



San Diego City Attorney's Office
A Report to the People of San Diego

January 2018

A message from City Attorney Mara W. Elliott

I'm pleased to share some of the amazing work the City Attorney's Office has accomplished for the people of San Diego during my first year as your City Attorney.

You would be reviewing hundreds of pages if we included every accomplishment achieved by the 165 attorneys and 200 support staff who make up our team. Instead, we've presented representative highlights that reflect our top priorities - priorities that are largely based on input we've received from you during public comment at Council meetings, at the town halls we hosted throughout the City in 2017, by constituent email and letters, and through your direct interactions with the deputy city attorneys who attend your town council, planning group, and community meetings.

Under "Protecting Our Most Vulnerable Populations," we discuss initiatives we've developed to protect our most susceptible citizens: victims of domestic violence, children, and the elderly. We also introduce you to our San Diego Misdemeanants at Risk Track (S.M.A.R.T.) Program. This Program helps people with substance abuse problems get off the streets and into a safe environment where they can repair their lives while saving taxpayers tens of thousands of dollars per participant. We also describe our plans to expand the Family Justice Center, the City's one stop shop for victims of domestic violence.

Under "Protecting the Environment," we discuss our ongoing efforts to hold polluters accountable, remove hazardous materials from our homes, waterways, and landfills, and prevent the destruction of our ecologically fragile shoreline.

Under "Protecting the Public," we discuss our prosecution of criminals who endanger others by driving while impaired, selling lethal street drugs, providing alcohol to minors, and profiting from illegal business and substandard housing.

Under "Protecting Taxpayers," we discuss our vigorous defense of the City from frivolous lawsuits and our ongoing efforts to advise the City on the best way to use its resources for the benefit of our neighborhoods.

This is just a sample of our work, and we are prepared for an even stronger 2018. Please contact me at cityattorney@sandiego.gov with your thoughts on how we are doing, and how we can do better.

As always, I am honored to serve San Diego and its residents.



Mara W. Elliott
City Attorney

PROTECTING SAN DIEGO'S MOST VULNERABLE CITIZENS

...from domestic violence

The week I took office, we added two prosecutors to our Domestic Violence & Sex Crimes Unit. This Unit works with more than 2,000 crime victims each year, including victims of elder abuse and child abuse. We hold abusers accountable and seek gun restraining orders in 100 percent of cases where the abuser has access to firearms.

We also partnered with the District Attorney and other law enforcement partners to create a strangulation protocol. This protocol trains law enforcement to recognize the signs of strangulation and to respond in a manner that will best protect the victim. Once a person is strangled by an intimate partner, the chances that she will be murdered by that partner increase 800 percent.

...from dangerous gun owners

Our office is among the first in the state to help families, roommates, and law enforcement to petition a court for a Gun Violence Restraining Order. This prosecutorial tool authorizes law enforcement to remove guns from a dangerous person for up to twelve months. This law can be used to disarm suicidal individuals, people suffering from delusions or dementia, and people intent on harming others. Our first successful case involved a man who had been shooting raccoon and rats in his backyard. He was three times over the legal drinking limit. Concerned neighbors sought our assistance.

In a related initiative, we developed police protocols for interviewing crime victims and witnesses who suffer from Alzheimer's and dementia-related diseases. This innovative approach helps us preserve valuable testimony while protecting the victim.

...from hate crimes

There is no place in San Diego for bigotry and violence perpetrated because of someone's race, ethnicity, religion, gender, disability, sexual orientation, or other protected characteristics. Whenever warranted, we will charge perpetrators with a hate crime, as we did when a gay couple was assaulted at a Hillcrest grocery store, an Uber driver from Somali was battered by a man who said he wanted the driver out of the country, and a man who shoved a customer in a La Jolla coffee shop while on a racist tirade.

...from elder abuse

When a daughter obtained a caretaker for her elderly parents, she never dreamed the caretaker would take over their home and refuse to leave. Our Office successfully prosecuted

the caretaker, who was also a hoarder, for trespassing. The court ordered the caretaker to undergo counseling to address her psychological issues and to pay restitution to her victims.

...from the cruelty of life on the streets

Being homeless is not a crime. Many people living on our streets are elderly, impaired by drugs and alcohol, and victims of crime themselves. In response to Proposition 47, which reduced certain drug and theft offenses from felonies to misdemeanors, our Office developed the S.M.A.R.T. (San Diego Misdemeanants At-Risk Track) Program. This Program responds directly to those who have found themselves homeless because of an underlying issue, such as substance abuse. In exchange for accepting treatment, counseling, and bridge housing, the participant's record is cleared. The Program is funded, in part, by the State of California. In applying for the funding, the State ranked our program number one (of 51 applications) because of its proven results and anticipated success. We expect to expand the Program by 84 beds in 2018.

...from child abuse

Unfortunately, our Office handles a significant number of cases involving child abuse. This can be anything from an intoxicated parent driving with a child in a vehicle to child neglect. We recently rescued a 13-year-old boy from an abusive and violent mother who made him sleep on the stairs outside her apartment, among other mistreatments. The mother pled guilty to misdemeanor child abuse for failing to care for her son, and the court issued a criminal protective order preventing her from having any contact with him until he turns 18.

PROTECTING THE ENVIRONMENT...

...from hazardous waste

Our Office pursues civil and criminal remedies against individuals and businesses that violate state and local environmental laws. We have not shied away from taking on big corporations, such as Monsanto, a company responsible for dumping PCBs into our local waterways, or paint manufacturers that unapologetically added lead to the paint we use in our homes. Although these violators are huge corporations with deep pockets, our Office does not back down because the stakes are too great. PCB exposure is linked to cancer and can endanger the immune, reproductive, nervous, and endocrine systems, and cause other serious health effects. Lead is a potent poison that can affect individuals at any age. Children are particularly vulnerable because their rapidly developing nervous systems are very sensitive to the effects of lead. Last fall, the California Sixth District Court of Appeal upheld a lower court decision in a case brought by San Diego and nine other California cities and counties. A trial court will determine how three paint manufacturers will clean up homes with lead paint products at a cost estimated at more than \$1 billion.

...from untreated sewage

Raw sewage has flowed into the Tijuana River for decades. In 2017, the City of San Diego, along with other impacted jurisdictions, declared its intent to sue the International Boundary Water Commission and a sewage plant operator for their failure to properly handle, transport, and dispose of solid and hazardous waste. Allowing this nuisance to remain unabated endangers the environment, people in the river valley, and swimmers in surrounding beaches. Negotiations are ongoing.

...from poachers

The South La Jolla State Marine Reserve and other reserves along the California coastline were created to protect marine life and the integrity of marine ecosystems. Poachers who catch and sell protected marine life, like the abalone and lobster that flourish in these no-take zones, are held accountable. We filed and prosecuted cases against two defendants, resulting in more than \$50,000 in fines, three-year stay-away orders for all county beaches (and three miles out to sea), and the forfeiture of fishing licenses and gear. We're continuing to work closely with groups like WILDCOAST to defend these precious resources.

...from unsafe asbestos disposal

When asbestos is released in the air and inhaled, it can cause respiratory disease and lung cancer. We prosecuted three construction companies that removed asbestos-laden building materials from a work site in North Park and left the materials lying in an alley. The companies were ordered to pay civil penalties and permanently enjoined from improperly removing, handling, or disposing of asbestos.

...from visitors who trash our beaches and parks

We work hard to preserve our beautiful beaches and parks so that they can be enjoyed by residents and tourists alike. To that end, those who litter, create a nuisance, or otherwise illegally degrade these public assets are offered the opportunity to participate in the Beach Area Community Court. This Court educates offenders about the impact their crime has had on public health and the community, while allowing offenders to work off their offenses through community service. This typically includes trash pickup and graffiti removal. Out-of-towners ticketed around the Fourth of July are eligible for a sister program, Instant Justice, to work off their debt before heading home. These programs educate offenders and save taxpayer dollars.

...by going green

Our Office practices what it preaches, which is why this year we became the first City Attorney's Office in the State to adopt office-wide sustainability policies and to take the State Bar Eco-Pledge. Among its goals are to reduce the environmental impacts of our legal work through

reductions in paper, energy, water, and other natural resources. This is good for the environment and good for our budget.

PROTECTING THE PUBLIC...

...from drunk and drugged drivers

Our Office prosecuted about 2,700 cases involving motorists who were driving while impaired by alcohol, prescription drugs, marijuana, and other substances. We file charges as serious as vehicular manslaughter and handle difficult “combination cases” that involve both drugs and alcohol.

...from adults who furnish minors with alcohol

Underage drinkers are particularly susceptible to the effects of alcohol. When tragedies result, our Office prosecutes their enablers -- typically an irresponsible adult. We filed two cases under a rarely used misdemeanor charge, Furnishing Alcohol to a Minor Causing Death, a recourse that is rarely used in our state. In one case, the adult received 100 days in custody for providing alcohol to his underage girlfriend the night she ran down a 16-year-old boy in Tierrasanta. The second involves a downtown bar and an adult customer whose actions led to a drunk driving fatality on I-5.

...from illegal marijuana dispensaries

Marijuana dispensaries that have proper permits are legal in San Diego. The City regulates legal operators to protect neighbors and clients, and requires round-the-clock security and employee background checks. Illegal dispensaries, by contrast, pop up in unapproved areas (such as near homes and schools) and often sell other illegal drugs. When neighbors complain, we prosecute. Police report that the lion’s share of the illegal marijuana trade has now moved outside the City, a boon to legal dispensaries that follow the rules.

...from dangerous drugs

Our Office wrote the ordinance that outlawed the sale of “spice” in San Diego. This year, we vigorously prosecuted retailers and merchants who carry this dangerous drug, usually under the counter, and sell it to people unaware that it can cause trauma and death. We prosecuted merchants at two “smoke shops” and helped to stop trafficking in spice.

...from unsafe building conditions that threaten the public’s health and safety.

We aggressively prosecute owners of substandard housing, abandoned and structurally unsafe buildings, and other nuisance properties for fire, health, and safety violations. We helped shut down a Barrio Logan artist studio that was a fire trap; cleaned up a home in Fox Canyon that

was a hub for criminal and nuisance activity; and sued a La Jolla couple who were slumlords. We also finished cleaning up a notorious hoarding house in Mira Mesa and went to work on another in the College Area. We use receiverships to hold violators responsible for cleanup costs, not taxpayer funds.

...from unsafe and misleading products

Our Office prosecutes false advertising on behalf of the People of California. This year we successfully sued the manufacturers and distributors of IntelliGender, a bogus “gender identity test” that misrepresented the test’s accuracy and exposed pregnant women to hazardous chemicals. The product exploded during use on hundreds of pregnant women, causing burns and skin irritation. In addition to winning hefty penalties, our case resulted in the product being removed from retailers’ shelves in San Diego.

...from consumer fraud

We quickly warned the public that restaurants were adding a “surcharge” to bills without advising consumers in advance of the charge, or truthfully explaining what the charge meant. Some restaurants falsely described the surcharge as a “government mandate.” The restaurants added the surcharge to combat a voter-approved increase in minimum wage. Although most restaurants were responsive to our threat to sue any business that unlawfully deceived the public, we continue to get complaints, and are in the process of prosecuting a non-compliant restaurant owner.

PROTECTING TAXPAYERS IN COURT

The City of San Diego is sued about 100 times a year, frequently by plaintiffs who make exaggerated claims in the hope of receiving undeserved riches through settlements and jury awards. We defend the taxpayers in these cases and our successes mean more money for City needs and neighborhood services. This year we instituted internal programs to improve our performance in court, including litigator roundtables, increased training and mentoring, and a policy of rarely settling and going to trial more. In addition, we work closely with our client to identify and achieve corrective actions so that we minimize or eliminate repeat lawsuits. Our zealous defense of the City has saved taxpayers tens of millions of dollars.

Here are some representative cases:

Police cases

The City prevailed in three high-profile cases in 2017 when courts found that San Diego Police Department officers acted reasonably by using force to protect innocent lives. The families of the deceased sought as much as \$7 million for their losses, but the cases were all dismissed by the court before trial. While the loss of life was a tragedy, it would have compounded that

tragedy if a police officer was faulted for taking reasonable actions to protect fellow officers and the public.

Employment cases

When a fire engineer alleged he was denied a raise because of racial discrimination, he sought monetary damages and came away with nothing. In trial, the City showed he had made critical mistakes in critical circumstances, violated medical standards, and failures in judgment, and had previously been discharged for poor performance.

When a recruit was terminated from the Police Academy, she sued the City, claiming discrimination, harassment, and retaliation, among other claims, and demanded \$5 million to settle. After a month-long jury trial with 19 witnesses, and an increased demand of \$7 million, the City achieved a defense verdict. The plaintiff received nothing.

Negligence cases

When a Navy employee drove his pickup truck off the Coronado Bridge while intoxicated, speeding, and texting, the City was sued by the driver and his victims for failing to maintain the bridge (which doesn't belong to the City) and failing to warn people below of the possibility of falling vehicles. The City prevailed.

In another case, a motorist failed to yield to traffic, and was rear-ended when he turned in front of police officer who was chasing a robbery suspect. He and his wife sued for negligence and sought about \$200,000 in damages. A jury sided with the police officer, who was driving with his lights and siren on, and rejected all of their claims.

Beach amenities case

We defeated two lawsuits that threatened to halt public amenities at San Diego beaches. One suit sought to invalidate the City lease of Belmont Park in Mission Beach to a company that has invested more than \$20 million in improvements to the oceanfront amusement park, home of the historic Giant Dipper roller coaster and iconic Plunge indoor swimming pool. The second sought to block construction of a new lifeguard tower needed to enhance the safety of swimmers on South Mission Beach, but which partially blocked a homeowner's view.

PROTECTING TAXPAYERS WITH LEGAL ADVICE

We work closely with the Mayor and City Council to help them achieve the civic goals they were elected to advance, and with City departments to ensure their operations are efficient, economical, and defensible. We draft ordinances and regulations with a sharp eye toward identifying unforeseen and potentially adverse consequences.

In 2017, we helped craft the Equal Pay Ordinance (ensuring that San Diegans receive equal pay for equal work regardless of gender), the Alarm Ordinance (cutting red tape for homeowners to secure their homes with alarm systems), the Debarment Ordinance (giving the City greater power to debar unscrupulous contactors), and the anti-Border Wall Resolution (encouraging healthy cross-border relations). In addition, we assisted the City in implementing Proposition 64, the Adult Use of Marijuana Act, which was approved by voters in 2016. The City enacted regulations for the retail sale of marijuana, which includes requirements for location, security, and permits, and “supply chain” regulations allowing for commercial cultivation, distribution, storage, production, and testing of medical and recreational marijuana and marijuana products. These regulations will protect the public from unlicensed retailers and distributors.

Much of our work is proactive:

Recreation Councils

We advised the Park and Recreation Department that volunteer recreation councils may no longer place City funds in private accounts and that recreation councils must follow applicable laws requiring compliance with competitive bidding and ethics laws. This advice followed the theft of nearly \$68,000 by the president of a recreation council, as well as other concerning situations arising from the handling of public funds. The Department worked with the recreation councils to create policies and procedures that protect taxpayer funds while continuing to offer ample recreational opportunities.

Sidewalks

We advised the Rules Committee on the costly consequences of a proposed change in the City’s sidewalk maintenance policy. The proposed change would have shifted liability for broken sidewalks from homeowners to taxpayers at a potential cost of tens of millions of dollars, yet would not have provided new resources for repairs and maintenance. City responsibility would exist even when the City was not at fault. On our advice, the Rules Committee recommended that City staff work on a better approach.

Homelessness

We created a Special Projects Team to advise the Mayor and City Council on complex issues concerning homelessness in San Diego, including abatement, appropriate City actions in light of several federal court orders, new and threatened litigation, and the Hepatitis A outbreak. In responding to the Hepatitis A outbreak, for instance, the team drafted emergency contracts that allowed City officials to expeditiously hire contractors who could provide temporary housing, public amenities, and testing. Further, the team analyzed the City’s sanitation response, including abatement and sidewalk bleaching, to ensure that the City’s actions were lawful and safe.

Police Chief Recruitment

We gave input to the Mayor and City Council on the recruitment and selection of the next police chief. Our advice included building credibility and trust through the process and choosing a chief whose background indicates compassion and an understanding of diverse populations. Among the desirable qualities we identified: a strategy for addressing officer recruitment and retention, ending the rape kit testing backlog, and partnering with our office on solutions to end gun violence.

Soccer City initiative

We provided voters and elected officials with a legal analysis of both the San Diego River Park and Soccer City Initiative, a citizens' initiative that would develop the 233-acre Mission Valley site of San Diego County Credit Union Stadium (SDCCU) and 20 acres of City land in Murphy Canyon, and the competing Friends of SDSU Initiative. Our memos answered legal questions raised by the initiatives including an analysis of liability, ownership, costs, and related issues.

ACCOUNTABILITY AND PUBLIC TRUST

I value and respect public input and transparency. For that reason, I and my team are in communities like never before.

We hold quarterly town halls in each council district. This is an opportunity for me to tell you how my Office serves you, to explain Office priorities, to answer your questions, and to receive valuable community input.

We also expanded our presence by assigning a deputy city attorney to each police division. These attorneys attend your town council, planning group, and related meetings to report on our services and to help your communities address pertinent issues like public nuisance, crimes, and emerging issues.

I am present during the public comment period of each City Council meeting so that I can hear directly from you.

Within our Office, we have appointed a Chief Diversity Officer to ensure we're hiring staff that look like the neighborhoods they work in, a Chief Ethics Officer who oversees conflict of interest and other ethical issues, and a community relations officer to ensure we regularly communicate with San Diegans.

Our attorneys and staff are teaching and mentoring at local elementary and high schools to prevent teen violence and combat trafficking through education campaigns. Our goal is to partner with educators to prevent kids from entering the criminal justice system. Education and mentoring are effective tools.

CONCLUSION

We accomplished a lot in 2017, and are excited about what we'll accomplish in 2018. We're looking forward to reporting back on the following priorities:

- Protecting our elderly population from consumer fraud, as well as mental and physical abuse. This includes holding licensed care facilities accountable.
- Transitioning the Family Justice Center from the San Diego Police Department to the City Attorney's Office with plans to regionalize the agency.
- Expanding our consumer protection efforts.