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Attachment 1

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Re: Claims, Litigation, and the Media: Sample Talking Points

This memorandum is intended to provide guidance to City staff and members of their respective City Councils. However, no two situations are the same and each situation must be analyzed individually with the City Attorney and/or communications team, an outside attorney, and/or staff from your risk pool or insurance carrier. This memorandum is to provide guidance alone.

The main thing to remember is that anything said should be 100% true now and also remain 100% true in the future. In other words, don't speculate about the incident, as more facts might be revealed later that could render your statement untrue. Don't promise something that can't be guaranteed. By speculating about what did or didn't occur, or what might or might not occur in the future, you have created a situation that makes the City look as if it is not being transparent and is not accountable, which in turn tarnishes the City's reputation in the public eye. Those members of the public may be on a jury if the case goes to trial, and may tend to hold the City liable and/or increase the damage award as a result of their negative perception of the City.

Examples: Third-Party Claims/Litigation Against the City and/or Employees; Claims/Litigation by Employees Against the City

- “The City is legally prohibited from discussing any specific employee/officer or incident related to this claim/lawsuit because of state and federal privacy rights laws. The City respects the privacy and confidentiality rights of employees/officers as well as members of the public who may have information about the incident.”
- “The City understands that the media/public would like to know more about this claim/lawsuit. To preserve the integrity of the legal process and fairness for all involved, the City has a policy of not discussing pending claims or litigation.”
- “The City's priority has been, and will always be, to ensure that it is serving the community and providing as much information and transparency as allowed by the law.”
- “The [City] takes this incident very seriously. This incident has been referred for an independent evaluation by outside professionals.”

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- “The City, working in partnership with the community, is committed to enhancing all individuals’ quality of life by promoting a cohesive and supportive environment.”
- “The City understands and appreciates the trust that the community places in both it and its employees. Despite the threatened legal proceedings, the City extends its support not only to those that have been directly involved, but also to the community in hopes of moving forward in a positive and collegial manner. [The City’s priority has been, and will always be, to provide a safe environment free from harassment, intimidation or any other inappropriate conduct for everyone.]”

Examples: Press Statement and/or Response to Press Inquiries regarding an Outside Law Enforcement or Other Investigation

- “The City/Police Department is aware of the [Agency’s] press conference held [today, yesterday, etc.] outlining its independent investigation into [incident description]. The City/Police Department is fully cooperating with the [Agency] as they continue their investigation. To respect and maintain the integrity of the investigation, the City/Police Department will not be providing additional comments at the time.”
- “Because this incident involves conduct that may have occurred [off duty/outside the course and scope of employment and/or official duties], the City must respect the rights of the persons involved to due process and not make statements that could improperly influence the results of the legal proceedings.”

Examples: Damage to City Infrastructure or Facilities

- “The City understands that damage to its facilities is disruptive, and staff is working tirelessly to repair/restore the facilities/services.”
- “The City is working to determine how and why this incident occurred.”
- “The City has declared a local emergency and has activated its Emergency Operations Center, which will be coordinating efforts among all City departments and any outside agencies for the benefit of its residents.”

Additional General Guidance for Councilmembers regarding statements and contact with affected persons (such as families of a decedent or injured individual).

- Compassion for the family, [concern for officers – if applicable] and personal connections within the community are all understandable and human. However, at the same time, this incident is the subject of an active investigation and pending and/or anticipated litigation against the City. Thus, it is critical that all councilmembers refrain from making any public statements about the incident in any setting, other

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than as approved by the City Manager, City Attorney, and any outside counsel. This includes, but is not limited to, comments to the media, statements at public gatherings or protests and posts/reactions on social media. Even well-intentioned remarks expressing sympathy or personal views can be taken out of context and used against the City in a lawsuit.

- For the same reasons, councilmembers should not reach out directly to, or communicate with, those directly involved (including victims and family members) regarding the incident. While the desire to express condolences is understandable, any communication can create a misunderstanding and be construed an admission of fault. Not only does this prejudice the City in any legal proceedings, but it also places an additional emotional burden on the family should the legal proceeding play out in a way favorable to the City.
- If approached by members of the public or media, councilmembers should limit their response to a neutral statement such as: “I cannot comment on a matter involving pending investigations or litigation against the City.” This statement is not intended to limit empathy or compassion; rather it is designed to protect the City and ensure no unintended statements are made that could complicate the legal process or undermine the integrity of the processes.
- For example, unintended statements regarding the vague “need for justice” have resulted in councilmembers’ depositions being taken. Additionally, such statements have led to courts holding that the City waived its defense of discretionary immunity. Statements made by elected officials that can be construed as an admission of liability have resulted in a denial of coverage by primary and excess JPAs due to breaches of the terms of the Memorandums of Coverage, which require the City to cooperate with the pool or insurance carrier in the defense of the City.