A Practical Guide to Litigation and Crisis Management Communication

Annual Conference 2026

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A Practical Guide to Litigation and Crisis Management Communications

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I. Introduction

Transparency. Honesty. Open Communication. Three key buzz words which constantly center around communications from anyone or anything in the public eye – whether it be a large corporation or a public entity (city, town, special district, etc.). But what do these buzz words really mean for a city in the context of litigation? Can the city, its employees or, councilmembers really be as "open" and "honest" as the public may demand? Likely, no.

However, with the right framework and protocols in place, cities should be able to develop a communication strategy to address the public's concerns while complying with state laws regarding privacy, confidentiality and protecting closed session privileges. This adaptable framework aids in identifying which potential or actual claims, litigation and/or an emergency crisis might call for communication by the city or its officials and, if so, who should speak on its behalf.

Additionally, the implementation of a communication plan/protocol aids in eliminating the risk and potential liabilities of an ill-timed or ill-considered statement. These risks include, but are not limited to additional litigation, the potential loss of coverage, and reputational harm.

II. When Should A City Consider Speaking?

A city's default response should not be to speak simply because an incident has occurred. Rather, decision-makers should first determine whether a public statement advances legitimate municipal interests. Before making a public statement, city officials should ask:

> Will this statement help the city provide necessary public information, protect public safety, or maintain essential public confidence?

If the answer is **no**, or if the primary effect would be to increase legal, financial, operational or reputational risk, the better course may be to hold comments. For example, John Doe files a routine complaint to enforce a Public Records Act Request after he feels he did not receive a proper response. Doe has now made several Facebook posts describing the legal proceeding and questioning the city's transparency. Should the city respond in a similar public forum? Likely no. In this example, the city gains little from commenting on the litigation, risks calling further unwarranted attention to it, and could create opportunities for misstatements or legal complications.

Additionally, if the incident is between private individuals or is unlikely to attract public attention, a public comment is likely not warranted. For example, Party A and Party B have children on the same little league team. At an evening game, Party A and Party B have an altercation. Both are private citizens but, the altercation happened at a city-owned baseball field. Should the city comment, as the altercation happened on its field? Again, likely no as there is no involvement of the city in the matter. Additionally, a statement from the city may likely drag the city into litigation for a deposition and/or subject it to a Public Records Request.

If the answer to the above question is **<u>yes - a statement will provide necessary public information, protect public safety or maintain essential public confidence -</u>**, the City must then determine whether the statement can create evidentiary, litigation, employment, privacy and insurance consequences. When crafting the statement, the city officials must remember that ANY STATEMENT MUST BE TRUE, 100% OF THE TIME – NOW AND IN THE FUTURE.

A. Legal Considerations Supporting Public Comment

In determining whether to issue a public statement, cities should consider not only communication objectives but also potential legal consequences. Statements by authorized officials may constitute admissions that can be used in litigation. Likewise, public commentary concerning pending claims, personnel matters, investigations, or potential settlements may undermine the city's legal position, interfere with investigative processes, implicate privacy rights, or prejudice ongoing proceedings. California law recognizes these concerns through protections for pending litigation, personnel records, investigative materials, and settlement communications. In general, if there is a statute protecting the confidentiality of a communication or a matter, or exempting records about a matter from production, it is wise to ask whether making a public statement would potentially violate that statute, or at the very least, risk disclosure of information that the legislature has determined should be kept confidential.

Accordingly, restraint is often the legally prudent course until material facts have been verified and counsel has had an opportunity to evaluate potential consequences as ANY STATEMENT MUST BE TRUE, 100% OF THE TIME – NOW AND IN THE FUTURE.

1. Public Statements Can Become Admissions.

Statements by authorized city officials may be admissible in subsequent litigation as admissions of a party-opponent. (Cal. Evid. Code §§1220; 1221 [excluding from hearsay statements offered against a party that the party adopted with knowledge of its contents]; 1222 [excluding from hearsay statements the party authorized another to make on his or her behalf]; 1223 [excluding from hearsay statements of declarants in the course of a conspiracy]; FRE §801(d)(2).) This creates risk when officials speculate about fault, responsibility, policy violations, or damages before investigations are complete.

Example: Following a vehicle collision involving a city employee, the city spokesperson states: "The city employee failed to follow its own safety protocol." Even if a later investigation disproves this statement, a plaintiff can introduce it as evidence of liability and open up the floodgates to depositions and, ostensibly, back-peddling of comments which can compromise trust, among other things.

2. Pending Litigation Requires Protection of the City's Legal Position.

California's Brown Act expressly recognizes that discussion of pending litigation can prejudice a city's position. (Cal. Govt. Code §54956.9.) It expressly authorizes closed sessions for consultations with legal counsel when open discussion could harm the city's interests in litigation. (*Ibid*.) This legislative recognition supports a broader principle - *to wit* – a city should not publicly disclose the information that could prejudice its defense, litigation strategy, settlement posture, or legal defense.

Hand-in-hand with this concept is the discussion of settlement and/or compensation. California Evidence Code §1152 protects settlement negotiations by making settlement offers and related communications generally inadmissible to prove liability. (Cal. Evid. Code §1152.) The statute reflects California's strong public policy favoring candid settlement discussions.

While the statute may protect settlement communications, public statements can inadvertently undermine settlement negotiations or create expectations that complicate the resolution of the claims. For example, before a Mandatory Settlement Conference, a city official publicly states: "The city intends to fully compensate Jane Doe for the harm caused." Although formal settlement communications may be protected, public pronouncements such as this can impair negotiation flexibility and place added financial pressure on the city and its risk pool to resolve a claim for a higher value than may be warranted. As is always the case, the defense tends to value claims differently than the plaintiff.

Example: Jane Doe's son died while in police custody and she has brought a federal civil rights lawsuit against the city. Causation is highly contested, and the city's outside defense counsel has filed a motion for summary judgment. While the motion for summary judgment is pending, mediation is scheduled between the parties. One week before the mediation and during the pendency of the motion for summary judgment, the mayor gives Jane Doe a key to the city for her advocacy work in relation to this incident. The damage this gesture can do to the city's bargaining position in mediation is difficult to overstate.

3. Ongoing Investigations Warrant Caution When Determining Whether a Statement is Necessary.

Cal. Government Code §7923.600-7923.625 recognizes the protections for investigatory records maintained by law enforcement and other agencies because premature disclosure can interfere with investigations and enforcement activities. A city official must be aware that any statement regarding an ongoing investigation may interfere with that process and/or create an unintentional bias in the outcome.

Example: The District Attorney is investigating a city employee for embezzlement. The local media has requested an official comment from the city about the employee and the investigation. The investigation is of public interest as it involves taxpayer money. Does the city make an official comment and, if so, what does the city say?

In these situations, the city must consider the legal consequences of every statement *and* the rights of the city employee (see further discussion *infra*). Since the investigation is ongoing, the Government Code sections cited above protect the records and the information contained therein. Accordingly, the likely best practice is to say only: "The City is aware of the matter and is cooperating with the appropriate authorities. Because the investigation is ongoing, the City will not comment further."

4. Personnel Matters Involve Significant Privacy Rights.

California law protects personnel files and information when disclosure would constitute an unwarranted invasion of privacy. Government Code §7927.700 reflects the strong public policy favoring confidentiality in personnel matters ["[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."] Section 7927.700 and its predecessor §6254(c) was "developed to protect intimate details of personal and family life, not business judgments and relationships." (*Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045.)

Accordingly, a request for information regarding a personnel matter and/or personnel files involves a balancing test. "Under Section 6254, subdivision (c), the court balances the public interest in disclosure against the individual's interest in privacy." (*Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222, 240.) When city employees take on this balancing test alone and disclose personnel matters and information, there is a substantial risk of additional litigation.

Example: Joe Doe works for the sheriff's department and testifies before a grand jury as whistleblower to alleged internal corruption. The sheriff's department contracts with the city for police services. During the grand jury investigation, the city manager gives multiple statements to the press regarding his knowledge of Joe Doe's employment and termination. A defamation lawsuit filed by Joe Doe follows.

III. Who Should Speak to the Media During a Crisis or Litigation?

During a crisis, investigation, or active litigation, public communications can significantly influence community trust, media narratives, employee morale, and legal risk. Municipal leaders often face pressure to respond quickly and visibly. However, not every city official is equally positioned to speak on behalf of the organization.

The most effective approach is to designate a single, well-prepared spokesperson and ensure close coordination among the City Manager's Office, Communications staff, department leadership, and legal counsel. While elected officials play a critical governance role, public statements from councilmembers during active disputes or litigation generally provide limited value and may inadvertently increase legal exposure, litigation costs, or personal liability.

Yet, as with all lawyer responses, each case is fact-dependent and "it depends".

A. Communications Director or Public Information Officer

A Communications Director or PIO is often highly effective because of professional media training and experience managing public messaging.

Their strengths typically include:

- Message development.
- Media relations.
- Crisis communications expertise.
- Ability to maintain consistent messaging across platforms.

In many organizations, the PIO either serves as the spokesperson or works closely with executive leadership to prepare designated speakers.

B. City Manager

The City Manager is often the most appropriate spokesperson because of their executive authority and broad understanding of city operations.

Advantages include:

- Organization-wide perspective.
- Established credibility with stakeholders.
- Ability to communicate strategic decisions.
- Strong understanding of operational impacts.

For citywide issues, governance matters, and organizational responses, the City Manager is frequently the preferred choice.

C. Police Chief or Fire Chief

Public safety leaders may be the most effective spokespersons when incidents involve:

- Emergency response.
- Public safety operations.
- Natural disasters.
- Criminal investigations.
- Community safety concerns.

Their operational expertise often provides greater credibility than general administrative leadership in these situations.

D. Other Heads of Department

When a matter primarily involves finance, procurement, infrastructure, technology, or other specialized operations, the relevant department director may be best positioned to address technical questions.

The spokesperson should possess:

- Deep subject-matter expertise.

- Strong communication skills.
- Ability to remain disciplined under scrutiny.

E. City Attorneys

Although legal counsel plays a critical role in reviewing and advising public communications, city attorneys generally should avoid serving as primary public spokespersons.

One significant concern is that attorneys who make substantive public statements may become percipient witnesses regarding disputed facts. If that occurs, they could be required to provide sworn testimony concerning those statements or their underlying knowledge.

Potential consequences include:

- Complications to litigation strategy.
- Attorney-witness conflicts.
- Challenges regarding continued representation.
- Increased legal costs and procedural complexity.

For this reason, legal counsel is often most effective behind the scenes, advising decision-makers and reviewing communications rather than serving as the public face of a matter.

Yet, with that being said, there is always a caveat where the city attorney may be in the best position to speak – particularly at the outset of proactive litigation. For example, the city has issued a Public Records Request to the Public Utilities Commission ("PUC") and has taken the position that the PUC has failed to comply. The city files suit to force compliance and holds a press conference regarding the same. At the outset of the litigation, the city attorney (without giving out legal strategy) is likely in the best position to explain to the public the allegations of the lawsuit.

F. City Councilmembers

Often the first who would like to speak, elected officials, are sometimes the last people who should take the podium. As experience shows and except under extraordinarily rare circumstances, public statements made by individual council members during active crises or litigation generally do not advance the city's interest and often send confusing messages.

Councilmembers fulfill an essential governance role through policy direction and oversight. During active legal disputes or sensitive investigations, however, public commentary can inadvertently become evidence, create new allegations, or complicate the city's defense. Accordingly, councils should strive for discipline and consensus regarding external communications and defer operational messaging to designated executive staff.

California elected officials are not immune from defamation claims. Recent litigation involving local elected officials demonstrates that statements made in public meetings, media interviews, campaign communications, court proceedings, and social media posts can result in lawsuits against a councilmember in their individual capacity. Even if a councilmember ultimately prevails, the costs associated with litigation, depositions, document production, and reputational harm can be substantial. For this reason, councilmembers should exercise particular caution when discussing pending disputes, personnel matters, investigations, contractors, developers, residents, or litigants. A coordinated communications strategy led by designated city representatives generally provides greater protection for both the municipality and individual elected officials.

One additional legal point that is particularly useful: California Government Code § 822.2 provides that public employees may be <u>personally liable</u> for injuries caused by actual fraud, corruption, or actual malice. (Cal. Govt. Code §822.2 ["A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice."]) While it is often difficult for plaintiffs to prove, alleged defamatory statements are frequently accompanied by claims that the official acted with malice. That possibility is another reason why disciplined communications are recommended.

It can sometimes be difficult to convince councilmembers that they should refrain from speaking about an incident, because they often believe that doing so is in their best political interest, even though they may cite as justification the public's interest in transparent and responsive government. Councilmembers may also be interested in promising that something will be done about the incident. But if an appropriate city spokesperson such as a PIO or City Manager is speaking about the matter, then there is little additional public interest to be served by the councilmember speaking. Moreover, in reality, councilmembers cannot control the timing or outcome of investigations or other actions by staff or outside agencies in response to the incident, so they risk making a promise they cannot keep. There is also a risk that the councilmember will become a witness in the proceeding, be deposed (and hence subject to perjury risk), and potentially have to retain counsel at their personal expense, potentially embroiling the city in litigation over the matter. This in turn raises the specter of a potential Government Code §1090 violation if the city attempts to settle the duty to defend case. Moreover, a risk pool or insurance company may limit or even withdraw coverage for the underlying case if they determine that the city has violated the standard "cooperation" clause in insurance contracts or pool agreements due to the councilmember's statements that may have been interpreted as adverse to the city's interests. A candid conversation with a councilmember who is reluctant to refrain from speaking may be helpful.

A separate category of situations that can be difficult to navigate is when councilmembers are themselves the subject of civil, criminal, or administrative litigation. If the matter is unrelated to their position as an elected official, then there is little that the city should say, other than to refer questions to the councilmember. Councilmembers in these situations are likely to have retained their own attorneys and perhaps even media consultants who can advise them. In other matters, the councilmember's conduct may be related to their position, but again, discretion is often the best policy. The city may be unaware of what the outside investigating agency is doing, and hence any statements are likely to be speculation.

1. Councilmembers Do Retain First Amendment Rights

While city councilmembers retain substantial First Amendment rights as elected representatives, those rights are not unlimited. The United States Supreme Court has recognized that elected officials are entitled to broad protections when speaking on matters of public concern and public policy. (*Bond v. Floyd* (1966) 385 U.S. 116, 135 ["[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy."]) At the same time, First Amendment protections do not immunize councilmembers from defamation claims, disclosure of confidential information, or the practical consequences of statements that increase municipal liability. Public comments may become evidence in litigation, subject individual council members to depositions, and create personal exposure where plaintiffs allege malice, defamation, retaliation, or other misconduct. (*See Byrne v. Rule* (2025) 113 Cal.App.5th 708 [Residents alleged violations of the confidentiality provisions of the Brown Act for statements made by councilmember; anti-SLAPP motion denied and protracted litigation followed].)

Accordingly, the existence of First Amendment rights should not be confused with the absence of legal risk, or a suggestion that because a right exists, it should be exercised in all circumstances. Cities are generally best served when communications regarding active litigation, investigations, or crises are coordinated through designated spokespersons and reviewed by legal counsel where appropriate.

IV. Developing Communication Protocols for Cities Following Critical Incidents

The purpose of a communications protocol is to ensure that public communications during and after a significant incident are:

- Accurate and fact-based.
- Consistent across all agency representatives.
- Timely and responsive to public concerns.
- Coordinated with legal counsel and operational leadership.
- Compliant with applicable legal requirements.
- Supportive of transparency while protecting confidential and privileged information.

An effective communications framework reduces confusion, minimizes contradictory messaging, and helps preserve public trust during periods of heightened scrutiny.

A. Chain of Command

A clearly defined chain of command should govern all external communications.

The city should designate a final decision-maker responsible for approving public statements, press releases, media responses, and other significant communications. Depending on the nature of the incident, this individual may be the city manager, executive director, agency chief executive, or another designated official. Centralized decision-making ensures consistency and reduces the risk of conflicting statements from multiple sources.

An experienced media consultant or PIO will be aware of media deadlines and prepare draft statements for review based on these timelines. There should never be an instance in which the city releases a statement that has not been thoroughly vetted. On the other hand, just because a reporter is subject to a deadline does not mean that the city must drop everything and be compelled to respond accordingly. If the PIO or media consultant has an established professional relationship with members of the media, they should be able to navigate the timelines appropriately and provide public statements in due course.

B. Approval Process

All public communications should be vetted through an established approval process.

At a minimum, statements should be reviewed by:

- The designated communications lead.
- Relevant operational staff.
- Executive leadership.
- Legal counsel, when appropriate.

This process helps ensure factual accuracy, legal compliance, and message consistency before information is released.

C. Social Media Guidelines

Public agencies across the country have been sued over social media activity, including the blocking of critics, deletion of comments, and publication of statements alleged to violate constitutional or common-law rights. The recent Supreme Court decision in *Lindke v. Freed* and the Ninth Circuit opinion in *O'Connor-Ratcliff v. Garnier* underscore that social media activity may be treated as governmental action when officials use their accounts to communicate official business. Accordingly, agencies should adopt written social media protocols, limit official communications to authorized channels, and require legal review of potentially controversial online communications.

In *Lindke v. Freed*, James Freed created a private Facebook page in 2008. In 2014, Freed updated his Facebook page to reflect that he was appointed city manager of Point Huron, Michigan in addition to including some personal information. (*Lindke v. Freed* (2024) 601 U.S. 187, 191-192.) After appointment, Freed continued to post primarily personal posts with a smattering of posts related to his activities as city manager. After the COVID-19 pandemic began, Freed posted about that. (*Ibid*.)

Plaintiff, unhappy with the city's COVID-19 response, frequently visited Freed's page expressing his opinions. (*Lindke, supra*, 601 U.S. at 192.) Initially, Freed deleted Plaintiff's comments but eventually blocked him from commenting. *Ibid*. Plaintiff sued under 42 U.S.C. §1983 alleging that Freed had violated his First Amendment rights.

In determining whether Freed's social media activity constituted a "state action", the Supreme Court observed that an official must not only have state authority – he must also "purport to use it". (*Lindke, supra*, 601 U.S. at 201.) "State officials have a choice about the capacity in which they choose to speak on behalf of the State while speaking in his official capacity or when he uses his speech to fulfill his responsibilities pursuant to state law." (*Ibid*.) The Supreme Court ultimately held the speech is attributable to the state only if the official (1) posed actual authority to speak on the state's behalf and, (2) purported to exercise the authority when he/she spoke on social media. (*Lindke, supra*, 601 U.S. at 191.) However, the dicta in the opinion is most instructive.

When analyzing Freed's Facebook post, the Supreme Court noted the "hazy" nature of the posts since there was no disclaimer or explanation – i.e. it was not expressly designated as either "personal" or "official" raising the presumption it was "mixed use". (*Lindke, supra,* 601 U.S. at 203.) It then suggested language which would give the Facebook posts a "heavy presumption" of personal use – "this is the personal page of James R. Freed" or "the views expressed herein are strictly my own". (*Ibid.)*

Conversely, in *Garnier v. O'Connor-Ratcliff*, a member of the Poway Unified School District blocked parents from the trustee's Facebook and Twitter pages. Under the *Lindke* framework, the Ninth Circuit examined the nature of the accounts and concluded, unlike *Lindke*, that the accounts were official government accounts. (*Garnier v. O'Connor-Ratcliff* (9th Cir. 2025) 136 F.4th 1181, 1190-1191.)

With regards to the first prong of the *Lindke* framework, the Ninth Circuit found that the trustee, as president of the board of trustees of the district, had actual authority to speak on the school district's behalf because it was explicitly granted by California law and the district's bylaws. (*Garnier, supra*, 136 F.4th at 1189-1190.)

With regards to the second prong, the Ninth Circuit determined that the trustee was purporting to exercise official authority on the trustee's Facebook and Twitter pages. (*Garnier, supra*, 136 F.4th at 1190-1192.) The court found that both the presentation and operation of the trustee's social media accounts reflected their use as official governmental communication platforms. The accounts were regularly used to provide constituents with information regarding district activities, board actions, meeting schedules, and personnel matters, including announcements made prior to formal district releases. The pages publicly identified the trustee by official title, included the trustee's district email address, and contained no disclaimer indicating that the views expressed were personal rather than official. Viewed collectively, these factors demonstrated that the trustee was using the accounts to exercise authority and communicate on behalf of the district. (*Ibid*.)

Accordingly, when read together, it appears imperative that public officials (whether elected or appointed) be made aware of the ramifications of their social media posts – whether it be alleged Brown Act violations (*Byrne, supra,* 113 Cal.App.5th 708) or protracted litigation into whether the comments were made in an official capacity. (*Garnier, supra*, 136 F.4th at 1189-1190; *Lindke, supra*, 601 U.S. at 191.) These cases underscore the danger that social media posts about claims or litigation can themselves become the subject of litigation, while simultaneously creating legal and reputational risks in the underlying case to which they refer.

Councilmembers sometimes conflate whether they are speaking in their personal capacity and not their official capacity, with whether they are speaking in their official capacity but not for the city council as a whole. These two situations are different, and ideally, councilmembers should attach different disclaimers to their communications in each situation. In the first situation, councilmembers would be wise to understand that the public almost always views their public statements about virtually any topic related to the city as being made in their official capacity, and evaluate the legal and reputational risks of speaking accordingly. In the second situation, councilmembers should recall that only a majority of the city council can take an official position on a matter, and tailor their public comments about city business accordingly.

D. Coordination with Legal Counsel

Legal counsel should be integrated into communications planning from the outset.

Counsel can help assess:
- Confidentiality concerns.
- Privilege issues.
- Pending litigation risks.
- Public records implications.
- Regulatory reporting obligations.

Early legal reviews help balance transparency objectives with legal considerations.

E. Rules for Elected Officials and Staff

Agencies should establish routing rules for media inquiries and public communications. Generally:

- Media inquiries should be directed to a designated spokesperson.
- Elected officials should receive guidance regarding approved messaging.
- Staff members should refrain from providing unofficial statements and refer inquiries to authorized personnel.

Clear routing protocols help prevent inconsistent or inaccurate messaging.

V. What Can Go Wrong by Ill-Timed or Ill-Considered Communications

- **Risk of Inaccurate or Misleading Communications:** Public statements may contain errors or misrepresentations, leading to significant reputational harm and loss of public trust.

- **Privacy and Confidentiality Exposure:** Unauthorized disclosure of protected information, including medical, juvenile, personnel, or other confidential records, may create legal liability for both the organization and individuals involved.

- **Interference with Investigations:** Public comments can compromise the integrity of administrative or criminal investigations, jeopardizing impartiality and potentially result in legal consequences.
- **Violation of Privileged Communications:** Disclosure of closed-session discussions, attorney-client communications, or other privileged information may waive legal protections and expose the organization to substantial risk.
- **Public Records Compliance Risks:** Improper release of documents or failure to redact exempt information can result in regulatory violations and increased liability.
- **Creation of Adverse Evidence:** Public statements and records may become discoverable evidence in litigation, potentially harming the organization's legal position.
- **Personal and Organizational Legal Exposure:** Individuals who make public statements may become witnesses in subsequent proceedings, creating risks related to testimony, liability, and insurance coverage.

VI. Summary of Best Practices for Media Communications

- **Ensure Accuracy and Consistency:** Communications should be factually accurate, sustainable over time, and carefully vetted before being made public.
- **Protect Reputation Through Disciplined Messaging:** Public trust is difficult to build and easy to lose; consistent, professional communications are essential.
- **Use Designated Communication Channels:** Refer media inquiries to the authorized spokesperson and adhere to approved talking points to ensure unified messaging.
- **Communicate with Empathy and Neutrality:** Express condolences where appropriate, use neutral language, and focus on factual information rather than opinions or conclusions.
- **Respect Legal and Administrative Processes:** Acknowledge ongoing reviews or investigations, avoid premature conclusions, and emphasize commitment to due process.
- **Protect Privacy and Confidentiality:** Respect legal requirements governing personnel, employment, and other confidential matters.
- **Avoid Speculation and Admissions:** Do not speculate, assign fault, discuss liability, evidence, settlements, discipline, or make promises regarding future outcomes.
- **Maintain Professional Conduct:** Avoid public disputes among officials or staff, as such conflicts can undermine credibility and negatively impact legal and public relations outcomes.

- **Follow Established Legal Positions:** Consistent with policy, refrain from commenting on pending claims or litigation.

VII. Approved Talking Points

Please see the attachment with talking points from PLAN JPA.

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Attachment 1

Amanda N. Griffith, Esq., Litigation Manager, PLAN JPA
Marc Zafferano, Esq., Senior Counsel, Boucher Law PC

Date: September 25, 2026
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 <u>anything said should be 100% true now and also remain 100% true in the future.</u> 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."

- "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 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 playout 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.