



employee relations **BULLETIN**

January 24, 2006

**To: Heads of All Departments
Departmental Personnel Officers**

Subject: COLLISIONS OF CITY VEHICLES OPERATED BY CITY EMPLOYEES

Every day hundreds of City employees drive City vehicles as part of their jobs. At any time, these employees could be involved in an accident that results in serious property damage, bodily injury or death. When this happens, the City and/or the employee could be subject to criminal investigation and criminal prosecution. Criminal proceedings may result from misdemeanor or felony infractions, including those contained in the Vehicle Code. This Employee Relations Bulletin addresses those instances in which City employees driving City vehicles while performing their jobs are involved in serious vehicle accidents and describes the associated Council guideline.

The City Attorney's Office does not directly represent either the City or City employees in criminal proceedings. This is true even if the accident occurs while employees are acting within the course and scope of their duties. The City Attorney's Office may provide advice in certain limited circumstances. (Note: the City Attorney will provide advice and defense for the City and employees, when they are acting within the course and scope of their duties, in civil cases.) State law, however, allows the City to provide criminal defense under certain limited circumstances, in the form of the City paying for the City employee's criminal defense. See Paragraph 5 below.

In addition, the City Council has adopted a guideline designed to protect the interests of civilian City employees who operate City vehicles as part of their jobs (C.F. 98-0237). All General Managers, Heads of Departments/Offices and Commissions are instructed to provide the following information to those employees and supervisors. In addition, convenient access to this information will ensure that the following policies are implemented and followed to best protect the interests of the public, the City and those City employees involved in accidents while operating City vehicles:

1. In some cases, vehicle collisions of City vehicles driven by City employees on City time lead to criminal investigations and prosecutions.

2. The City Attorney's Office does not provide defense in criminal matters.
3. Employees have an obligation to cooperate with accident investigators, including department personnel and must abide by City policies regarding reporting and investigation of vehicle accidents; but they also have the right to consult with legal counsel prior to speaking to law enforcement investigators in those rare instances where:
 - a) Criminal liability is at issue; and
 - b) They themselves reasonably believe they are the subject of a criminal investigation.
4. The employee associations that represent members who drive City vehicles may engage criminal defense attorneys to provide initial consultation with employees following serious traffic collisions.
5. The City Council may decide to pay for criminal defense only if the action or proceeding is brought on account of an act or omission in the scope of the employee's City employment; and the City determines that (1) the defense would be in the City's best interests; and (2) the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the City. See Government Code § 995.8.
6. The City Council will consider on a case by case basis, at the request of the employee or his/her representative, the appointment of criminal defense counsel for the employee. Where appropriate, and as requested by the employee, the City will use the representation that has already been engaged by the employee association.
7. When criminal defense counsel is retained by the City, it must be made clear that the criminal defense counsel and the City Attorney are separate entities with potentially differing professional interests and responsibilities and may be under an obligation not to share certain information.
8. The City Council may deny paying for the criminal defense for any employee of the City consistent with applicable law.

Any questions regarding this matter should be directed to the Employee Relations Division at (213) 978-7676.

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