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FROM	NAME & TITLE	Robert Cennamo, Chief	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774		
	SUBJECT	City Council Bill 19-0409 – Transparency and Oversight in Claims and Litigation		

TO

DATE:

The Honorable President and  
Members of the City Council  
City Hall, Room 400

September 13, 2019

**Position: Oppose**

City Council Bill 19-0409 has been introduced with the intent of increasing transparency and oversight in claims and litigation. The bill requires the Law Department to publish semi-annual reports on claims against Baltimore City regarding misconduct, unlawful discrimination, and certain litigations involving police, elected officials, and city employees. In addition, City Council Bill 19-0409 prohibits the Board of Estimates and Law Department from approving certain settlement agreements that require claimants to waive certain rights and prevents the Law department from enforcing previously approved non-disparagement clauses.

**Background**

The City has traditionally used settlement agreements with claimants in Police misconduct cases to minimize the time and resources required to litigate a case. As part of these agreements, the City uses non-disparagement clauses in the vast majority (approximately 95%) of its settlements. These clauses bar both parties from disparaging the other party after the agreement has been signed. They are considered standard practice in many forms of contract law.

Prior to 2017, the City's use of non-disparagement clauses prohibited any form of public discussion (opinions, facts, or allegations) regarding the case. However, in September 2017, the Law Department revised its policy. Settlements still include a clause prohibiting disparagement by either party, but do not prevent either party from openly discussing the facts surrounding the case.

**Fiscal Impact**

From a fiscal standpoint, there are two potential impacts, both on the implementation side and for future claim and litigation costs.

Implementation

In order to meet the immediate reporting requirements of City Council Bill 19-0409, we estimate that the Law Department would need an additional two FTE's at a cost of \$200,000 annually. Currently, case file management varies from attorney to attorney, and there is not one unified system of record. The additional personnel would be needed to consolidate, summarize, and in some cases redact information to ensure that the information published meets the guidelines of the bill while also protecting sensitive or personal data.

In the longer-term, we will encourage the Law Department to pursue a technical solution that could help better manage case files, reduce costs, and serve as a real-time source for public disclosure requirements. The City's Innovation Fund, which allows agencies to make one-time funding requests

that pay back with budget savings, might be an option. Upfront technology investments can often be quickly paid back via savings from fewer personnel and/or less paper, printing, and administrative costs.

#### Claims / Litigation Costs

Claims from Police misconduct are costly to the City. The City is self-insured for most risk-management liabilities, including civil claims, so the City directly pays for the settlement amount and some legal expenses. Police settlements are paid directly from the Police Department's General Fund budget. In the last five fiscal years, the City has spent \$24.5 million total in judgments, suits, and legal fees for the Police Department, which averages to nearly \$5 million annually. The table below shows the detail:

	2015	2016	2017	2018	2019
Judgements and Suits	1,892,024	5,536,926	2,073,202	2,522,860	654,236
Legal Fees	1,503,880	3,418,899	2,871,724	2,867,674	1,192,719
Total	3,395,904	8,955,825	4,944,926	5,390,534	1,846,955

Despite these high costs, the City's legal approach has likely saved the City from costlier litigation. From both a legal and financial standpoint, it is often in the interest of both parties to settle a claim rather than litigate. The claimant receives some form of financial compensation, while the City avoids costly and time-consuming litigation costs. These agreements also protect both parties from further reputational damage that may be uncovered during an adversarial civil trial.

We are concerned that City Council Bill 19-0409, by limiting the tools available to the Law Department to negotiate and settle cases, exposes the City to additional financial risks if both parties are unable to settle claims. Civil jury trials are unpredictable. In the most recent example, the Burgess case, the City lost (but has appealed) a \$15 million jury trial award. Going forward, the City could also be exposed to additional financial risk as claims arise from the Gun Trace Task Force (GTTF) trial.

#### **Conclusion**

By restricting the City's use of non-disparagement clauses, City Council Bill 19-0409 will limit the Law Department's options for seeking settlement of civil claims. This could lead to more financial uncertainty and risk for these already high costs.

**For the reasons stated above, the Department of Finance opposes City Council Bill 19-0409.**