



OVEREXPOSED: Thinking Through All Angles of Local Liability

By JOE CALLAHAN

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unicipal governments are responsible for managing a wide range of property and equipment, from school buildings and police stations to snowplows, generators and copy machines. As cities and towns continue to purchase more inventory, and as construction prices rise, liability exposures and potential risk also go up—and the associated insurance costs increase as well.

Some new school buildings in Massachusetts are projected to cost up to \$100 million for construction. Just as with a homeowner's insurance policy, an insurance policy for a new municipal structure is calculated in terms of value and cost per square foot. Cities and towns are also adding new police cruisers, fire trucks and public works vehicles to municipal fleets—each with their own auto insurance price tag.

Add to this the nature of the local government payroll, which can include a diverse combination of public safety personnel, teachers and school staff, city and town hall employees, and public works and highway departments, each with its own range of on-the-job risks. Just as any other type of employer can be held liable for workplace issues, municipalities are at risk for a range of professional liability exposures, such as civil rights claims and wrongful termination lawsuits.

Scope of Liability Exposure

Municipal government touches all points of the community at some level. Along with this vast reach comes, unfortunately, a vast potential for liability exposure and associated costs. Those of us working in municipal insurance can't help but see these at every turn: potential fire and

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police vehicle accidents, snowplow mishaps, injuries at public parks and events, lightning strikes, and natural disasters.

The Massachusetts Interlocal Insurance Association has recently seen adverse loss development, particularly in the areas of property, law enforcement liability, and school-related claims. Pipe freeze-ups and water damage, which can cause significant property damage, are a common issue during winter months. Law enforcement officers are continually at risk for claims of mishandling arrests or interrogations, in addition to their increased risk of being involved in motor vehicle accidents (due to being highly mobile on the job). Schools can face difficult and unique challenges related to the administration of special services and education, among other issues.

Cities and towns are also getting more innovative and creative, installing projects like wind turbines and solar panels to

Preventing Claims and Lowering Costs

Many municipalities are making great strides toward examining potential exposure areas ahead of time and helping to mitigate losses before they arise. For example, they are installing sprinkler systems and temperature alarms in municipal buildings to prevent frozen pipes. They are seeking out training for police officers related to avoiding liability exposures, and hands-on courses that teach defensive driving techniques. Some school systems are working with insurers to make sure they are handling specialized services delivery effectively and appropriately, in order to avoid potential issues and claims.

Some premium-reduction strategies are promoted by municipal insurers. MIIA, for example, offers its members several special cost-saving mechanisms, including a program offering credits toward future premiums for members

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mitigate energy costs. Schools are running imaginative programs like overnight science field trips and onsite obstacle courses during physical education class. And communities are enlisting the help of eager volunteers to set up and repair local playgrounds. These programs are commendable, but they also add to the list of potential liability exposures.

Just by the nature of doing business, the breadth of activities and responsibilities of a municipal government can drive insurance costs upward. Although there are some factors related to costs that cannot be controlled, such as fluctuations in the reinsurance market, there *are* some proactive steps municipalities can take to help ensure that costs are controlled as much as possible.

who take proactive cost-control measures, a grant application process for funding equipment and training that helps to control losses, and a pre-payment plan that provides a discount for premiums paid fully within thirty days.

Beyond preventative and cost-saving measures such as these, municipalities can take a close look at current insurance plans and schedules to help better manage coverage and determine what is necessary, what may be excluded, and what can be adjusted to save costs now and in the long run. (When looking at higher deductibles or retentions, municipalities should consider a budgetary mechanism to pay these out-of-pocket costs.)

With multiple policies to review and such a range of line items, municipal

managers can consider leveraging a checklist, such as the one below, to help ensure that key items are addressed and that insurance-related costs are contained as much as possible.

Checklist for Managing Exposures and Mitigating Costs

PROPERTY

1. Evaluate all property deductible options, ranging from \$1,000 to \$100,000. Just as one would do with a homeowner's insurance policy, consider taking a higher deductible in order to get a discounted insurance rate.
2. Insure all property to its replacement cost value. Ensure that all municipal property is insured up to 80 to 100 percent of its total cost, so that if damage were to occur it would be fully covered. This also helps to avoid paying a "coinsurance penalty" for not having insured accurately.
3. Evaluate "loss of income" and "extra expense" exposures, particularly related to expanded operations. Look at expanded operations such as solar panels, wind turbines and affordable housing projects, and determine if potential loss of income needs to be addressed in the insurance policy. Would a loss of income become a financial shortfall?
4. Review property schedules for completeness and accuracy, including buildings, contents, and equipment. Take a detailed inventory and update the insurance schedule with all property that is municipally owned. Remove and add items as needed. Schedules tend to be out-of-date, so be sure to update every year.
5. Examine all "builders' risk" exposures at least six months in advance of commencing a new project. Determine who will cover risk exposures for any new project—the municipality or general contractor—for everything from small renovations and repairs up to large building projects, such as a new school. Understand who will insure the existing structure during a renovation or addition.
6. Schedule all specialized equipment and property. Typically, municipally owned

equipment is covered as long as it resides within 1,000 feet of a city or town building. Make sure to add other equipment that isn't within that range, such as large generators, solar panels and HVAC equipment.

AUTO

1. Evaluate deductible options for physical damage, as discounts are often available for electing higher deductible options.
2. Review the accuracy of fleet schedules and equipment schedules. Regularly check inventory of all municipal fleets and make sure the insurance schedule is updated with current vehicles.
3. Remove physical damage coverage for older vehicles and equipment. Insurance typically covers "actual cash value" of a vehicle rather than replacement cost, so it may make sense to drop physical damage coverage once a vehicle is seven or eight years old, as it may be near full depreciation at that time.

GENERAL LIABILITY

1. Use "hold harmless" and indemnification language in all contracts, including leases. When commissioning with third parties for services—such as with any trade/construction contractor, companies leasing office equipment, or any vendor used for one-time repairs and projects—consider adding indemnification language and "additional insured" requirements to their contracts to limit your liability. Even for seemingly minor projects, it can be a good idea to make sure the city or town is not held liable for exposures such as workers' compensation claims.
2. Use liability disclosures for volunteers and students. Make sure liability waivers are signed for school field trips, playground work that relies on volunteers, and any other municipal activity that involves community members other than paid staff.

PROFESSIONAL LIABILITY

1. Evaluate deductible options ranging from \$2,500 to \$50,000. For professional liability policies that cover school boards,

public officials and law enforcement personnel, determine whether a higher deductible option, which can lower costs, would be sufficient.

2. Expand coverage to include back and future wages. In cases where a city or town is found liable in employment practices with an employee, the monetary award could potentially include back wages in addition to the settlement amount. It may be necessary to purchase additional coverage to cover this exposure, rather than having a gap in coverage.

WORKERS' COMPENSATION

1. Understand "experience modification" and the All Risk Assessment Plan (ARAP) calculation. Unique to Massachusetts, the ARAP and the experience modification factors adjust premium calculations for claims by comparing them to municipal peers statewide. When a municipality performs better than a comparable peer group, it earns credits toward insurance; if it's worse, it receives a debit. Review open claims on a regular basis to ensure proper reporting in premium calculations.
2. Confirm accurate payrolls by class code. Check payroll schedules and move employees into the correct class or pay-grade (e.g., clerical work or tree work). This ensures accuracy when calculating workers' compensation premiums and avoids surprises on audits.

UMBRELLA LIABILITY

1. Evaluate umbrella policy options from \$1 million to \$10 million. Determine whether it makes sense to purchase an umbrella policy that can provide extra liability coverage, on top of existing auto, professional, and general liability policies. Keep in mind that some claims, such as civil rights–related issues, can incur costs well over \$1 million.
2. List all underlying policies on the umbrella policy, including workers' compensation. Often, a municipality will purchase insurance coverage from multiple vendors, so be sure to schedule each of these, including workers' compensation, under the umbrella policy. 🌟