



## INFORMATION MEMO

# Parks and Recreation Loss Control Guide

*Cities strive to make their parks and recreation facilities and programs as safe as possible. Find here an overview of key risk management concepts and specific advice for managing many common programs and events such as snow hills, ice skating or swimming facilities, trails, skateparks, parades, sports leagues, and more. This memo also contains links to model policies, checklists, and forms.*

### RELEVANT LINKS:

## I. Parks and recreation risks

Minnesota cities provide a wide array of programs and services, their impact felt well beyond any jurisdictional boundaries. For many cities, the “crown jewels” of services lie within their parks and recreational programs. Recreational programs are very popular with people of all ages and provide opportunities for exercise and socialization.

As interests have changed, so have the programs and services cities offer. Playgrounds and ball fields once were the standard offerings. Today, however, many cities develop extensive trail systems, manage state-of-the-art community centers with ice arenas and fitness rooms, and accommodate those seeking “riskier” activities through the construction of skateparks, climbing walls, and the like.

## II. Reducing parks and recreation risks

### A. General loss control guidelines

#### 1. Employee injuries

It seems parks and recreation employees in cities are always on the go. Whether working at the community center, orienting a new member at the fitness center, testing the water at the municipal swimming pool, preparing the softball fields for spring, or caring for one of the city’s local parks, these employees have a wide variety of duties that keep them on the move.

League of Minnesota Cities Insurance Trust (LMCIT) claims data shows that city employees who work in the field are also the ones most likely to get hurt on the job. That, of course, includes parks and recreation workers.

Some of the key steps to take in avoiding workers’ compensation injuries are determining which city employees are getting injured, the nature of those injuries, and how to prevent such injuries from occurring in the future.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

### **a. Types of injuries**

In determining how to avoid injuries, the focus should be on preventing the most common causes of injuries. While LMCIT staff continue to analyze claims data on injuries, it is clear that many of the injuries experienced by parks and recreation employees are caused by either falls and slips, or moving heavy objects. Most recent statistics show loss costs allocated this way:

- Fall or slip—33 percent
- Strain or injury by lifting, pushing, or pulling—31 percent
- Struck or injured by—20 percent
- Motor vehicle accident—7 percent
- Cut, puncture, or scrape—5 percent
- All other—4 percent

Musculoskeletal disorders, such as back injuries, strained muscles and sprained ligaments may develop from various factors including lifting, repetitive motion, or overexertion. Ergonomic hazards also contribute to these injuries.

### **b. Avoiding injuries**

The best way to avoid costly workers' compensation claims is to have a program that helps employees avoid the injury in the first place. The following are steps your city should consider taking in an effort to help parks and recreation employees perform their jobs more safely.

#### **(1) Clear expectations**

The city should send a clear message to employees that they are required to take the time needed to do their job safely. That might mean following all safety instructions, finding another employee to help, being trained on new or different equipment, using different or additional equipment, or even delaying the task until it can be done safely. If a task needs to be delayed and there may be a risk of injury to the public, remember the city should consider placing proper warning signs and devices to help avoid these injuries.

## RELEVANT LINKS:

[OSHA hierarchy of controls.](#)

Contact Your Loss Control Field Consultant by calling LMC at 651-281-1200.

LMC information memo, [Safety Committee Toolkit](#), Section II-D-2, Conducting a job hazard analysis.

[Job Hazard Analysis](#), LMC Model Form.

[29 C.F.R. § 1910.132.](#)

### **(2) Occupational Health and Safety (OSHA) safety controls**

Follow the OSHA hierarchy of safety controls. Federal OSHA provides a general hierarchy of safety controls to help an employer prevent on-the-job injuries. This hierarchy includes engineering, administrative, and work practice controls as well as personal protective equipment (PPE). Work practice controls are procedures that reduce the likelihood of exposure to something harmful by altering the way in which a task is performed. Use of these safety controls, in conjunction with PPE, will help reduce the hazard or exposure. In more difficult situations, creative problem-solving and consultant resources may help the city create effective controls. LMCIT loss control consultants are available to assist cities in creating these controls.

### **(3) Job hazard analysis**

Conduct a job hazard analysis (JHA). Take the time to identify those job duties with a potential for someone to get injured. A JHA is a tool used to improve job safety through identifying the hazards or potential hazards associated with each step of a job and finding effective control measures to prevent or eliminate exposure. LMCIT loss control consultants can help your city with this process.

### **(4) Ergonomics**

Ergonomics is the science of fitting jobs to workers by taking into account the requirements of the job and peoples' abilities. When conducting a job hazard analysis, remember the goal of ergonomics: whenever possible, design the job to fit the worker, not the worker to fit the job. This is most commonly done by introducing ergonomic aides, such as lifts or dollies, that can assist a worker in performing a task while putting less strain on their body.

Having workers stretch before performing strenuous work is another part of ergonomics that should be considered. Stretching can loosen muscles and help prepare them for work. Implementing a combination of a stretching routine and ergonomic lifting aides has been shown to greatly reduce the occurrence of sprain and strain injuries, one of the most common types of injuries sustained by parks and recreation employees.

### **(5) Tools and equipment**

Employees must be provided with the proper tools and equipment for the job they are asked to do. In addition, the city should ensure employees use required personal protective equipment (PPE) in accordance with the rules and regulations established by state and federal OSHA.

## RELEVANT LINKS:

[LMC information memo, Safety Committee Toolkit, Section II-D-4, Employee safety training.](#)

[Current LMCIT training opportunities.](#)

[LMCIT Regional Safety Group \(RSG\) program.](#)

[LMC Webinars.](#)

[LMCIT Video Library Catalog.](#)

[FirstNet Safety Training.](#)

[Minn. Stat. §§ 299C.60 - .64.](#)

[For detailed information on city hiring see the League's HR Reference Manual, Chapter 2.](#)

## (6) Employee training

Workers often are injured when performing activities for which they were not trained. This can also affect the safety of the projects or facilities they are working with, creating safety hazards throughout your parks and recreational system.

Employers have an ongoing responsibility to ensure their employees perform their jobs safely – not just for the employees (or volunteers) themselves, but for the public's safety as well. People working in parks and recreational departments commonly use and operate:

- Riding lawn mowers.
- Weed trimmers.
- Chain saws.
- Chippers.
- Heavy machinery.
- Other dangerous tools and equipment.

In addition, cities must provide certain employees with a variety of ongoing safety training. An increased awareness of safety on the job will go a long way toward injury prevention. LMCIT offers webinars, a free video/DVD safety library, FirstNet Learning, the Safety & Loss Control Workshops, and the Regional Safety Groups Initiative. Take advantage of these trainings and other networking opportunities offered by professional organizations to help your city's parks and recreation employees avoid injuries.

## 2. Employees and participants

Parks and recreation employees will have frequent contact with the public. Because of this frequent contact, the city is exposed to potential lawsuits arising out of situations where an employee interacts with the public.

Background checks may be useful as part of a program to protect the public. This should be conducted at the time of the hire. The Minnesota Child Protection Background Check Act allows for, but does not require, background checks to be performed on anyone providing children's services. While cities can acquire valuable information by conducting a background check on adults, it is unclear whether it will be effective to use on minor employees as juvenile records are typically unavailable.

There are several things a city can do to prevent injuries, claims, and lawsuits when staff interact with the public.

**RELEVANT LINKS:**

[Minn. Stat. § 121A.37.](#)

See Section III-B-2-i, *Other provisions to consider.*

[Minn. Stat. § 121A.37 \(a\) \(1\).](#)

**a. Training and orientation**

Provide adequate training and orientation. Once an employee has been hired, the supervisor should provide a comprehensive orientation. Because seasonal employees need to be brought up to speed quickly, cities may want to get a jump on the orientation process by sending an information packet prior to the employee's start date. This way, the orientation an employee receives on his/her first day can be a review rather than an introduction. A thorough orientation should impart technical skills (for example, how to use the weed whip), but also information about:

- Customer service expectations in dealing with the public.
- Handling complaint.
- Handling and reporting injuries.
- Procedures for emergencies.

**b. Concussion training**

If a city organizes a sport league, club or athletic event, state law also requires concussion awareness training to be provided to employees, volunteers and participants in the program.

The law applies to all "youth (18 and under) athletic activities." This means any sport or other athletic activity where there is

- Competition, practice, or training exercises.
- A coach or official present in an official capacity as a coach or official.

The law emphasizes education about concussions to coaches (including volunteer coaches), officials, parents, and students. Cities must:

- Make information accessible to all participating coaches, officials, and youth athletes and their parents or guardians about the nature and risks of concussions.
- Require all participating coaches and officials to receive initial online training on the nature and risks of concussions. Training must be repeated every three years.

The online training for coaches/officials and information for parents and participants must be consistent with training provided by the National Centers for Disease Control and Prevention (CDC) and must address all the following:

## RELEVANT LINKS:

CDC course "[Heads Up: Concussion in Youth Sports](#)".

- The nature and risks of concussions associated with the athletic activity.
- The signs, symptoms, and behaviors consistent with a concussion.
- The need to alert appropriate medical professionals for urgent diagnosis and treatment when a youth athlete is suspected or observed to have received a concussion.
- The need for a youth athlete who sustains a concussion to follow proper medical direction and protocols for treatment and returning to play.

Any program a city uses or designs must be consistent with the CDC program. While cities are not required to use it, the CDC offers a free online course and printable information on its website. Using the CDC program may be the simplest approach. Once coaches and officials finish the e-learning program and quiz, they can print a certificate demonstrating completion.

The city should document compliance with the law by preserving copies of coaches' and officials' certificates of completion and copies of materials provided to parents and participants.

### **c. Supervision and effective communication**

Providing adequate supervision and effective communication to parks and recreation employees can sometimes be a challenge. The workweek of a parks and recreation employee may be quite different from other city employees. These employees are far more likely to work at a site away from city hall. The work may be done outside of city hall business hours. Also, many parks and recreation employees have direct contact with the public on an almost continual basis. Effective communication is essential to ensure that employees understand the expectations of their supervisors regarding attendance, work schedules, and interaction with the public. To hold employees accountable, supervisors can require employees to complete activity logs to track activities and can make unscheduled site visits.

### **d. Plan for emergencies**

Plan for emergencies. Parks and recreation employees must be prepared to act quickly and appropriately in emergency situations. Supervisors are responsible for making sure employees have the knowledge and ability to handle urgent situations that may occur while working away from city hall or after regular business hours, including CPR or first aid training, information on proper procedures for obtaining emergency help, or directions on when and where to seek shelter.

## RELEVANT LINKS:

See Section VII-Specific loss control recommendations, for inspection suggestions for particular activities.

See Section VII-Specific loss control recommendations, for maintenance suggestions for particular activities.

See Section VII-Specific loss control recommendations, for signage suggestions for particular activities.

[Minn. Stat. § 466.03, subd. 6e.](#)  
See Section V - *Immunities*.  
See Section IV - *Liability*.  
Restatement (Second) of Torts § 335 (1977).  
*Unzen v. City of Duluth*, 683, N.W.2d 875 (Minn. Ct. App. 2004). *Conlin v. City of St. Paul*, 605 N.W.2d 396 (Minn. 2000).

### e. Consider the nature of a program

Consider the nature of a program. In hiring, assigning, and training workers, think of how many kids they will supervise (if any), what kinds of activities they will be engaged in, what risks will be posed by those activities, and how to minimize risks.

## 3. Park and recreation facilities

### a. Inspections

Routine inspections should be done on a periodic basis to help the city identify potential hazards that should be corrected. Inspections should be documented.

### b. Maintenance

Maintenance should be performed on a routine basis to ensure facilities and equipment are in good repair. Maintenance activities should be documented.

### c. Signage

Signs warn of dangers, and instruct parks and recreation users on expected and prohibited behaviors. Signs must also be regularly maintained. If signs cannot be read or understood because of poor maintenance, they are useless.

Failure to warn parks and recreation participants is an issue in determining city liability in the case of injury or damage. The law provides some immunity for these activities except in situations where, among other things, the city failed to exercise reasonable care to warn of a dangerous condition and the risk involved.

In general, signs should use clear language so people can understand the risks and rules. Signs should:

- Use bold print.
- Use simple, short sentences and words.
- Use plain lettering.
- Use warning words with other descriptive words, such as “Danger—High Voltage”; “Warning—Submerged Obstacles”; “Caution—Sharp Edges”.
- Include symbols or pictographs when appropriate. They are more effective than words in overcoming language, social, or cultural barriers.

## RELEVANT LINKS:

Sometimes the use of warning devices such as barricades, fencing, or warning tape may be needed. They are typically most effective when used along with signage and can be beneficial in physically separating the hazard from the general area. Entities should consider using warning devices to block off hazards deemed to be extremely dangerous, as well as newly developing hazards such as areas of trails where the ground is starting to deteriorate.

### **d. Multi-use facilities**

If your park and recreation facility is multi-use, such as a park with multiple ball fields, ice arena with more than one rink, or other indoor facility with multiple activities going on concurrently, it is important to be mindful of how these activities may interfere with one another and risk injury to the participants. For example, it may not be best to have a horseshoe pit beside a tennis court without adequate fencing separating them, or anything within foul ball territory of a baseball diamond.

If you recognize a risk like this in one of your facilities, take steps to reduce it, such as posting signage warning participants of the risk, or enforcing opposite operational hours for the two activities. If possible, it may be prudent to install fencing, netting, or other barriers to protect and separate the participants of different activities.

## **III. Reducing risks in cooperative agreements**

Minnesota cities have a long history of working with others to provide various programs and services. Regardless of structure, the intent behind these relationships is consistent: many city services can more efficiently be provided when working together, and can help balance costs against an organization's strengths and weaknesses.

The goal of any cooperative venture is to provide those participating "more" than they would be able to accomplish on their own. In today's economic climate, when a city enters into a cooperative program, the "more" generally equates to preserving city services at the lowest cost possible. Cities have a long history of finding success through collaboration, particularly with their city parks and recreational programs. Unfortunately, they are not all successful. If a program turns "bad," a city may face:

## RELEVANT LINKS:

- Increased program costs.
- Elimination of programs.
- Reductions in workforce.
- Injuries.
- Lawsuits.
- Increased insurance premiums.
- Damaged relationships.
- Public distrust.

In many cases, negative issues are the result of poor planning. By taking the time to focus on some basic considerations before consolidating services, signing the service contract, or implementing a volunteer-based program, cities can minimize the chances that one of these worst-case scenarios will occur.

### **A. Types of relationships**

Often, the city's partner is another governmental entity— a city, county, township, or school district that shares common interests. Cities sometimes enter into “business” relationships with a public or private partner in which services are performed or received in exchange for payment.

For example, athletic associations operate sports leagues and help fund and maintain city facilities. Local businesses and fraternal associations adopt city parks, sponsor park benches, and donate playground equipment. Individuals coach youth leagues, and operate concession stands— some simply carry a garbage bag and pick up trash as they walk city trails. Unlike some departments, where the necessary training and expertise practically prohibits volunteer assistance, parks and recreational programs offer opportunities for a wide range of interests and abilities.

Because cities have tremendous discretion in shaping the purpose, scope and duration of their cooperative efforts, these efforts vary from the very structured (with mission statements, written contracts, and insurance and liability considerations) to the very informal (the proverbial “handshake” agreement), and anywhere in between.

Cities should have a clear understanding of why they are looking at possible partnerships. If city officials and staff are unable to articulate their rationale (or define any critical elements of a successful partnership), they may find themselves locked into an agreement adverse to their interests.

Any cooperative venture should be evaluated to determine whether the participants have both the interest and ability to perform as required. Whoever is responsible must be able to perform the task safely. When the city performs a task itself, it controls how the job will be done. However, when we work with others, we may not know if the workers/volunteers:

## RELEVANT LINKS:

LMC information memo,  
[LMCIT Liability Coverage  
Guide](#), Section III.I, Joint  
powers entities.

LMC information memo,  
[Intergovernmental  
Cooperative Agreements](#).

- Are provided the necessary equipment.
- Have the skills necessary to perform the work.
- Are in a safe working environment.

This is most critical when evaluating volunteer programs, but should be applied to all cooperative efforts.

Cooperation also increases the potential for injuries, damage to city facilities and equipment, and significant insurance claims. While this should not discourage collaboration, it does create the need to audit current and future relationships from a loss control perspective. Planning and negotiating an agreement to share or combine services, or establish a volunteer program, can be a big task with many factors to consider.

### 1. Consolidated services (joint powers)

Under the consolidated service approach, two or more cities (or other governmental units) enter into an agreement and create a new entity called a “joint powers entity.” This joint powers entity is created to perform services on behalf of all its members. This new entity is administered by a joint board made up of representatives from each member. Each city provides its share of the financial support to the joint powers entity. In turn, the joint power board will independently:

- Employ staff.
- Enter into contracts.
- Purchase or lease property and equipment.
- Manage the joint power operations.
- Carry insurance.

### 2. Service contracts

Under the service contract approach, one city will enter into a “business” relationship with another public or private entity for the performance of certain services. For example, a city may contract with a private company for landscaping services in city parks. Or, the city and school district may enter into an agreement where the city will maintain the school’s ball fields during the summer. Typically, the parties may enter into a written agreement that specifies:

- The level and type of services to be provided.
- Cost to provide the services.
- Performance standards.
- Liability.
- Any other relevant factors.

## RELEVANT LINKS:

LMC information memos, [LMCIT Liability Coverage Guide](#), Section III.U, Volunteers and [LMCIT Workers' Compensation Coverage Guide](#), Section II.C.7, City volunteers.

Learn more about the LMCIT volunteer accident coverage in the [LMCIT Liability Coverage Guide](#), Section III.U, Volunteers.

### 3. Volunteers

A city volunteer is someone who is performing services as part of a city event or function, under the city's direction and supervision. Typically, the key difference between a city volunteer and someone working under a service contract is that volunteers provide assistance without the expectation of pay. It is important to determine whether or not someone is a "city volunteer." It may seem counterintuitive, but not every person performing community service will be considered a city volunteer.

Determining whether someone is a city volunteer or not can affect:

- Liability (both for the city and the volunteers).
- Insurance coverage.
- Eligibility for workers' compensation.

Many individuals volunteer their services in connection with a project sponsored or administered by a private organization they belong to (such as a church, their employer, or a fraternal organization) and are not being directed or supervised by the city. In these situations, the city's relationship may be with the organization itself, not the individual volunteers. Sometimes, an individual performs community service on their own, without the direction—or even knowledge—of city staff (for example, persons picking up garbage as they walk city trails).

If an individual is truly a city volunteer (i.e., someone who works under the city's direction and control), and he or she is injured, LMCIT's volunteer accident coverage will provide benefits to the individual. This is a standard coverage feature for members of the LMCIT workers' compensation program. It's important to note, though, that not all volunteers are included under this coverage. Some volunteers, such as volunteer firefighters and first responders, are defined by the Minnesota workers' compensation statute as city employees, which means they already have the benefit of workers' compensation coverage.

Cities should be aware that some of the decreased costs obtained through cooperative efforts may be offset by increased supervision costs, especially when the service is provided by volunteers. While volunteer programs may appear to be "free labor," unexpected costs such as injuries, liability claims, and lawsuits can be far more than the costs related to a little more supervision.

While city staff may not be responsible for directly supervising the activities, it may be necessary to inspect the park areas before and after the work is completed. In some ways, a city will always have some responsibility to supervise or inspect the performance of its partners or volunteers because it may be the one liable if someone is hurt.

**RELEVANT LINKS:**

## **4. Sports organizations**

Many cities have sports associations that are involved in the recreational programs offered to city residents. Just as every city is different, so are the associations they work with, both in organization as well as in scope. Some cities have one large umbrella organization (generally called an “athletic association”) involved in most, if not all, of the athletic programs. In others, individual associations (such as the “football association”) exist for different sports. A city sports association might be a local chapter of a national organization. Some organizations’ primary purpose is to raise money to support the athletic programs. Others are involved in virtually all aspects of the program.

The relationship between the city and an association depends, in part, on the type of association. An association may be a formal, well-organized, and structured entity, or an informal group of persons.

### **a. Formal sports organizations**

Many sports associations become nonprofit organizations by filing articles of incorporation with the Minnesota Secretary of State. Nonprofit corporations are formed for a purpose “not involving monetary gain and paying no dividends to its members.” They may exist for any lawful purpose, including the operation of athletic associations. Many are local chapters of national organizations and have insurance to cover risks associated with operations. It is common for these groups to conduct charitable gambling or other fundraisers and many operate concessions during athletic events. Some have adopted rules of conduct and have coaches and officials (sometimes even parents) go through mandatory training.

A nonprofit is a separate legal entity and may be held responsible (or “liable”) for the actions of its members. In addition, the assets of the individual members can be protected for actions taken within the scope of their duties for the nonprofit corporation. Nonprofits often obtain insurance to cover the risks associated with their operations.

An advantage for individuals volunteering for a nonprofit corporation is provided by the Federal Volunteer Protection Act which provides some civil liability protection in certain circumstances.

See Section V-A-3,  
*Immunities -Volunteer  
coaches.*

## RELEVANT LINKS:

See [LMCIT Contract Review Service](#).  
Chris Smith, LMCIT Risk Management Attorney:  
[csmith@lmc.org](mailto:csmith@lmc.org) or  
651.281.1269.

### **b. Informal sports organizations**

An informal group lacks the structure found in nonprofit (or similarly structured) organizations. In many situations, a group of interested citizens began to organize activities and started making decisions because there wasn't a "structured" organization in existence, or because an activity wasn't a city priority. Because they typically lack formal structure, it is more likely they don't have insurance, a written agreement with the city, and may not provide their volunteers adequate training.

Members of an informal group might be more likely to consider themselves to be "city volunteers."

## **B. Terms of agreement**

### **1. Duration**

It can be difficult to know at the beginning of any relationship how long it is going to last. Usually, relationships continue until either something goes wrong or a better opportunity exists elsewhere. Cities should consider how difficult it will be ending that relationship. For example, if an independent joint powers is created, how will assets be distributed upon dissolution? Will one party have to reimburse the others? If a joint facility is constructed in your city (perhaps attached to other city property), will you be able to properly maintain it alone?

Not all of these concerns are contractual. For example, some nonprofit athletic associations donate significant money and labor to construct and maintain city facilities. Even though they may have no legal ownership, the baseball association may feel they have built some equity or some say regarding the use of those fields. Rights and responsibilities need to be clarified from the beginning, as well as when critical individuals (such as association officers) change.

### **2. Written agreements**

All agreements should be in writing, regardless of their nature or the dollar amounts involved. These agreements may take the form of a lease to use a city facility, or as a "permit to play." If the city is working with informal groups, the written agreement may be in the form of city rules or policies regarding the use of its facilities, or the operations of recreational activities more generally.

## RELEVANT LINKS:

Although most oral agreements are legally enforceable, a contract that is not in writing may be very difficult to enforce if the other party does not meet its obligations. In addition, the process of writing down the contract's terms and signing the contract forces parties to think about, and be precise about, the obligations they are undertaking. A written contract is likely to be more complete and thorough than an oral agreement. If the parties enter into an oral contract, they may have different recollections of what they agreed on. A written agreement helps eliminate disputes over what was promised.

When drafting written agreements, or when just generally considering the responsibilities of both parties, there are certain issues that should be considered.

### **a. Insurance coverage**

Associations may get two different types of insurance coverage: insurance that provides medical and accident coverage for participants; and liability insurance to cover injuries to third parties resulting from the actions of the association and its representatives. A nonprofit association should be able to obtain insurance to cover its activities (possibly through a national organization or a company that specializes in providing coverage to that type of organization). Cities should do one of the following:

- Require all associations to have their own insurance coverage.
- Develop criteria to determine where insurance coverage is mandatory or optional.

### **b. Defense and indemnification**

Defense and indemnification provisions help ensure liability is placed with the organization closest to the risk. If a sports association has the primary responsibility for the activity, the association should agree— in writing—to defend and indemnify the city for any claims arising out of the activity. If the city is also participating in the activity, the agreement could still include a defense and indemnification clause that would help simplify the defense of any claims.

## RELEVANT LINKS:

LMC information memo,  
*Data Practices: Analyze  
Classify and Respond.*

### **c. Maintenance**

When someone is injured on a city recreational facility, they often claim the facility was negligently maintained. The city and the association should discuss and clarify who is responsible for maintaining the athletic buildings, fields, concession stands, or arenas. If the sports associations have maintenance responsibilities, the city should periodically inspect the facilities to make sure the associations are following through with the agreed-upon maintenance. If the association is unable to meet expectations, the city should take back maintenance responsibilities and change the terms of the agreements (perhaps charging the association to cover maintenance costs). In some cities, proceeds from charitable gambling are used to pay these costs.

Another important issue relates to field conditions. Many sports are played in inclement conditions, which can significantly damage the city's field. Cities should consider whether it is necessary to include specific language detailing when sporting events cannot occur.

### **d. Government data**

Certain data collected and maintained by cities for enrolling individuals in recreational programs is classified as private, including names, addresses, telephone numbers, and any other data that identifies the individual and data that describes health or medical conditions.

If, based upon the relationship between the city and the association, the registrant information must be considered "government data," both the city and the association would be required to protect this information.

### **e. Scheduling**

There can be risks associated with the scheduling of activities. City staff may need to actively participate in the scheduling of activities. For example, if a men's league baseball game is being played next to a youth soccer game, there may be the danger of children being hit by a baseball.

There may be practical concerns with scheduling as well. In many cities, the parks and recreation departments find that:

- Demand for city facilities by athletic associations exceeds capacity.
- Associations may have preferences for using certain fields or facilities.
- Scheduling can be very difficult.

## RELEVANT LINKS:

See Section VI – Americans with Disabilities Act.

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III.K, Liquor Liability.

### **f. Accessibility**

City facilities should be accessible to individuals with disabilities. Cities should consider if reasonable modifications to city policies or architectural barriers would better allow individuals with disabilities to participate in activities. If a disabled person wishes to participate in (perhaps even watch) an association's activities, the association should work with the city to communicate the request to ensure ADA compliance.

### **g. Alcohol**

If an association is going to sell alcohol at any event, it must be a nonprofit organization and must obtain a liquor license from the city.

State liquor laws do not require organizations that sell a limited amount of alcohol each year to have liquor liability insurance, however LMCIT suggests that any alcohol seller carry liquor liability coverage limits of at least \$500,000, and strongly consider a higher limit of \$1 million (to carry less coverage effectively means leaving a significant financial risk unfunded). Cities should also require at least some of the association members to complete alcohol server training.

### **h. Medical care**

Before accidents happen, the city and the association should determine:

- Who will be responsible for providing first aid equipment— the city or the sports association.
- Whether there will be anyone present (coaches, volunteers, or city employee) trained in first aid and CPR.
- How medical emergencies will be handled.

### **i. Other provisions to consider**

When contracting with sports associations that use city facilities, city officials should consider whether it is a good idea to have the associations promise to not engage in any discriminatory practices. In addition, as more and more parents and spectator have been involved in fights and other inappropriate conduct, some athletic associations have developed codes of conduct for both participants and spectators.

Also in contracts with sports associations the city should be aware that some associations have substantial financial assets through membership dues, donations, and charitable gambling. As there is a greater risk of the city being financially responsible for insolvent associations, the city may be interested in whether the association:

## RELEVANT LINKS:

[Minn. Stat. § 121A.37.](#)

See Section II-A-2-b,  
*Concussion Training.*

- Performs periodic external audits.
- Has written financial management policies.
- Requires two signatories on every check.
- Has more than one member in sole control of association finances (responsibilities should be delegated among several persons).

Many cities jointly offer or organize sporting events with other cities or entities. Usually these situations are governed by a joint powers agreement or other contractual arrangement. In these instances, it would also be prudent for a city to discuss with its partners which entity will be responsible for following the legal requirements about youth concussion prevention and education. It may be necessary to revise existing written agreements to reflect this new understanding.

### 3. Review

After a city enters into a cooperative agreement or implements a volunteer program, it should conduct periodic reviews to make sure the relationship continues to meet its needs. Cities change over time. What was appropriate when the partnership was first established may not meet needs or expectations in the future. Relationships and responsibilities may need to be modified to reflect those changes. Contracts, policies, and programs require review and updating to reflect these changes.

## IV. Liability

The city's goal should always be to prevent injuries from occurring. Yet as owners and operators of those recreational facilities, and by providing various recreational activities, cities face potential liability for injuries that can and do occur.

[Minn. Stat. § 466.02.](#)

Cities are generally liable for injuries caused by their wrongful acts, as well as the acts of its employees and officials. In order to prevail on a negligence claim an injured person must show all the following:

- The city owed them a duty of care. A duty of care exists when the city has some responsibility to protect others from reasonably foreseeable dangers.
- The city breached the duty. A breach occurs when the city exposes someone owed a duty of care to a substantial risk of harm from foreseeable dangers, demonstrated by actual or constructive knowledge of dangerous or defective conditions.
- The city's negligence was the proximate cause of the person's injuries or damages, and if it wasn't for the city's action (or failure to act), that individual would not have been injured.
- Actual damage or injury occurred.

## RELEVANT LINKS:

See LMC information memo [Intergovernmental Cooperative Agreements](#), Section III-D, Mutual aid and joint powers agreements.

LMC information memo, [LMCIT Liability Coverage Guide](#), Section III.I, Joint powers entities.

See LMC information memos [LMCIT Liability Coverage Guide](#), Section III.U, Volunteers and [LMCIT Auto Coverage Guide](#), Section VII.A, Operation of employees' or volunteers' vehicle for city business

### A. Liability in cooperative agreements

In any cooperative arrangement, you ideally want to avoid creating situations where each party must respond independently to claims arising from the cooperative activities. This can put the parties into conflict with each other (even litigation against each other) when a liability claim occurs.

### B. Liability in consolidated services (joint powers)

In a consolidated service the joint powers entity must carry its own liability coverage or be specifically added to the coverage of one of the constituent members. The coverage should be structured to protect the member cities as well as the joint powers entity. LMCIT joint powers coverage does this automatically.

### C. Liability and service contracts

With service contracts, it is best for the entity providing the service to carry the liability risk and insurance coverage, since it will control how the service is provide and therefore is in the best position to control that liability risk. The contract should include a provision where the “provider” agrees to defend and indemnify the “purchaser” for claims arising from activities under the service agreement.

### D. Liability and city volunteers

City volunteers are individuals who are performing services as part of a city event or function and under the city’s direction and supervision.

Supervisory control might include specifying what the person or group has authority to do. The city should require or encourage background checks on all volunteers who work with children since there are potential risks related to the negligent supervision or abuse of children under the care of volunteers working for the city, for sports associations, or both parties together. If coaches or other volunteers are allowed to transport children the city should check the drivers’ motor vehicle records and require proof of automobile liability coverage.

City volunteers are protected against tort liability in the same way as the city’s officers and paid employees. The Tort Liability Act:

- Limits the city volunteer’s maximum liability.
- Requires the city to defend and indemnify volunteers against claims for damages when the volunteer was acting in the performance of his or her duties as a city volunteer.

## RELEVANT LINKS:

See LMC information memos, [LMCIT Workers' Compensation Coverage Guide](#), Section II.C 7, City volunteers and [LMCIT Liability Coverage Guide](#), Section III.U, Volunteers.

The only exception to the duty to defend and indemnify is if the volunteer's action constituted malfeasance, willful neglect of duty, or bad faith. A city is not required to protect an individual from the consequences of his or her own intentional wrongdoing.

Volunteer involvement can result in a variety of risks and exposures. In some instances, volunteers injured while performing volunteer work for the city:

- May be entitled to workers' compensation benefits (certain types of volunteers are treated as employees for workers' compensation purposes).
- Could file a tort claim against the city.
- May qualify for premises medical coverage, if the city elected this type of coverage through LMCIT.

State statutes provide certain immunities that may prevent a volunteer from receiving any award from the city. But, if the volunteer's injuries were caused by someone other than the city or its officers, employees, or volunteers, the injured volunteer may bring a tort claim against that person.

Some cities have volunteers sign a liability waiver or release, designed to protect the city from liability for any claims or lawsuits resulting from that activity. A waiver can be enforceable if it is drafted correctly and used properly. Even when the waiver is not enforced, it can still be used positively as a basis for other defenses. It can be used to establish that the person was aware of the risk of the activity and assumed that risk. It can also be used to show that the city was not negligent and exercised "reasonable care" by warning participants about the dangers of the activity.

## E. Liability and non-city volunteers

Non-city volunteers are not considered city employees and, therefore, are not covered by workers' compensation. If one of these volunteers is injured while performing services for the city, he or she might be able to make a tort claim against the city or against a city officer, employee, or another volunteer. This type of claim is no different from any other tort claim that may be filed against the city.

In order to recover damages from the city, the injured volunteer must show that:

- His or her injury was caused at least partly by the city's negligence, or the negligence of a city officer, employee, or other volunteer.
- He or she wasn't more at fault for his or her own injury.

## RELEVANT LINKS:

See [City Park Department Voluntary Waiver of Liability](#), LMC Model Form and [City Park Department Voluntary Waiver of Liability for Adult Athletic Teams](#), LMC Model Form.

[Diker v. City of St. Louis Park](#), 268 Minn. 461, 130 N.W.2d 113 (1964).

## F. Waiving liability

A waiver is an agreement signed by a person that states he or she will release the party providing the recreational activity from liability for any negligent claim or lawsuit. Other names for waivers are exculpatory clauses, releases, or hold harmless clauses. The use of waivers is quite common. Private and public recreational facilities often require a signature on a waiver or release form prior to participation. Despite how commonplace waivers are, there is a great deal of uncertainty on what waivers are, why they should be used, and when they are needed.

A waiver that is more likely to be enforced should:

- Be in large print and prominent.
- Have clear language.
- Apply only to negligent actions.
- Be signed voluntarily and with knowledge of the effect of the waiver.
- Be given to the person with ample time to review the waiver.

A waiver that is more likely to be enforced should not involve an activity that is an essential service that cannot be obtained elsewhere. It is a good idea to periodically review the waiver forms you are currently using. Always have your city attorney review the release forms and approve the final language.

### 1. Why use waivers

There are risks associated with every recreational facility and activity. The waiver is used to try to limit the liability of the recreational provider. By limiting the liability, the recreational provider is more likely to afford to provide that activity and other recreational opportunities.

Waivers are important because they help address the risks associated with every recreational facility and activity a city chooses to provide, whether or not any injuries and possible future claims would be precluded under the recreational immunity. Accidents happen and can result in serious injuries to players or participants, and even spectators. By limiting its liability, the recreational provider is more likely to continue to provide that activity and other recreational opportunities to the public.

Waivers of liability tend to be more effective for preventing claims based on active, rather than passive, negligence. That means waivers work better with participants than spectators. Additionally, the use of a waiver may be beneficial in circumstances where the city has arguably assumed, through its conduct, a duty to supervise when one typically does not exist. Waivers generally are used for the following types of activities:

## RELEVANT LINKS:

*Scoles v. Franzen*, No. C5-91-425 (Minn. Ct. App. Sept. 17, 1991) (unpublished decision).

- Use of public buildings or fields.
- Athletic teams.
- Recreation classes.
- Recreation teams.
- Special events.
- Field trips.
- Races (bicycle, running, in-line skating, cross-country skiing, etc.).
- Skateboard competitions.
- Fun runs.
- Hazardous activities (climbing walls, demolition derbies, etc.).

The waiver may be a separate document or part of an application or registration form. Each person doing the activity should sign the waiver. A team captain cannot sign on behalf of the entire team. A parent should sign in addition to the minor child.

It may be a good practice to establish a procedure and train city employees to ensure waivers are properly executed. City staff should not encourage or rush someone into signing the waiver. If an individual wants additional time to read the document or seek independent legal advice, do not pressure him or her into immediately signing. It is a good idea for staff to ask if participants have read and understand the release, but they should not interpret the document or minimize its importance. Do not accept altered waivers, where someone has crossed out certain portions or added their own additional provisions. Never allow someone to participate unless he or she signs the waiver.

## 2. Enforcement of waivers

Waivers are not favored by the courts because they shift the risk of negligent conduct away from a negligent party to those harmed. Courts often look for a way to construe a waiver against the party it is supposed to protect, such as the city.

Waivers are enforceable, however, if drafted correctly and used properly. The general legal rule is that a court does not want to enforce a waiver where someone has given up important legal rights. It will therefore look at the waiver very carefully and interpret it against the party who wrote it and benefits from its enforcement.

Even when the waiver is not enforced, it can still be used positively as a basis for other defenses. It can be used to establish that the person was aware of the risk of the activity and assumed that risk. It can also be used to show that the city was not negligent and exercised “reasonable care” by warning participants about the dangers of the activity.

## RELEVANT LINKS:

The following are key factors courts look at when considering whether to enforce a waiver.

### **a. Negligent activity**

A waiver only releases negligent activity. It does not release willful, wanton or intentional behavior. It is a good idea to indicate specifically within the waiver clause that it applies only to negligence and does not apply to damage caused by willful/wanton/intentional misconduct.

### **b. Use of clear language**

Contract language is always important. A release should be susceptible to only one reasonable interpretation. The waiver should not be buried within the form, on the back of the document, or written so small it is difficult to read. When drafting waivers, highlight key words to draw the reader's attention to the document's purpose and consequences. If any doubt exists, the issue likely will be resolved in favor of the injured party.

### **c. Voluntary signing**

Waivers should only be signed with the full knowledge of the effect of the waiver. Always provide enough time to review the waiver and consider the implications. Make people aware of any and all known risks associated with the activity prior to signing. In addition to waiving his or her right to bring a negligence claim against the city, that individual is also acknowledging he or she has read the city's rules and, through their signature, agrees to comply.

### **d. Disparity in bargaining power**

A disparity in bargaining power may exist when the program is only offered by a person or organization and the conditions required for participation are "take-it or leave-it." Hopefully, this recreational program or service (or a reasonable equivalent) is also available elsewhere.

### **e. Waiving essential services**

Waivers for essential services are void as a matter of public policy. Waivers for essential public services such as for police, fire, or utility service may be invalidated by the courts. Releases for parks and recreation programs are unlikely to be deemed "essential" and waivers are not likely to be deemed contrary to public policy, particularly when the likely consequence of invalidating those waivers would be the reduction or elimination of the programs offered.

**RELEVANT LINKS:**

[Minn. Stat. § 466.03, subd. 6e.](#)

Restatement (Second) of  
Torts §§ 335, 339 (1977).

## **V. Immunities**

The city’s goal should always be to prevent injuries from occurring regardless of whether the city might have immunity from a claim. The best defense for a city is to strive to make their parks and recreation facilities and programs as safe as possible.

### **A. Parks and recreation immunity**

A city is immune from most claims based upon the construction, operation, or maintenance of any property owned or used by the city that is intended or permitted to be used as a park, an open area for recreational purposes, or for the provision of recreational services. With the purpose of preserving recreational resources, the parks and recreation immunity has been applied broadly to various activities and injuries, from swimming and ice skating to the use of exercise equipment.

#### **1. General trespasser exception**

There are some circumstances under which parks and recreation immunity does not apply. The city does not have parks and recreation immunity if the plaintiff can meet the “trespasser standard of care.” In other words, the city cannot assert parks and recreation immunity if the injured person can show the condition was:

- Created or maintained by the city.
- Likely to cause death or serious bodily harm.
- Hidden upon a brief inspection.

The city also cannot assert parks and recreation immunity if the injured person can show that the city had actual or constructive notice the condition was likely to cause death or serious bodily harm.

#### **2. Children trespasser exception**

A separate standard of care exists for both adult trespassers and children. Since you may not know who is going to be hurt prior to an injury, a loss control recommendation is to meet the standard of care applicable to children where a city will be liable for artificial conditions if:

## RELEVANT LINKS:

Refer to *Lloyd v. City of St. Paul*, 538 N.W.2d 921, 924-25 (Minn. Ct. App. 1995) for more information on preserving recreational immunities.

[Minn. Stat. § 604A.11.](#)

[Minn. Stat. § 121A.37 \(d\) \(e\).](#)

CRS Report for Congress, 97-490A, [Volunteer Protection Act of 1997](#) (June 24, 1997).

[Minn. Stat. § 466.03, subd. 6.](#)

- The park or facility is used by children.
- The city has actual or constructive notice of both the condition and that the condition involves an unreasonable risk of death or serious bodily harm to children.
- Children do not discover or appreciate the danger created by the condition.
- The utility of managing the condition and the burden of eliminating the danger are slight as compared to the risk to children.
- The city fails to exercise reasonable care to eliminate the danger or otherwise protect children from it.

### 3. Volunteer coaches

State law provides that volunteer athletic coaches, officials, and trainers are generally not liable to players, participants, or spectators for injuries during sporting events. The state's concussion law specifically provides that these protections remain in place for coaches, even if a coach fails to remove a youth athlete from an activity after a concussion is suspected.

For individuals volunteering for a nonprofit corporation, such as some sports associations that may be in a contractual relationship with the city, the Federal Volunteer Protection Act provides civil liability protection to volunteers of a nonprofit, school, or government agency for acts of negligence while acting within the scope of their volunteer duties.

However, the Act does not provide protections in certain circumstances, including when the volunteer:

- Was grossly negligent or intentionally trying to cause harm.
- Did not have the state-required license or certification.
- Violated an individual's civil rights.
- Was under the influence of drugs or alcohol.
- Caused harm while operating a motor vehicle.

This immunity only applies to the volunteer; the nonprofit may still be liable for the negligent acts of a volunteer protected by the Act.

### B. Discretionary immunity

In addition to parks and recreation immunity, the city is also immune from "any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused." Discretionary decisions are those that involve the weighing of social, political, safety, and economic factors.

## RELEVANT LINKS:

[28 C.F.R. § 37.](#)

For more information, see [The Americans with Disabilities Act Title II Technical Assistance Manual.](#)

To help ensure the city receives this protection from liability it has to be clear to the courts that the city was making a discretionary decision. Weighting of the factors should be done preferably at the city council level, and the city must make clear records to show the decision was discretionary such as council minutes that record the factors that went in to the decision and supporting documentation such as staff memos.

For example, a city policy addressing trail inspections and snow removal will help to show the city considered these factors in making decisions like when to remove snow, and how often to inspect the trails. Accordingly, if a city develops and adheres to its trail policies, the city may be in a better position to defend itself based on discretionary immunity.

## VI. Americans with Disabilities Act

### A. Overview

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination by public entities in services, programs and activities on the basis of disability. Cities must make reasonable modifications if requested. The goal is for cities to operate their programs so that when they are viewed in their entirety, they are readily accessible to and useable by individuals with disabilities.

The ADA protections apply to an individual with a disability who meets the essential eligibility requirements for the service, program or activity, with or without reasonable modification to:

- Rules.
- Policies.
- Practices.
- Architectural barriers.
- Communication.
- Transportation.
- Auxiliary aids and services.

### B. Compliance

Cities should make every reasonable effort to accommodate an individual with a disability. This may include modifying existing rules, policies, practices, and physical barriers. Eliminating unnecessary eligibility standards or rules, like having a driver's license to register for a program, may also need to be considered. This will allow for individuals with disabilities to have an equal opportunity to enjoy city services.

## RELEVANT LINKS:

Cities that employ 50 or more persons must designate at least one employee to be the responsible authority to oversee the requirements of Title II of the ADA. That employee must accept accommodation requests, respond on behalf of the city to the requests and investigate any complaints of noncompliance. The name, office addresses, and phone number of this employee is public information.

Exceptions for accommodating individuals with disabilities are discussed below. A city should never exclude an individual on the basis that they are known to have a disability.

### **1. Integration**

Services, programs, and activities must be administered in the most integrated setting possible for qualified individuals with disabilities. Separate or different measures may be taken if necessary to ensure equal opportunity.

When there are separate programs offered to individuals with disabilities, those individuals still have the option to participate in the program offered to individual without disabilities. In this situation, cities are still required to make reasonable accommodations so that the individual with disabilities can participate in the program offered to individuals without disabilities.

Cities cannot require an individual with a disability to accept a special accommodation or benefit.

### **2. Communication**

A different approach to communication may be needed when serving disabled persons. Cities must make every attempt to ensure effective communication which may include the use of auxiliary aids. Examples of auxiliary aids include Braille and large print materials, audio recordings, sign language interpreters and using the telecommunication relay service.

### **3. Cost**

Cities cannot charge an individual with a disability more than an individual without a disability to participate in a service, program, or activity. The cost of an accessibility accommodation cannot be assessed back to the individual(s) who requested the accommodation.

### **4. Safety**

The safety of all participants is important. A city may create safety requirements that are necessary for the safe operation of its services, programs or activities. Safety requirements must be based on actual risk to participants. Speculation, stereotypes, or generalizations about individuals with disabilities are not considered legitimate safety concerns.

## **C. Exceptions**

Cities must make reasonable modifications unless the city can demonstrate that:

- Making the modification would fundamentally alter the nature of the service, program or activity.
- Allowing an individual with a disability to participate would pose a direct threat to the health or safety of others.
- Undue financial and administrative burden.

However, cities must take any other action available that would insure that individuals with disabilities receive the same benefits or services.

## **D. Common concerns**

### **1. Structural changes**

Existing facilities are not required to have structural changes to comply with all provisions of the ADA if there are other methods in effect for achieving accessibility. However, structural changes made to new or existing facilities must be in compliance with the ADA.

### **2. Direct threat**

When denying an accommodation request on the basis that allowing an individual with a disability to participate would pose a direct threat to the health or safety of others, cities must consider specific factors. Cities must conduct an individualized assessment, based on reasonable judgment that relies on current medical knowledge or the best available objective evidence, to determine the:

- Nature, duration, and severity of the risk.
- Probability that the potential injury will actually occur.
- Whether reasonable modifications will mitigate the risk.

### **3. Service animals**

Cities must modify their policies, practices, or procedures to allow service animals for individuals with disabilities. City staff should not ask an individual the nature or extent of their disabilities because an animal is present. Rather, a city may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. Cities cannot require additional documentation and it is a best practice not to inquire when it is readily apparent that an animal is trained to assist an individual with a disability.

## RELEVANT LINKS:

For assistance contact Joel Muller: [jmuller@lmc.org](mailto:jmuller@lmc.org) or 651.215.4079.

More information is available from the [Consumer Product Safety Commission](#), including their [Public Playground Safety Handbook](#).

[“Crumb Rubber in Athletic Fields,” Minnesota Department of Health Fact Sheet](#), (April 2016).

EPA: [Federal Research on Recycled Tire Crumb Used on Playing Fields](#).

The individual cannot be asked to pay a fee when bringing the service animal, even if there is generally a fee for individuals bringing pets. If the service animal causes damage, a city can assess a fee to the owner if the city has a policy to charge a fee whenever there is damage caused to the facility.

A city may ask the individual to remove the service animal if it is not housebroken or if the animal is out of control and the handler has not taken corrective action.

## VII. Specific loss control recommendations for facilities

For questions not covered in the following sections, or for site-specific risk management review, contact the LMCIT Loss Control Consultant assigned to your city.

### A. Playgrounds

Playground safety for our youngest community members requires attention to a few key concepts including surfacing, use zones, and inspections.

#### 1. Surfacing

About 68 percent of playground injuries can be avoided or minimized if soft landing material of sufficient depth is available, according to the National Playground Safety Institute. This means improving and maintaining playground surfacing should be a top priority in cities.

Loose-fill surfacing materials typically consist of sand, gravel, shredded wood products, and crumb rubber. To prevent injuries, loose-fill should be provided at an adequate depth—generally at least 12 inches—and maintained to prevent compaction. Manufacturers can provide the specific depths for their materials based upon the material and height of the playground equipment.

Crumb rubber is a common surfacing option for playgrounds and ballfields, and it is typically created from shredded tires. Due to being created from tires, crumb rubber can potentially contain carcinogens and other potentially dangerous chemicals. Initial studies have concluded that exposure to chemicals in crumb rubber is likely to be small and unlikely to increase the risk for any health effect; however, they urge caution until longer, more detailed studies currently being performed by the federal Environmental Protection Agency (EPA) can be completed. Information on the status of this study can be found on the EPA’s website. The Minnesota Department of Health has also put out a fact sheet on this topic.

## RELEVANT LINKS:

For sample diagrams, see the Consumer Product Safety Commission's [Public Playground Safety Handbook](#), page 40.

Instructions for making your own devices are provided in the on pg 52 of the Consumer Product Safety Commission's [Public Playground Safety Handbook](#).

See [Playground Inspection](#), LMC Model Form.

Unitary materials, made from one substance, are another surfacing option. They are generally rubber mats or rubber-like materials that have shock-absorbing capabilities built into them. These types of materials have varied degrees of shock-absorbing abilities and are available from a number of manufacturers. If your city uses a unitary material, it should request test data from the manufacturer that identifies the critical height of the desired material.

## 2. Use zones

A use zone is the area under and around the playground equipment in which a child might fall. Use zones should extend at least 6 feet in all directions from the edge of stationary equipment, such as climbers. Use zones should have soft landing material and be free from other obstacles or equipment.

Non-stationary equipment such as swings requires a larger use zone. The use zone for a swing should extend two times the height of the pivot or swing hanger in front of and behind the swing seats. The use zone should also extend 6 feet to the side of the support structure. The reason for this greater use zone area is the potential for a child to jump or fall off the swing while it is at its greatest distance from the support structure. The child's momentum could potentially cause them to miss the protective surfacing if the surface is not properly extended.

## 3. Entrapment and entanglement hazards

Enclosed openings on playground equipment need to be checked for head entrapment hazards. Some examples of these hazards are handrail openings on a slide ladder, between platforms, and on climbers.

Children often enter an opening feet first and attempt to slide through the opening. If the opening is not large enough, it may allow the body to pass through the opening and entrap the head. Generally, there should be no openings on playground equipment that measure between 3.5 inches and 9 inches.

Test fixtures and templates are available for testing these openings.

## 4. Identify and repair existing hazards

In order for playgrounds to remain in good condition, a program must be developed for identifying and repairing missing, broken, or worn-out playground components.

## RELEVANT LINKS:

[National Recreation and Park Association](#) offers Certification as a playground inspector.

See Section V-B,  
Discretionary immunity.

See the Consumer Product Safety Commission's [Public Playground Safety Handbook](#).

An inspection program can reveal items that pose hazards such as exposed concrete footings, protrusion hazards, or an open “S” hook on a swing connection point. An open “S” hook can catch a child’s clothing and present a strangulation hazard. “S” hooks should be pinched closed. An S-hook is considered closed if there is no gap or space greater than 0.04 inch (about the thickness of a dime).

It is important to document that inspections and follow-up maintenance activity is taking place. This type of documentation usually consists of a completed inspection form or maintenance follow-up report. Cities can develop their own site-specific inspection forms or have the manufacturer of the playground equipment provide these forms.

The inspection process helps to ensure hazards are found and promptly repaired. It also establishes that the city is doing a reasonable job of maintaining the playground equipment and is one of the most important things cities can do to help LMCIT defend the city in the event of a playground-related claim.

There is no easy answer to how often a city should inspect playground equipment. Obviously, the more frequent the inspections, the better. But city resources are limited. City councils must make and document a determination of what is a reasonable inspection frequency based on things such as use patterns, time of year, past vandalism problems, complaints, and the type of playground equipment involved.

Lastly, when replacing broken or worn equipment that has been associated with an accident or injury, store equipment in a secure location so an LMCIT claim representative has a chance to review the materials.

## 5. Removing playground equipment from service

Consider whether the playground equipment is suitable for use on a public playground. The Consumer Product Safety Commission (CPSC) specifically recommends that some older style playground equipment is not to be used on public playgrounds due to severe injury potential. Equipment that should not be used on playgrounds includes:

- Trampolines.
- Swinging gates.
- Giant strides.
- Climbing ropes that re not secured at both ends.
- Heavy animal figure swings.
- Multiple occupancy swings.
- Rope swings.
- Exercise rings.
- Trapeze bars.

## RELEVANT LINKS:

See the Consumer Product Safety Commission's [Public Playground Safety Handbook](#).

See Section VI-Americans with Disabilities Act.

Contact [ASTM](#) for their manufacturing standards "Standard Consumer Safety Performance Specification for Playground For Public Use", Standard F 1487.

## 6. Playground signage

It is important to properly sign your playground area. One reason for signing the playground is to separate children into age-appropriate activities. Preschool and school-age children have different play needs and abilities. It is preferable to designate some playground areas for preschool children (ages 2-5) and others for school-age children (ages 5-12).

Signs also can be used to explain the rules and regulations of the play area. This could include requirements for small children to have adult supervision, the park's hours of operation, and specific playground equipment rules. Most playground equipment manufacturers supply signs specific to their equipment, and these should be placed accordingly.

Some cities use playground signage to help encourage the general public to assist with the city's safety efforts. Signs such as these typically state: "Please report broken equipment or playground hazards to the parks department."

## 7. Accessibility

Playgrounds should be designed to accommodate individuals with disabilities. There should be a wheelchair-accessible route to the general play area and specific play equipment. Creating a similar play experience for disabled children should be one of your city's goals. For more information on this topic contact your playground equipment supplier to discover options to incorporate into your new or existing playground structure.

## 8. New equipment

When new playground equipment is purchased from manufacturers, the city should require a certification of compliance with the most current American Society for Testing and Materials International (ASTM) standards for playground equipment. Also, it is a good idea to require manufacturers to provide a certificate of product liability insurance. This helps limit a city's liability for a faulty product design.

Cities need to be very cautious when accepting donated playground equipment or offers to install playground equipment. Although most of these organizations are probably well-meaning, blindly accepting any type of donated playground equipment can expose your city to unnecessary liability. Remind these organizations that the city follows recognized safety guidelines and standards (such as the CPSC and ASTM) and that all playground equipment must comply.

## **9. Natural playgrounds**

Natural playgrounds, as the name may imply, are playgrounds designed to incorporate nature. They may include features such as real or artificial rocks or logs to climb upon as well as slides and crawl tubes that take advantage of natural landscaping such as hills and mounds.

Like a regular playground, natural playgrounds should be designed with Consumer Product Safety Commission (CPSP) and American Society for Testing and Materials International (ASTM) standards in mind. This includes ensuring that every feature has an adequate fall/use zone, and that the surfacing around features is a soft material even though the rest of the playground may just have grass for surfacing.

One of the hazards associated with natural playgrounds is that they often include materials, like branches or lighter sticks and logs, that encourage children to use them to build structures such as teepees. As a general best practice, cities should try to stick with fixed or difficult-to-move features as much as possible because the city cannot control features that can be moved or displaced, and that could create an unsafe environment.

Another hazard that cities should be aware of when designing a natural playground is the materials being used. If real wood is being used, it should be treated to prevent splinters, and any sharp edges should be dulled. Large rocks or boulders likewise should be secured to prevent them from tipping or rolling over onto a child. Natural playgrounds should be inspected at least as often as any standard playgrounds that the city may have, if not more often depending on the materials used and the features present, to ensure that they remain a safe and fun environment for all that attend.

## **B. Bouncy houses (inflatable amusements)**

Inflatable amusements (commonly known as moon walks, space walks, and bouncy castles) can be found at small backyard parties as well as at large fairs and amusement parks. While these amusements are very popular with children and young adults, they can cause injury and increased liability risk for a LMCIT Member.

### **1. Installation and operation**

Whenever possible, installation should be done by qualified personnel. Usually, this means the rental company does the installation. Instructions from the manufacturer are preferable but if not available, the rental company should provide such installation and operating instructions.

## RELEVANT LINKS:

[Gopher One Call.](#)

- Manufacturers will usually be the best source for information on the inflatable's anchorage system including where the anchors go, of what the anchors should be made, how many must be used, how strong the anchors must be, and the wind speeds allowable. There should be no deviation from the manufacturer's suggested inflation pressures and the number of blowers.
- All signs recommended by the manufacturer or rental company should be displayed, including age restrictions and the capacity of the inflatable by weight or number of users.

## 2. Anchoring

Safety pointers for the anchoring process include:

- Ensure that the ground is free of any sharp objects that would puncture the house. If the manufacturer specifies that the ground be covered with protective materials, such a cover should be installed under the inflatable.
- Anchor the bounce house on level ground. (Don't forget Gopher One Call before installing stakes.)
- Anchors must be fixed, stationary objects (and must not include trucks, cars, or other vehicles) and located so that they do not create additional hazards.
- Anchor stakes and other anchorage equipment and blower equipment must be kept clear of the entrance.
- Anchors must not be installed at the entrance(s) to the inflatable so as to cause tripping hazards.
- Anchors must be installed so as not to impale users who tumble against them from inside the inflatable.

## 3. Electrical

Electrical loss control measures include:

- Ensure the bounce house is installed away from power lines, including those overhead or attached to structures and poles.
- The blower should be plugged into a GFCI (ground fault circuit interrupter).
- Extension cords should be minimized or avoided but if used, they must be properly rated for the load and the environmental conditions (for example, if used outside, they must be rated for outdoor use). Cords should also be placed out of traffic areas and secured to prevent trips and falls.

**RELEVANT LINKS:**

[ASTM F2374-10/6.1.11.1.](#)

#### **4. High wind and poor weather**

Review the weather and postpone bounce house activities when high winds or lightning is present or forecasted. If the manufacturer does not specify the highest allowable wind speed, 40 km/h (25 mph) should be used.

#### **5. Operating the inflatable**

Safety rules for use include:

- Supervision- Active adult supervision is required. If the manufacturer specifies that one or more operators or attendants be on hand, these personnel should be provided, and the training recommended by the manufacturer must also be provided.
- Ideally, one child at a time, but this is almost never possible, so the fewer-the-better. If the manufacturer recommends capacity limitations, they must be adhered to. These will usually be on a tag or in the instruction manual, and will require that the larger and older the children, the fewer of them permitted.
- Users should be prohibited from making contact with one another. Accidental contact should be prevented by restricting the number of users.
- If feasible, limit users to those age six and over only. Whatever age restriction is put in place, only users of the same age, height, and weight should be permitted at the same time.
- No flips or other maneuvers that can cause spinal injuries.
- No shoes.
- No sharp objects inside, including earrings, necklaces, and belts.
- No toys other than those approved by the manufacturer or provider.
- No food, drinks or gum chewing.
- Fatigued children should rest outside the bounce house.
- No playing on or atop the outside of the bounce house unless designed for it.
- Barriers for crowd control must be provided to prevent injury to the users, the observers, or to the inflatable.
- The landing area should be appropriate for the speed at which users will exit (for example, if there is a slide, the landing area should be capable of handling the highest speeds and longest distances of exit).
- Operators should sanitize and wipe down/dry the bounce surfaces periodically to prevent slippery surfaces and contamination.

## **6. Deflation**

If the unit begins to deflate:

- First, have all children exit the unit immediately.
- Next, if the motor has stopped, make sure that it has not been unplugged. If the motor is still running, check the air intake on the side of the motor for blockage, and check both blower tubes on the inflatable unit to make sure that they are tightly tied off.
- Never allow riders in or on a partially inflated unit.

## **7. Insurance and legal considerations**

- If you are hiring a company to operate an inflatable amusement, ask them for proof of liability insurance.
- Insist that the rental company install the inflatable. If feasible, arrange for the rental company to operate the inflatable. If you are operating the inflatable, ensure all staff or volunteers are fully trained in the safe operation of each inflatable by the rental company. A minimum age of 18 is recommended for all staff or volunteers who operate inflatable. In summary, children's activities require a much higher degree of care from those who select, install, operate, and maintain them.

## **8. Alternate power (fuel and generators)**

If the blower is powered by a gasoline, diesel or propane generator, additional precautions must be taken in regard to:

- Carbon monoxide buildup inside and around the inflatable. Generators should be used outside, away from all doors, windows, and vent openings
- The safe handling of the flammable fuel (proper cans). When refueling, the generator should be shut down and allowed to cool.
- Fire prevention plan, including a proper fire extinguisher.
- Proper use of the generator. Generators must be used in strict accordance with the manufacturer's instructions

## **C. Trails**

Trails are an important thread in the fabric of Minnesota communities. More versatile than sidewalks, trails provide for a variety of recreational activities including walking, hiking, jogging, bicycling, in-line skating, skiing, equestrian activity, and snowmobiling.

## RELEVANT LINKS:

[Minnesota Department of Natural Resources](#) has state trail studies, rules, maps, and surveys for more information.

Learn more about trail construction from [American Trails](#), the [Professional Trailbuilders Association](#) and the Federal Highway Administration publication "[Designing Sidewalks and Trails for Access](#)."

### 1. Trail use

Cities should take care to ensure trail use is consistent with the design and construction of the trail. For example, using a gravel trail for bicycle use presents many safety hazards. Be prepared to address these issues in the design phase by integrating construction features appropriate to ensure safe use. With existing trails, cities should be prepared to enforce rules in accordance with a trail's intended use.

Also keep in mind that any area open to pedestrian use must be available to use with wheelchairs and manually powered mobility aids for those with mobility disabilities. Reasonable modification should be made to accommodate power-driven mobility devices unless there are legitimate safety concerns.

### 2. Trail design and construction

Managing liability begins with the design of a trail and continues through construction. When designing and constructing a trail, keep in mind these important items:

- Anticipated use.
- Dimensions.
- Transition of buffer zones.
- Adjacent uses.
- Surface conditions.
- Signage.
- ADA guidelines.

### 3. Trail maintenance

A properly maintained trail reduces liability and keeps trail users safe. Cities should respond to complaints of hazards in a timely manner. When a city is on notice that a hazardous condition exists, it should follow its policy on responding to hazards. In addition, adequate warnings should be considered to notify trail users of the hazard. The city may choose to designate trails as high maintenance or low maintenance to facilitate proper care. Other important maintenance considerations include:

## RELEVANT LINKS:

See [Trail Inspection](#), LMC Model Policy and [Trail and Sidewalk Removal of Snow and Ice](#), LMC Model Policy.

See [Trail Inspection Sheet](#), LMC Model Form.

See Section V-A-1, general trespasser exception to park and recreation immunity.

- Mowing to prevent tall weeds from leaning on trail surfaces and to permit users to safely exit the trail in emergency situations.
- Tree trimming to keep limbs and branches out of the way of trail users.
- Trail sweeping to ensure a clear surface for bicyclists and pedestrians.
- Maintaining trail surfaces according to the required specification (e.g., roots can lead to cracking in asphalt causing a bike accident).
- Removing snow to prevent ice and snow buildup creating a hazard. The city may consider a trail snow removal policy to better define these maintenance parameters.

### 4. Trail inspection

A written policy should be developed to establish frequency and types of inspections conducted on city trails. Since municipal staffs are increasingly doing a greater amount of work with fewer resources, volunteers may be used to assist in the trail inspection program.

Trails should be inspected on a regular basis during each season the trail is used, observing for trail clearances, condition of signs, trail surface condition, drainage, harmful weeds, trash, and hidden hazards. Detailed records of these inspections are important because they may provide essential support if it becomes necessary to prove that reasonable care was exercised in maintaining a particular trail.

### 5. Trail signs

Signage is an important part of keeping people safe while reducing a city's liability. Trail signs fall into two basic categories: safety signs and information signs. Trail users should be informed of where they are, directions, and how to safely use trails. Signs related to safety are most important and should receive the highest priority.

Warning signs should be posted far enough in advance to advise the trail user of a problem ahead. For instance, trail signs that warn a bicyclist of a steep hill after the bicyclist has started the downgrade are obviously ineffective. Signs should also be visible from the trail surface, but not a hazard to trail users, i.e. 2 to 3 feet off the trail whenever possible. It is especially important to warn of sharp curves, speed limits, hills, intersections with other trails, or hidden hazards.

## RELEVANT LINKS:

[LMCIT Contract Review Service.](#)  
Chris Smith, LMCIT Risk Management Attorney:  
[csmith@lmc.org](mailto:csmith@lmc.org) or  
651.281.1269.

[Minn. R. 4717.3750.](#)

## 6. Trails and intergovernmental agreements

When sharing or leasing a park or trail with a school district, county, or other governmental entity, it is important for all parties involved to have a clear understanding of construction, maintenance, and inspection responsibilities. Consequently, these roles and responsibilities should be set forth in a written agreement. Written agreements should address maintenance, inspections, insurance requirements, and liability for claims or accidents arising out of trail use.

If you're not sure about a particular contract, LMCIT will review it before the city signs it to help ensure the contract's insurance and liability provisions adequately protect the city's interests. Advice and recommendations on insurance coverage also are provided to help ensure contracted activities fall within the scope of LMCIT coverage.

## D. Public swimming beaches

In Minnesota, "going to the lake" is a long-standing tradition in the summertime. Many cities have developed public water access into a formal swimming beach. These areas are often a favorite spot for residents looking to take a swim. When a city owns and/or operates a swimming beach, risk management techniques need to be implemented to keep swimmers safe and minimize liability to the city.

### 1. Beach docks, rafts, and slides

Installing features such as docks, rafts, slides, etc. with or without lifeguards does increase the city's potential liability. Cities need to ensure beach features are properly maintained. In addition, if water depth is not adequate for diving, "no diving" signs must be posted. Water depths for diving should be consistent with Minnesota Department of Health regulations for swimming pools. A minimum of 8 feet 6 inches of water depth is required for diving from the water level and a 10-foot water depth is required for a 1-meter diving board or elevated platform.

### 2. Beach lifeguards

The decision to employ lifeguards is up to the city. City liability is not automatically reduced if lifeguards are present, nor does the presence of lifeguards reduce the city's liability insurance premium. However, if lifeguards are present and fail to enforce rules like no diving, the city's liability may increase. City liability may also increase if docks, rafts, and other features are misused and no lifeguards are employed to take supervisory action. As a result, we recommend the number and complexity of features be limited or removed altogether if there are no lifeguards on site.

## RELEVANT LINKS:

[Minn. R. 5200.0910, K. 29 C.F.R. § 570.34 \(1\).](#)

If the city chooses not to employ lifeguards, a sign that reads “No Lifeguard on Duty” should be posted at the beach. When a lifeguard is on duty for certain hours, a sign indicating “Lifeguard on Duty” needs to be posted. Avoid posting set hours in a fixed sign that does not allow for flexibility in the event of changes in the lifeguard hours such as poor weather, illness, etc. It is preferable to have a sign indicating “No Lifeguard on Duty” that the lifeguard covers with a placard noting “Lifeguard on Duty” when he/she is actually on duty.

If lifeguards are employed by the city at a beach, they must be 16 or older (in contrast, the minimum age for a pool lifeguard is 15). In addition, lifeguards who are younger than 18 must be continually supervised by an adult who is 18 years of age or older. Safety equipment available when a lifeguard is on duty should include the following:

- Sun umbrella.
- First aid kit.
- Communication (phone or radio).
- Ring buoys or rescue tubes.
- Rescue boat.

### **3. Beach attendants**

Some cities choose to use a beach volunteer or hire a beach attendant to supervise the beach area and report problems. Cities using a “beach attendant” still should post a “No Lifeguard on Duty” sign.

### **4. Beach maintenance and inspection**

Park personnel should inspect the beach area on a regular basis during the open season. Documenting such inspections can benefit the city by illustrating that reasonable care was exercised in maintaining the beach. Hidden hazards may naturally exist and vandals or weather conditions may create additional hazards that need to be addressed. Obstructions, drop-offs, and trip hazards can be marked with a warning sign and/or eliminated.

It is important to inspect these areas in the off-season to identify hazardous conditions that may become snow-covered and create a hidden hazard. Docks, lifeguard stands, and other temporary features need to be stored in the off-season safely away from snowmobile access trails, sledding hills, or other recreation activities.

**RELEVANT LINKS:**

[Minn. R. 6110.1600.](#)

## **5. Beach signs**

Post beach rules and information such as:

- Swim in designated areas only.
- Hours of operation.
- No alcohol.
- No pets.
- No glass.
- No smoking.
- No unsupervised children under \_\_\_\_\_ (insert age).
- The phone number to report a problem.

## **6. Beach designated swimming areas**

Swimming areas in public waters maintained or designated by cities that offer public swimming facilities in any body of water where operation of motor-powered watercraft is not prohibited must be marked in the following manner:

### **a. Perimeters**

The entire perimeter of the water area must be marked with white marking buoys no less than nine inches in diameter and extending no less than 36 inches above the surface of the water. Each marking buoy must contain two horizontal bands of orange, one such band at the top and the other just above the waterline. Each marking buoy must also contain two diamond shapes with crosses, which means, "Boats keep out." These diamond shapes must have a vertical diagonal of not less than 14 inches. The borders of the diamond and cross outline cannot be less than two inches in width. The color of these borders must be orange. The diamonds must be placed midway between the horizontal bands. The words "swim area" should also appear on each marker in no smaller than two-inch letters.

### **b. Buoys**

Marking buoys must not be spaced more than 75 feet apart and in no case may fewer than three markers be used to establish a boundary line.

### **c. Other markers**

Smaller markers may be used to add definition to the area boundaries. These smaller markers must be all white in color.

**RELEVANT LINKS:**

[Minnesota Department of Health](#) has information on monitoring programs and closure tools for local governments.

## 7. Beach closure—water quality criteria

Although it is normal (in fact healthy) for beaches to have microbes in the water, sometimes the water contains pathogens that cause sickness. Local authorities, such as city officials, may face the prospect of closing beaches and bathing areas in order to protect public health.

### E. Quarries

If a quarry is to be redeveloped for recreational use the LMCIT member must make every effort to safeguard the quarry and surrounding area. Decisions need to be made on types of activities that will be allowed and/or restricted. From that a plan for controls can be developed and implemented.

A comprehensive risk management plan should start with identifying, mitigating, and/or warning of hidden hazards associated with its use. Examples of warning signs include:



If a quarry is to be open for swimming, then the swim area and surrounding area underwater should be inspected by an underwater dive team. This will provide the trust member with information needed to plan for appropriate use, removal of debris, and signing other hazards. Physical barriers such as fencing may also be necessary to restrict certain areas or activities taking place that are not desired.

SCUBA diving is popular in quarries, but is an activity which requires specialized training, equipment, and certification and has specific risks to those involved. Quarries generally have numerous underwater hazards. Diving is done at the divers' own risk, and must be a Certified Diver (or be with an instructor). In an effort to control activity of divers, a permit system should be developed. See permit and waiver of liability & indemnification form used by Stearns County, in its' Quarry Park and Nature Preserve.

See Waiver of Liability and Indemnification, Stearns County Quarry Park and Nature Preserve, "[SCUBA Diving Guidelines](#)," April 8, 2015.

## RELEVANT LINKS:

LMC Webinar: [Pool Play-Aquatic Facility Risk Management and Inspections](#), May 9, 2013.

The Pool Code is [Minn. R. 4717.0150 - .3975](#).

[Minn. R. 4717.0650, subp.3.](#)

[Minn. R. 4717.0650, subp.5.](#)

[Minn. R. 4717.1250.](#)  
[Minn. R. 4717.1450, subps.3, 4.](#)

## F. Pools and aquatic facilities

Public pools are becoming increasingly popular recreational venues with growing emphasis on fun, family, and features. As municipal facilities implement programs to encourage greater attendance and longer stays, the associated increase in patron usage puts additional stress and strain on both the physical facilities and staff. This is why it is important to effectively manage the risks associated with an aquatic facility beginning in the conceptual stage and continuing through construction and operation. Some of the hazards are unique. Many are similar to traditional swimming pools. Each facility requires additional attention to safety and loss control because of the potential for severe injuries or drowning.

An aquatic facility has more specialized recreational equipment than a standard swimming pool. Features you may see in an aquatic facility include things such as: flume waterslide, drop slide, wading pool, zero-depth pool, spa pool, wave pool, splash pad, fountain, lazy river, climbing wall, etc. There are combinations and variations to each facility. Some are indoors and some are outdoors, and many offer food and beverage services.

### 1. Minnesota Pool Code

The Minnesota Department of Health administers the Minnesota Pool Code and conducts plan review and inspection of public pool construction or alteration. The Pool Code requires all public swimming pools to be operated by a certified pool operator, and that certifications are posted.

The purpose of this requirement is to ensure that all public pool operators have proper training in pool operations and chemical handling. A certified pool operator must successfully complete a Minnesota Department of Health-recognized training course at least once every five years. The following is a list of acceptable training courses:

- The National Swimming Pool Foundation Certified Pool Operator Course.
- The National Spa and Pool Institute; Tech I and Tech II courses.
- The National Recreation and Park Association Aquatic Facility Operator Course.

### 2. Pool Code-required safety equipment

Pool and aquatic facilities should provide the necessary safety and rescue equipment. This includes an emergency telephone, first aid kit, spine board, and elevated lifeguard stations.

**RELEVANT LINKS:**

[Minn. R. 4717.1450, subp.3.](#)

[Minn. R. 47147.1450, subp.4.](#)

[Minn. Stat. § 144.1222.](#)

[“Abigail Taylor Pool Safety Act Report to the Minnesota Legislature”](#), Minnesota Department of Health, January 15, 2009.

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[“Virginia Graeme Baker Pool and Spa Safety Act,”](#) Consumer Product Safety Commission, December 2014.

One “unit” of lifesaving equipment is generally required for each 2,000 square feet of water surface area. The Minnesota Department of Health defines one “unit” of lifesaving equipment as follows:

- A ring buoy attached to a 3/16 inch manila rope, or equivalent material, that is 1-1/2 times the pool width, but not over 60 feet in length.
- A life pole, or shepherd’s crook pole, with blunted ends and a minimum fixed length of 12 feet.
- Where a lifeguard is provided, a rescue tube may be used instead of a ring buoy.

All lifesaving equipment must be mounted in conspicuous locations and be in good condition. Equipment should be routinely inspected and repaired as necessary. Lifeguards must be trained on all safety equipment.

### **3. Common swimming pool exposures**

#### **a. Unprotected drains**

Improperly protected pool drains are cited by the CPSC as responsible for the deaths of several swimmers during the past few years. Drowning may occur when the drains suck the hair or other body parts of swimmers into the drain pipe. A substantial amount of research into the problem by the CPSC and the National Spa and Pool Institute (NSPI) resulted in the development of a protective cover for pool drains.

#### **(1) Minnesota Pool Law**

The Minnesota Pool Law (Abigail Taylor Pool Safety Act) is meant to ensure that every commercial/public swimming pool in Minnesota is as safe as possible. It requires many of the same provisions as the federal pool safety bill, but goes one step further by requiring dual main drains to be installed on any single-outlet pool suction. Swimming pools with unblockable suction outlets/drains or gravity outlets/drains are already in compliance.

If you are planning an aquatic facility or have questions about an existing facility you may contact the Minnesota Department of Health’s Swimming Pool Program.

#### **(2) Federal Pool Law**

The Federal Pool Law (Virginia Graeme Baker Pool & Spa Safety Act) must also be complied with. The provisions are very similar to the Minnesota Pool Safety Act, but have a different compliance date and allow for additional compliance options, including safety vacuum release systems (SVRS), which will not alone make pools compliant in Minnesota (dual drains are still required for Minnesota pools).

**RELEVANT LINKS:**

[Minn. R. 4717.1550.](#)

**b. Electrical equipment**

Poorly installed or poorly maintained electrical equipment is a common pool risk exposure. Improperly grounded electrical equipment is the cause of a number of deaths in and around swimming pools. Some of the critical items include lights, underwater lighting, and cord-connected appliances belonging to people using the pool.

**c. Inadequate markings**

Another problem you may see is a lack of depth markings, or those that have faded and are illegible. This situation can be hazardous to people who are unfamiliar with the pool and may dive into shallow water.

**d. Lack of fencing**

Many courts consider pools to be “attractive nuisances.” Therefore, perimeter fencing with a locking gate is an essential part of pool safety. When perimeter fencing is not in place, the potential for accidents involving unsupervised children greatly increases.

**e. Lack of emergency equipment**

Having emergency equipment readily available is critical when it comes to pool safety. When emergency equipment and healthcare facilities are not nearby, the possibility of serious injuries and fatalities increases.

**f. Slippery surfaces**

The most common insurance claim associated with pools is slips, trips, and falls. All walkways should be constructed of slip-resistant materials, and oily or greasy substances should be prohibited near walking surfaces. Most importantly, people should be warned not to run on the wet surfaces surrounding the pool.

**4. Common aquatic feature exposures**

**a. Flume water slides**

The flume water slide is one of the main attractions at an aquatic facility. Some of the most overlooked hazards are the walkway, stairs, and platform surface that lead to the top of the flume tower. These surfaces must be made of a non-slip material and continually monitored to minimize the chance of slip and fall injuries. Railings and supports need to be inspected to assure they are in good condition.

**RELEVANT LINKS:**

A lifeguard should be provided at the top platform and near the plunge pool. A communications system between the two lifeguards is critical. This will help to assure that only one rider is in the slide at a time. The lifeguard near the plunge pool has the responsibility for observing that area only and should be ready to assist any users exiting the area.

**b. Drop slides**

A drop slide is a slide with a drop of more than two inches to the water surface. This type of slide has similar hazards as the larger flume slides. At least one lifeguard should be provided to observe the slide and monitor its use.

Non-slip surfaces, including the ladder or steps, are essential. Handrails should be provided on both sides of the steps. A 42-inch-high guardrail with a mid-rail should also protect any platform areas.

**c. Wading and zero-depth pools**

Wading pools and zero-depth pools require special attention. A large number of small children and inexperienced swimmers use them. Zero-depth pools require a lifeguard to be present at the zero-depth area. Some form of barrier, such as stanchions and ropes, is needed to restrict access to the sides of the pool where the water depth is less than three feet. Both of these measures are designed to minimize the chance of potential diving injuries. Some of these pools also have water fountains, which should be designed to minimize the chance of children climbing them.

**d. Spa pools**

Spa pools (also called whirlpools) are now addressed in the Minnesota Department of Health public swimming pool rules. Items covered include things such as the timer design, access to the spa pool, steps, and required signage.

The U.S. Consumer Product Safety Commission publishes guidelines for spa pool safety that cover body entrapment, hair entanglement, and evisceration hazards in spa pools. This publication is essential for any municipality with a spa pool.

[Minn. R. 4717.3850.](#)

[CPSC "Guidance for Safety: The Pool and Spa Safety Act".](#)

## RELEVANT LINKS:

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Engineer, Swimming Pool  
Program.  
651-201-4503  
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### e. Wave pools

A wave pool is a swimming pool with artificially generated waves, similar to the ocean. Wave pools are often a major feature of aquatic facilities. Wave pools are more difficult to lifeguard than still pools. This is due to such things as moving water, sun glare, overcrowding, and other factors. With these types of pools, it is very important to ensure you have enough lifeguards to cover the entire pool area, and that the maximum capacity is not exceeded.

### f. Splash pads and fountains

Splash pads can be a safer and cheaper alternative to a pool. A splash pad is an area for water play that has no standing water. This is said to eliminate the need for lifeguards or other supervision, as there is practically no risk of drowning. Slips, trips, and falls are the most common type of injury associated with splash pads, so it is important to have them surfaced in textured non-slip concrete or in crumb rubber.

Many splash pads have some features, such as fine mist and/or fountains that are designed to be moderate enough for young children or sophisticated enough for adults.

### g. Climbing wall

Presently, there are no *specific* rules regulating the installation and use of climbing walls. However, the state governs climbing walls as “pool alterations” under the jurisdiction of the Minnesota Department of Health’s Swimming Pool Program. The city should contact the state pool inspector before installing an aquatic climbing wall.

Recommended rules of play for aquatic climbing walls include:

- A lifeguard must be on duty at all times.
- The play area (both front and slides) must be roped off— a minimum of 10 feet out from structure.
- One person on the structure at a time.

Other safety features you might wish to look for include:

- Appropriate clearance to the sides (6 feet or more) and rear (minimum 10 feet) of the structure.
- Gently textured, non-abrasive surfaces.
- Submerged bottom panels— so play begins and ends in the water.
- A frame designed to deter users from climbing over, around, or behind structures.
- Panels flush mounted to the deck to reduce the chance of entrapment.

## RELEVANT LINKS:

- Appropriate anchoring to the pool deck.
- Protective padding.

[Minn. R. 4717.0275.](#)

[Minn. R. 4717.3750.](#)

[Minn. R. 4717.](#)

[Minn. R. 4717.0950.](#)

[Minn. R. 5200.0910, K.  
29 C.F.R. § 570.34 \(I\).](#)

[Minn. R. 4717.1850.](#)

[Minn. R. 4717.3950.](#)

[Minn. R. 4717.0950.](#)

## 5. Pools with diving

Diving-related injuries could be severe and lead to paralysis or death. Good pool design, lifeguard practices, and supervision of the pool area can prevent many of these injuries. Most injuries are the result of diving into shallow water and not the result of diving boards. Some injuries can be the result of falls from steps leading to the diving board. To minimize this, slip resistant surfaces and close supervision of this area is needed to assure only one person is on the steps at a time.

Minnesota follows the national standards for pools designed with diving boards. Ten feet of water is required for a 1-meter diving board and 12 feet of water is required for a 3-meter diving board. There are specific design requirements and distances for such things as the length of the diving well, run-out, and minimum overhang.

All new public pools must meet the Minnesota Department of Health standards to be approved. Existing public pools must also comply with these standards. There is no “grandfathering” of existing pools.

## 6. Lifeguards

Lifeguards must be certified in first aid, cardiopulmonary resuscitation, and have a Red Cross lifeguard certification or equivalent. The Minnesota Child Labor Law prohibits minors under the age of 18 from working as lifeguards unless they are working under uninterrupted adult supervision.

The number of lifeguards required for any particular pool varies depending on the nature of the facility. More lifeguards may be needed if there are more play features and a zero-depth entry into the pool.

Swimming-related drowning in areas where lifeguards are on duty usually result from three causes commonly referred to as the “RID” principles:

- Recognition: Failure to recognize a victim.
- Intrusion: Performing secondary duties, like sweeping the deck.
- Distraction: Talking with other staff or patrons.

Continual safety training must be provided to lifeguards on recognition of responsibilities, accident prevention, and dealing with emergencies. It is essential that a policy and procedure manual be developed which outlines lifeguard duties and facility policies. This will help to eliminate confusion and create standard operating procedures for emergency situations. Additional training should be provided for items such as filling out pool inspection reports, accident and incident reports, etc.

## RELEVANT LINKS:

[29 C.F.R. § 1910.1030 \(Bloodborne pathogens\).](#)

[LMC information memo, Potential Infectious Disease Exposures in Municipal Operations.](#)

[Minn. R. 4717.1050.](#)

[Minn. R. 4717.1050.](#)

[Minn. R. 4717.1350.](#)  
[Minn. R. 4717.1250.](#)

[Minn. R. 4717.2450.](#)

[Minn. R. 4717.3875, subp.11.](#)

[Minn. R. 4717.3850, subp.10.](#)

Good training records should be maintained which may include who attended, what was covered and when the training took place. The cost incurred for a well-trained lifeguard staff is money well spent.

According to OSHA, lifeguards must be offered the Hepatitis B vaccination series if they have not already had it. A lifeguard can refuse the vaccination series but a specific declination form must be signed and kept on file.

## 7. Signs and rules

Posted signs and rules are an important part of an aquatic facility or swimming pool. Signs provide clear direction as to prohibited and expected behavior. All pools should have posted rules, which are clearly visible and legible. Signs should be written in the English language, unless demographics dictate otherwise. Pictographs can also be helpful in displaying the prohibited activity.

The Minnesota Department of Public Health requires the use of certain signs, including:

- When a lifeguard is not on duty at a public pool open for use, a warning sign must be placed in plain view. The sign must state in clear, legible letters at least four inches high; “Warning— No Lifeguard on Duty.”
- The sign must also state in clear, legible letters, at least 1-inch high; “Children must not use the pool without an adult in attendance.”
- The capacity of the pool must be posted in the pool enclosure area.
- Instructions regarding emergency calls must be prominently posted.

Pools are required to have depth markings, “No Diving” markings, and a “No Lifeguard” warning sign if a lifeguard is not provided. There are additional signs that may be required for specific equipment such as flume water slides, spa pools, and climbing walls. Often times, the manufacturer will provide equipment-specific signs. Most signs are required at the entry point for a specific piece of equipment. Some signs such as pool rules may need to be placed in multiple locations that are visible to all users of the facility.

## 8. ADA requirements

City pools and spas are required to have an accessible means of entry to insure individuals with disabilities have an equal opportunity to use city facilities and participate in programs or activities.

## RELEVANT LINKS:

For more information, see [2010 ADA Standards for Accessible Design](#) (§ 242, Swimming Pools, Wading Pools, and Spas).

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-S, Skate parks and [Skatepark Insurance Coverage Checklist](#), LMC Model Form.

### a. Technical guidance

The “accessible means of entry” means pools must have pool lifts, pool stairs, or sloped entries, and either a transfer wall or a transfer system. (A transfer wall is a wall along an accessible route that allows a person to leave a wheelchair, for example, and lift or move their bodies onto the wall and then into a pool.) The ADA Standards for Accessible Design require a different number of accessible entries based on the size of the pool.

Larger city pools with at least 300 linear feet of pool wall are required to have at least two accessible means of entry. At least one entry must be a sloped entry or a pool lift; the other could be a sloped entry, pool lift, transfer wall, or transfer system. Smaller pools, with fewer than 300 linear feet of pool wall, must have one accessible entry.

### b. Exceptions

There are only a few exceptions to the new requirements. If a public entity can demonstrate that it is structurally impracticable to meet the standard for new pools, then full compliance is not required.

According to the Department of Justice, adaptations are “structurally impracticable” only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. Even then, achieving compliance is required to the extent possible.

Another exception relates to cost and mostly applies to existing pools. If a city demonstrates that making existing swimming pools accessible would be an undue financial and administrative burden, the exception protects the city from excessive compliance costs. Deciding what constitutes an undue financial and administrative burden is a city-specific question requiring legal advice from the city attorney.

## G. Skateparks

LMCIT has developed an underwriting approach which categorizes skateparks upon a two-tier system: Tier 1 and Tier 2.

There is no additional premium charged for Tier 1 skateparks. Tier 1 skateparks have:

- Features 48 inches or less in height.
- Pyramids 6 feet or less in height.
- Bowls 6 feet or less in depth.

**RELEVANT LINKS:**

For more information contact  
the LMCIT Underwriting  
Department  
651.281.1220  
800.925.1122.

Additional premium is charged for Tier 2 skateparks based on size, type, and number of features. Tier 2 skateparks have:

- Features greater than 48 inches in height.
- Pyramids greater than 6 feet in height.
- Bowls greater than 6 feet in depth.

**1. Possible skatepark features**

**a. Half-pipe structures**

This equipment is shaped like a “U” and typically ranges from two- to ten-foot high. A half-pipe purposely does not have a staircase to the platform area so unskilled skaters are deterred from using the structure.

**b. Bowl structures**

Bowls are pilings driven into the ground with clay packed around to form hills and valleys that are covered with concrete or asphalt. They might also be stand-alone fiberglass flume-type bowls. A bowl looks like a large empty swimming pool with rounded edges and moguls contained inside.

**c. Street skating structures**

Equipment such as rails, a “fun box,” and the “pyramid” reflect obstacles actually found on the street and are often more interesting to skaters. These structures can rapidly deteriorate with use so it is important to inspect regularly and budget for ongoing maintenance.

**d. Guardrails**

Any skatepark platform 48 inches or higher must have a safety guardrail on the back or corner to help prevent falls. The guardrail must be designed so use as a skatepark feature is discouraged and no entrapment hazards exist.

**e. Personal structures prohibited**

Skaters are prohibited from bringing in their own ramps, handrails, or other structures that could be used to perform stunts.

## RELEVANT LINKS:

[Skate Park Association International.](#)

See [Skatepark Rules](#), LMC Model Form.

## 2. Skatepark development concerns

### a. Environmental controls

Proper assembly and installation of ramps and other equipment are crucial for structural integrity and overall safety. A great deal of information about ramp and park design is available online. In addition, there are both national and state skateboard associations that are potential information resources for a city interested in developing a skatepark.

It is important that installation of equipment be done in accordance with the manufacturer's instructions and be carefully inspected before the equipment's first use. The manufacturer's assembly and installation instructions and related materials should be kept in a permanent file.

### b. Supervision

Adequate staffing— a sufficient number of well-trained employees— is a must for the safe operation of a Tier 2 skatepark. At least one employee with sufficient knowledge of skateboarding and inline skating to enable him/her to review and determine the skill level of park users should be present during all hours the park is open. One of the employees should also be comfortable enforcing skaters' use of personal protective gear.

Because injuries at skateparks can be severe, there should be a written emergency plan and staff members should receive training on that plan as well as on general park safety rules and facility operations. In addition to having employees trained in CPR and first aid, the following is to be readily available:

- A telephone or radio communications to contact emergency services.
- A complete medical first aid kit on premises.
- Ice packs and sanitary towels.
- Accident reports for city employees to complete upon report of any accident or injury occurring at the facility.

### c. Facility rules and signs

Proper signage and rules posted in a visible area can reduce the risk of injury to participants and spectators. Signage must be easy to read and should be accompanied by visual symbols, and wherever necessary, translated into the language of the community.

Information on skatepark signage should include, but need not be limited to:

## RELEVANT LINKS:

See [Skatepark Inspection](#),  
LMC Model Form.

- Operating hours and admission.
- Possible age limits and skill level requirements.
- Behavior or conduct expectations.
- Requirement that skaters use personal protective and safety equipment.
- Degree of difficulty on various skate runs.
- The city's right to revoke skating privileges of skaters who do not follow the rules.
- Contact information for reporting of problems.
- Prohibition of altering or adding ramps or equipment.
- List of personal protective equipment that should be worn: helmets, knee and elbow pads, wrist guards or gloves, proper shoes (no flip-flops).

### **d. Maintenance and safety inspections**

Injuries to skaters are more likely to be caused from inadequate structure and park maintenance than from skating activities. To help prevent such injuries cities must conduct regular safety inspections, follow repair programs, and train staff to identify hazards at the park. The more advanced the skatepark, the more frequent safety inspections should be. Both inspections and maintenance performed should be documented.

### **e. Security inspections**

Periodic security inspections must be conducted by city personnel (law enforcement, parks and recreation supervisor, etc.) to ensure skatepark rules are being observed.

### **f. Personal protective gear**

Skaters should be required to wear safety equipment at all times. Most of the protective gear currently on the market is not subject to performance or safety standards, so careful selection is necessary. It is important the equipment fits properly and does not interfere with the skater's movement, vision, or hearing. Such equipment typically includes, but is not limited to, a helmet, knee and elbow pads, flexible wrist guards, and proper shoes.

### **g. Competitions**

Competitions should be held only by member cities or those sponsoring organizations able to provide separate insurance coverage and a contract holding the city harmless and indemnified.

**RELEVANT LINKS:**

See Section VII-M-6 for recommendations in the spectator area of ice rinks.

[American Bicycle Association.](#)

See Section II-A-1 on Employee Injuries and II-A-2 on Employees and Participants.

## **H. Bicycle motocross (BMX)**

A BMX facility is a bicycle motocross course that provides artificially developed earth structures to be used by bicycle riders. BMX became popular in the early 1970s by imitating motorcycle motocross racing facilities.

Injury and liability potential certainly exist for a city with a BMX facility. These potential liability exposures for cities include injuries to users, spectators and bystanders due to negligent design, negligent maintenance, negligent supervision, and failure to warn of dangerous conditions.

LMCIT covers member cities for general liability when they operate BMX tracks for recreational use as well as competition, at no additional premium. However, if an outside organization sponsors a competition on a city track; the city should obtain a certificate of insurance, have a hold harmless/indemnification agreement, and be named as an additional insured.

### **1. Design**

There are no national standards for constructing a facility. Some design recommendations are:

- Include users in the design process.
- Locate a facility in an existing or new park with access to restrooms, drinking fountains and shade trees.
- Consider traffic; noise, etc. if the park is near residential areas.

If the facility will be used for spectators, the city should consider fencing and other safeguards.

You may also find current practices and assistance from sport groups.

### **2. Maintenance**

The city must develop a regular system of maintenance for the facility. This includes periodic inspections. Any dangerous condition should be fixed as soon as possible or a warning device such as a barricade, cone or sign used.

### **3. Supervision**

The city should have a plan for periodic enforcement of the rules by police or parks employees, depending on whether the facility is supervised or unsupervised.

If it is supervised, the employees should be given basic training on the rules of the facility and what their role is in enforcement of those rules. They also should be trained on emergency procedures including first aid and incident documentation.

**RELEVANT LINKS:**

See Section II-A-3-c, Park and Recreation Facility Signage.

#### **4. BMX facility rules**

The city should develop rules to govern the operation of the facility. These should include, but are not limited to:

- Helmets, shin guards, closed-toed shoes and elbow pads should be worn at all times.
- Bicycles should have padded frame, tube, handle bars and neck.
- When riding on the track:
  - Only two-wheeled non-motorized equipment.
  - Ride with the flow of traffic.
  - Don't stop on the track.
  - Don't ride when the track is wet.
  - Don't tamper with the track surface or add jumps.
- Parents should supervise younger riders.

The rules should be posted in visible locations and be easily understandable. If there are a significant number of users that speak a different language, have signs in that language. Use pictographs, if feasible.

Post a contact phone number so that users can report problems. There should also be warning signs for any risks the city knows about and cannot eliminate. You wouldn't put up a warning sign for something that is part of the sport but you would if there is an unusual risk that is not obvious.

#### **5. Additional safety considerations**

Riders should inspect their bicycle every time before they ride. This would include tightening any bolts or screws and checking to see the frame and forks are in good repair. Generally, a bicycle used on a BMX track should have the following:

- No kickstands, chain guards, fenders, reflectors, or brackets.
- Handlebar grips that cover any metal.
- Padding on the top tube, stem, and handlebar crossbar.
- A seat that is fastened securely.
- Brakes in good working order.

## RELEVANT LINKS:

[Minnesota Recreation and Parks Association.](#)

[Minnesota Off-Road Cyclists \(MORC\).](#)

[International Mountain Bicycling Association \(IMBA\).](#)

Aaron Hautala, *The Cuyuan Pump Track*. Online video clip. YouTube (July 12, 2012).

[Minnesota Climbers Association.](#)

# I. Alternative bike trails and other recreation activities

## 1. Bike trails

Bike trails come in many different varieties these days, and they usually fall into one of the following types:

- Skills Park—small and compact park used to hone bike skills.
- Single-Track Trails—narrow trails, typically consisting of a network of trails with one-direction travel and designated levels of difficulty.
- Pump Tracks—a larger version of a skills park where the features allow the riders to use their body and the ground features to gain and maintain momentum to propel through the course.
- Flow Trails—trails that use gravity and elevation changes to propel riders through the course like a pump track, but on a larger scale.
- Winter Biking Trails—typically done on single-track trails where bikes called “Fat Bikes” equipped with 4.5-inch tires ride on directional trails.

When designing bike parks, cities should utilize many resources such as the organizations and association listed in the margin. Talking to other cities in the state who currently have established bike parks can help give a better idea of what works and what doesn’t work for features, terrain, funding sources, partnerships, labor ideas, etc. The following are a few points to consider:

- Trails should be set up with different loops or tracks to have various levels of difficulty so that people can ride at their skill level and progress to harder features as their skills increase.
- When designing the skills park it should be set up to have an entrance or starting area.
- Signs should be near the entrance or start area for maximum visibility.
- The trails should have signs to note difficulty level and have one direction of travel for safety. City staff or volunteers need to identify potential hazards, and either mark or abate these hazards in a timely manner.

## 2. Bouldering

Bouldering is also gaining popularity as it is considered to be safer than traditional climbing. This type of climbing can be done on either natural or artificial features. Bouldering is a good practice sport because it allows people to hone their skills and create complicated routes, which challenge the climbers’ abilities and imagination. The following are a few facts about bouldering:

## RELEVANT LINKS:

Live to the Max TV #102, [Sandstone & Ice](#). Online video clip. YouTube (Feb. 10, 2011).

[Minn. Stat. § 326B.112](#).

- Climbers are on smaller rock faces—typically large boulders under 20 feet in height.
- Climbers use crash pads under the boulder, and often use a spotter to help minimize or lessen falls and impact.
- Some climbing features may require a climbing harness, and the type used depends on the structure to be climbed.
- Climbing enthusiasts currently are bouldering in areas around Minnesota such as Taylors Falls, Winona, La Crescent, Red Wing, Sandstone, Pipestone/Marshall, and the north shore area as well as other areas around the state.
- Many of the areas are not official climbing/bouldering areas, which can lead to both legal and liability issues.

By establishing specific bouldering areas, you can make it safer and have more control. This may also make climbers feel welcome and draw them to your city, which can be a good boost to tourism.

### 3. Ice climbing

A variation to rock climbing or bouldering is what is taking place in the City of Sandstone. Sandstone officials are using a quarry where massive ice pillars are formed from a water system to provide a challenging adventure for climbing in the winter months.

Contact your LMCIT underwriter and/or loss control consultant for additional information on these recreational activities during the planning stages.

## J. Bleachers

The Bleacher Safety Act is state law that provides a uniform standard for bleacher safety that applies to bleachers owned by cities, counties, schools and private organizations. This law requires all cities and other organizations that own bleachers to obtain a certificate of compliance signed by a qualified building official or a state-licensed design professional by Jan. 1, 2002.

### 1. Bleacher Safety Act requirements

#### a. Openings and gaps

The Bleacher Safety Act allows only a four-inch gap between the railings and between the footboards and seat boards, starting at a height of 30 inches from ground or floor level. The updated legislation exempts bleachers 55 inches high or less. Building codes previously allowed gaps in railings and in the seating areas. Some bleachers have large gaps (13-18 inches) between the footboards and seats of each tier and other large gaps exist between railings on the back and sides of bleachers.

## RELEVANT LINKS:

### **b. Retractable bleachers**

The Bleacher Safety Act exempts retractable bleachers with open spaces of 9 inches or less. Retractable bleachers that have been exempt from the standards must have a safety management plan in place and an amortization schedule to plan for their future replacement.

### **c. Approved netting**

This was an alternative provided in the Act. The definition of “approved” is unclear. The netting is used to prevent persons from falling through the bleachers between the seat and footboards or in any other openings in the bleacher assembly.

Chain link fencing may be used but must be secured tightly to the underside of the bleachers. Maintenance is critical with this option since the fencing material can sag over time and become detached. This type of netting adds extra weight to the bleachers and must be factored in to the bleacher load capacity. The netting must not be climbable and have openings of no more than two inches.

### **d. Railings**

The law requires bleacher guardrails to comply with the gap standards for all parts of the guardrail 30 inches above grade or the floor.

### **e. Railings on retractable bleachers**

Retractable bleachers in gymnasiums and recreation centers are split into sections. Each section can be pulled out independently for small crowds of spectators. Unfortunately, this leaves an open area for persons to fall at heights above 30 inches from the floor. These types of bleacher sections should be fitted with 42-inch vertical guardrails having no more than a 4-inch gap.

### **f. Climbability**

The Act addresses climbability by permitting an opening no greater than 2 inches in the rear and sides of the bleacher. Many cities have attached chain link fencing material with 2-inch squares to the back and sides of bleachers to meet these requirements.

**RELEVANT LINKS:**

See Section VI, *Americans with Disability Act*.

See Section II-A-3-c, *Park and Recreation Facility Signage*.

**g. Aisle-ways**

All bleachers should now be equipped with aisle-ways for egress and ingress to bleacher seats. Designated aisle-ways are required by the building code based on the size of bleachers. Aisle-ways should be fitted with handrails and non-skid material to assist people coming and going from their seats.

**h. Structural problems**

Some of the structural problems that need to be addressed are:

- Cracked welds in bracing.
- Cracked wooden structures due to weathering or rot.
- Missing bolts from seats and structural components.
- Cracked concrete block structures due to frost heaving.
- Cracked concrete pads or support braces for the seating area in the foundation.
- Structural stress and bent support braces in bleachers that are towed or pushed from one activity area to another.

**i. Signage**

Signs can be posted on equipment or work areas that are under repair. Sign posting should not be used as an alternative to repair or replacement of bleachers. If a section of bleachers is closed due to a hazardous condition, physical barriers should be placed with warning signs until repairs can be completed. Physical barriers should be actual barriers such as chain link fence or structural material and not just yellow tape and traffic cones.

**j. Anchoring**

Bleachers should always be anchored to prevent tipping. Portable outdoor bleachers particularly have live loads of people which, if not evenly distributed (for example, the upper two rows of a five-tier bleacher are full of people and the bottom rows are empty), can tip the bleachers over. Whenever bleachers are moved, they should be re-anchored with portable anchors.

**k. Americans with Disabilities Act**

Accessibility for people with disabilities to sporting events is critical to meeting the ADA requirements. Each facility must have an adequate number of accessible seating spaces to ensure that individuals with disabilities can attend the events.

## RELEVANT LINKS:

LMC information memo, [Sanitary Sewer Toolkit](#), Section VI-A, Keep good records.

[Minnesota Bleacher Safety Act Certificate of Compliance](#).

Individuals with disabilities must have the same opportunity to purchase tickets for events. This includes the time tickets are on sale and the methods for how they are available for purchase. Accessible seating must be made available for purchase at the same price as tickets in the same seating section. There should be accessible seats available at every price level.

When an individual with a disability purchases a wheelchair space, the city must make available three additional tickets for purchase that are continuous with the wheelchair space, if available. If these tickets are no longer available, the city should offer the next closest seats still available for purchase.

### **I. Recordkeeping**

Cities will need bleacher maintenance and repair programs that address and keep repair, maintenance, usage, and inspection records. Each set of bleachers may need its own label or identifying number to match with a record of inspection, certification, and maintenance.

### **m. Inspections**

Bleacher footboards and guardrails must be re-inspected at least every five years and a structural inspection must be made at least every ten years.

## **2. Steps to compliance**

Most cities have already evaluated and have modified bleachers and grandstands. For those who have not, they should begin by doing the following:

- Retrofitting and repairing existing bleachers.
- Purchasing and installing new bleacher systems.
- Installing “approved” netting.
- Removing bleachers.

These modifications should be undertaken carefully. Structural integrity of bleachers is a critical feature. Some “shop” or homemade bleachers may not have structural integrity due to inadequate welds, support braces, and configuration. And removal of one row of bleacher seats may not solve the problem of an inadequate set of bleachers. Steps that can be taken to comply with the Bleacher Safety Act include:

## RELEVANT LINKS:

- Have a state-certified building official or state-licensed design professional inspect all bleachers above 55 inches in height.
- Obtain a certificate of compliance signed by either of the above professionals for all bleachers currently meeting the provisions of the Bleacher Safety Act.
- Prioritize and budget for repair, retrofitting, and replacement of non-complying bleachers followed by certificate of compliance signed by one of the above professionals.
- Create an inventory system to track bleachers for re-certification in five years and a structural inspection every 10 years. A state-licensed structural engineer must complete 10-year structural inspections.
- Implement a maintenance program for all bleacher systems and related areas such as foundations and anchors.

### **3. Priorities for repair**

#### **a. Seasonal use**

If an arena is open all year, it should have a higher priority for bleacher repair than a softball field, for example.

#### **b. Frequency of use**

Bleachers used daily or weekly, at busy recreation areas or indoor arenas, would generally present more risk of injury than a small, five-tier bleacher at a rarely used softball diamond, and therefore should have a higher priority.

#### **c. Height of bleachers**

The large 25-foot grandstand in the baseball field would be retrofitted before the 5-foot bleachers at the soccer field.

#### **d. Gaps in seating and railings**

Bleachers with the 18-inch gaps between the seat and footboards would carry a higher priority than those with a 5-inch gap.

#### **e. Cracked or damaged foundations**

Any damaged supports holding up large bleacher systems should be given a high priority for repair. Such systems may have to be closed awaiting repair. Smaller bleachers with bent or cracked supports should be repaired or replaced before undamaged systems.

#### **4. Risk exposure and loss control options**

Old bleachers may be configured with openings between seats and floorboards, side and back openings, and railing systems that may present potential exposure to injuries. Newer bleachers are designed to greatly reduce these exposures and are in compliance with the Minnesota State Building Code.

Cities that have non-compliant bleachers can work to protect spectators from serious injury by conducting thorough evaluations with the public's safety in mind. Cities should carefully evaluate loss control options to be sure they effectively address concerns and don't create additional problems. Before modifications are made to a bleacher system, it is very important to involve the manufacturer and/or structural engineer—the weight added by the modifications, coupled with the user load, may create new risks.

##### **a. Gaps in the footboard area**

Address any gaps in the footboard area with one or more of these options:

- Fill in the gap with a lightweight material (e.g., wood, metal rods, sheet metal, fencing, or Plexiglas).
- Install netting under the bleachers.
- Remove the high bleachers.
- Replace the entire bleacher system.

##### **b. Perimeter safety**

Improve perimeter safety using one or more of these options:

- Install guardrails (with small gaps between the rails) on the sides and back of bleachers.
- Install fencing around the bleachers.
- In buildings, push bleachers against side or back walls and secure them in place.

##### **c. Maintenance**

A loose board can produce a serious accident just as a big gap can, and cities should be particularly conscious about proper and continuous maintenance of bleachers. For example: repairing and replacing boards, making sure all screws and protruding materials such as the netting are protected, and ensuring all the bleacher parts are properly adjusted and tightened.

## **K. Outdoor skating rinks**

Outdoor skating rink facilities vary throughout Minnesota. Each city will decide whether to have a warming house next to a rink, and if a rink does have a warming house, whether to have a warming house attendant.

### **1. Inspection and maintenance**

#### **a. Dasher board**

Dasher board maintenance is extremely important because of the frequent contact of the skaters with these boards. Frequent and routine safety inspections should be conducted on your dasher boards, paying close attention to the following:

- Protruding screws and/or nails, which could cause a severe cut or laceration.
- Cracks or openings that may be large enough to catch a hockey stick or skate blade.
- The alignment of each section of the dasher boards should be flush with the adjacent boards.
- The dasher boards should be stable and not have become weakened by the force of skaters checked into them. This is important because the weakening of the dasher boards may cause inadequate alignment.

#### **b. Gate**

When inspecting your gates and openings, it is crucial to check the latches to ensure they are in good operating condition. If the latches to the gates are not operating correctly, hockey players or skaters may need to climb over the boards to either leave the ice or enter/ exit the player's boxes. In addition to the latches, the hinges should also be surveyed to ensure the hinge pins are not bent or the hinges themselves are not damaged causing the gates not to open smoothly.

The openings around the gates and/or doors need to be inspected to ensure sharp edges have not developed around the openings, which could catch the skater and/or their clothes and cause injury.

#### **c. Puck backstop**

Typically, puck backstops are constructed of either chain link fence or Plexiglas. When surveying maintenance issues on the chain link fence, problems to look for include:

## RELEVANT LINKS:

Minnesota Bleacher Safety  
Act: [Minn. Stat. § 326B.112](#).

- Sharp edges.
- Metal straps that may be bent and are protruding inward toward the skating area.
- Fencing that isn't secured properly to the support devices.
- End supports that aren't covered with impact-absorbing material such as Styrofoam pads.
- Overall installation of the chain link fence that is not in proximity to the top of the dasher boards (i.e., the fence does not extend below the outside top edge of the dasher boards).

Maintenance on the Plexiglas puck backstops should include surveying the main support brackets to ensure they are tightly fastened, and checking the Plexiglas itself for any cracks or broken pieces. Any cracked or broken Plexiglas should be replaced immediately.

### **d. General maintenance**

The following are maintenance standards on some of the other components of the outdoor skating facility:

- All lights are operating correctly and all skating areas are properly illuminated.
- Bleachers and benches are compliant with the Bleacher Safety Act, and bench seats are in good condition and with no nails, screws or wood splinters protruding.
- Windows in the warming house are intact and not broken or cracked.
- Hockey goals are in good condition.
- Nets have not come loose from the frames, and the frames are not cracked or broken.
- Goals are not top heavy, which may cause them to topple over onto one of the skaters.
- Goals are not melted into the ice. If the goal has melted into the ice, it should be loosened from the ice and relocated, and the depression left by the net should be filled as soon as possible.

## **2. Signage**

Signs should be visible from the parking lot as well as within the warming house and should be adjacent to the skating areas. These signs should include the following information:

## RELEVANT LINKS:

- Whether an attendant is on location, even if there is no warming house.
- The hours the rinks will be open under normal conditions.
- Restrictions on when the rinks will be closed due to weather such as when there are two inches or more of snow, or when the temperature drops to zero degrees or below including wind chill.
- No smoking or alcohol allowed.
- No horseplay.
- No hockey games on the pleasure rinks.
- Hockey players must wear helmets/face shields.
- No broomball (or only during specified hours).
- No Loitering.
- All injuries and/or incidents must be reported to the rink attendant immediately.
- Large “OPEN” and “CLOSED” signs to help parents or guardians know when they arrive at the skating rink whether or not the warming house is open regardless of the posted hours.  
The signs posted at the outdoor skating rinks should be inspected periodically.

### 3. Design

Design and layout of the rinks are important; it is recommended there be two separate designated areas for hockey and pleasure skating. If this arrangement is not feasible at your facility, signs should be posted indicating what hours the rink can be used for hockey and what hours the rink can be used for pleasure skating. It is also crucial the rink attendant (if there is one) enforces these hours.

The hockey rink and pleasure rink should be separated so hockey pucks do not strike someone on the pleasure rink. Parking lot placement is important to ensure hockey pucks do not damage parked cars or hit a pedestrian.

Review the design and layout of your rinks to minimize the potential of stray pucks coming in contact with vehicles, pedestrians, pleasure skaters, or any other buildings or items in the area.

### 4. Rink attendants and warming houses

Not all cities have warming houses or rink attendants. However, if your city has either of these amenities at outdoor skating rinks there are some requirements to follow.

## RELEVANT LINKS:

Rink attendants should go through a detailed orientation program that outlines the specific safety requirements and operating procedures of the outdoor skating rinks. They should also attend first aid and emergency preparedness training. The orientation, first aid, and emergency preparedness training should be documented in the employee's file.

The warming house should be equipped with a first aid kit with no ingestible medicines, a telephone or other form of communication, and a list of contact names and phone numbers for specific situations such as emergencies, possible rink closures, etc.

The warming house should also be equipped with an incident/injury log. This is used to document injuries or incidences that have occurred at that location. The following information should be recorded on the injury/incident log:

- Name of the injured party/individual involved with a specific incident, age, home address, phone number, parent's or guardian's name, address, and phone number.
- Date of the incident, rink attendant in charge at the time of the incident, where the incident occurred, and a description of the incident.
- Kind of injury, if applicable, first aid given and by whom, where the injured party was taken, if applicable, and whether or not the parent or guardian was notified.
- Eye witnesses' names, addresses, and phone numbers.

## L. Sledding hills

Sledding has long been a favorite winter activity among Minnesota children, young and old. There is nothing quite like the excitement of flying down a snow-covered hill! Unfortunately, accidents can and do happen on sledding hills. When an accident or injury occurs people often look for someone to blame. If the sledding hill is on city property, it is likely the injured party will look to the city.

### 1. Factors in building sledding areas

#### a. Top of the hill

A flat staging area at the top of the hill will allow people to get situated and ready before starting down the slope. This is a good place to post rules and to provide other amenities (warming house, concessions, etc.) since they are not in the sledding traffic pattern.

## RELEVANT LINKS:

*Pre-Season Sled Hill Checklist*, LMC Model Form, and *Sled Hill and Warming House Inspection*, LMC Model Form.

### **b. Sledding area (hill face)**

A 30-degree average slope is recommended for the face of the hill. The sledding area should have a method of channeling sliders toward the bottom and away from obstacles. Fences or other barriers may be needed to restrict activities to a safe area. Straw bales work well to buffer obstacles.

### **c. Run-out**

The run-out is the flat area at the bottom of the hill and should extend far enough to allow sleds to come to a safe, unobstructed stop. For a shorter run-out, a slight incline on the run-out will allow gravity to help slow the sleds.

### **d. Restricted areas**

Use a corridor of straw bales or other material to keep sliders in or out of specific areas. If fencing is used, ensure that it does not create a greater hazard than would have been created by traffic in the restricted area in the first place.

### **e. Return trip**

Straw bales or other materials should be used to channel sliders away from the sledding area when returning to the top of the hill.

### **f. Additional things to consider**

- Review past accidents to identify areas or practices needing improvement.
- Document reasons for actions taken or not taken.
- Secure or remove park amenities as appropriate (picnic tables do slide when tipped over).
- Consider the impact of trespassing on adjacent private property.
- Designate sledding hills as part of the city's parks system.
- Separate sledding hills from other uses (snowmobile trails, cross-country ski trails, etc.).

## **2. Maintenance and inspection**

Cities should create a policy addressing the maintenance of designated sledding areas. The policy should address how often inspections will be done in an effort to identify potential hazards. Any hazards should be documented and the policy should address how the city will respond to hazards or other problem areas. Regular use or weather conditions may create hazards that need to be eliminated. In addition, look at the area in the off-season to identify hazardous conditions that will become snow-covered.

### 3. Signs

Establish rules and frame them in a positive manner such as “for your safety”. Avoid the use of words such as “danger” or “at risk.” Use pictographs as needed to bridge language barriers. Additional sign rules could include:

- Use is restricted to daylight hours unless lighting is provided.
- Users assume risk of injury.
- Adults must supervise children.
- Use caution.
- Be considerate of others.
- Don’t slide when icy.
- Don’t alter sledding hill.
- Slide in designated areas only.
- Report problems to city parks department (include phone number).
- Use sleds that are controllable, not tubes, saucers, or discs.

A city may also want to post “no sledding” signs at non-designated sites to alert the public these areas are not safe for sledding. If the city decides to post “no sledding” signs, the city should make reasonable attempts to enforce the policy. For example, the city might have police or public works personnel routinely patrol the area to warn users the area cannot be used for sledding.

Because the city is dealing with the natural environment, additional considerations may be warranted depending on the site being used or considered for a sledding hill. Contact your city’s LMCIT loss control consultant for a site-specific risk management review.

### 4. Precautions

#### a. Essential precautions

Essential precautions include:

- Sledding should be done only in designated and approved areas where there are no trees, posts, fences, or other obstacles in the sledding path. The sledding run must not end in a street, drop-off, parking lot, pond, or other hazard.
- Parents or adults must supervise children in sledding areas to make sure the sledding path is safe and that there are not too many sledders on the hill at the same time, or at the end of the run, to avoid collisions.
- No one should sled headfirst. All participants should sit in a forward-facing position, steering with their feet or a rope tied to the steering handles of the sled.

## **b. Preferred precautions**

Preferred precautions include:

- Young children should wear a fitted helmet while sledding.
- The sled should have runners and a steering mechanism, which is safer than toboggans or snow disks.
- Sledding in the evening should only be done in well-lighted areas.
- Plastic sheets or other materials that can be pierced by objects on the ground should not be used for sledding.
- Sledgers should wear layers of clothing for protection from injuries and cold.

## **M. Ice arenas**

By establishing effective safety policies and procedures, ice arenas are better able to retain profits by limiting liability exposure. In order to provide a reasonably safe environment for those attending your ice arena, the following are items to consider and some suggestions for operation.

### **1. Ice arena management**

An owner or operator of an ice arena is charged with the duty to exercise reasonable care in the supervision of its employees and patrons, as well as maintaining the skating surface and premises. Similarly, a patron of an ice arena is generally assumed to have accepted certain risks associated with the use of the arena for recreational purposes.

While most agree the owner or operator of an ice arena does not ensure safety, whether or not an owner or operator has provided a reasonably safe environment for everyone attending the ice arena depends on the specific factual circumstances of each case. To best minimize its liability exposure, an arena should have a policy which establishes a system of inspection and maintenance to be followed by the arena staff.

Providing documented and detailed maintenance, proper signage, good design and layout, and well-trained and effective attendants will help to ensure safe and enjoyable skating activities for your patrons.

### **2. Ice rink design and layout**

Design and layout of the rinks is important. Generally, the design and the original construction of the arena should conform to industry standards. It is recommended there be two separate designated areas for hockey and pleasure skating. If this arrangement is not feasible at your facility, signs should be posted indicating what hours the rink can be used for hockey and what hours the rink can be used for pleasure skating.

## RELEVANT LINKS:

These are some considerations in the construction of the rink:

- Construct dashers, gates, netting, plastic walls, etc. according to standards.
- Choose materials that are of a reasonable expense, provide safety features, and meet the intended purpose.
- Provide a sufficient number of emergency exits for the expected capacity. In addition, all exit doors should open in the direction the crowd will be exiting to prevent a “pile-up” during evacuation.
- Provide adequate lighting throughout the arena, wherever a person may be walking.
- Provide emergency lighting in case the power goes out.
- Place guards over windows and restricted areas in order to prevent access.

### **3. Ice rink maintenance and inspection**

When developing an inspection and maintenance policy, arena management should decide what level of effort it can afford and ensure that this decision is properly documented. The arena management should also ensure, for whatever policy of inspections and maintenance it adopts, that it follows the policy. A failure to follow the policy will almost assuredly prevent the arena from being able to rely upon a “policy” defense in an event it is sued. Finally, the arena should ensure arena employees keep logs or records of all inspections and maintenance performed.

#### **a. Ice rink dasher board maintenance**

Dasher board maintenance is extremely important because of the frequent contact of the skaters with these boards. Frequent and routine safety surveys should be conducted on your dasher boards, paying close attention to the following:

- Protruding screws and/or nails, which could cause a severe cut or laceration.
- Cracks or openings that may be large enough to catch a hockey stick or skate blade.
- The alignment of each section of the dasher boards should be flush with the adjacent boards.
- The dasher boards should be stable and not have become weakened by the force of skaters checked into them. This is important because the weakening of the dasher boards may cause inadequate alignment.

**RELEVANT LINKS:**

**b. Ice rink gate maintenance**

When surveying your gates and openings, it is crucial to look at the latches to ensure they are in good operating condition. If the latches to the gates are not operating correctly, hockey players or skaters may need to climb over the boards to either leave the ice, or enter/exit the player's boxes. In addition to the latches, the hinges should also be surveyed to ensure the hinge pins are not bent or the hinges themselves are not damaged causing the gates not to open smoothly.

The openings around the gates and/or doors need to be surveyed to ensure sharp edges have not developed around the openings, which could catch the skater and/or their clothes and cause injury.

**c. Ice rink puck backstop maintenance**

Typically, puck backstops are constructed of either chain link fence or Plexiglas. When surveying maintenance issues on the chain link fence, problems to look for include:

- Sharp edges.
- Metal straps that may be bent and are protruding inward toward the skating area.
- Fencing that isn't secured properly to the support devices.
- End supports that aren't covered with impact absorbing material such as Styrofoam pads.
- Overall installation of the chain link fence that is not in proximity to the top of the dasher boards, i.e., the fence does not extend below the outside top edge of the dasher boards.

Maintenance on the Plexiglas puck backstops should include surveying the main support brackets to ensure they are tightly fastened, and checking the Plexiglas itself for any cracks or broken pieces. Any cracked or broken Plexiglas should be replaced immediately.

#### **d. Ice rink maintenance—other considerations**

Other general ice rink maintenance standards should include:

- Hockey goals are in good condition.
- Nets have not come loose from the frames, and the frames are not cracked or broken.
- Goals are not top heavy, which may cause them to topple over onto one of the skaters.
- Goals are not melted down into the ice. However, if the goal has melted into the ice, it should be loosened from the ice and relocated, and the depression left by the net should be filled as soon as possible.
- Establish a method of repair. If the method of repair is not working, find a new method.

#### **e. Ice rink inspections**

An itemized inspection schedule will facilitate inspections of the ice rink. The schedule should establish the items to be inspected and the frequency with which they should be inspected. In order to properly document the inspection, the use of a checklist is suggested. Finally, anything needing repair should be attended to in a timely and proper manner.

### **4. Ice rink skating surfaces**

In developing a resurfacing and maintenance policy, the ice arena manager should take into consideration the abilities of the intended user. Generally, there is a requirement that the quality and condition of the ice be suitable given the patron that will be using the ice. For example, while somewhat rough ice may be acceptable for pick-up hockey (generally less frequent resurfacing), the ice provided during free skate should be relatively slow and defect free (generally more frequent resurfacing and higher temperatures).

While attendants are skating on the ice rink in order to supervise the skaters, part of their duties should include constant cleaning of the ice and inspection of the surface. The attendants should be instructed to remove or mark any hazards.

Make sure to consider establishing a maintenance and resurfacing policy stating specific procedures and then following it. The resurfacing policy should consider the:

- Quirks of the ice and your equipment.
- Changes in ice due to use.
- Intended user in-between resurfacing.

## RELEVANT LINKS:

Indoor ice arenas that support major events owe a higher duty of care to their patrons than other rinks and arenas. In determining the quality of ice in terms of thickness, speed, and roughness, the arena manager must consider the abilities of the expected user.

- Clean and inspect the ice before each use.
- If there is an area where a danger exists, mark it until it can be rectified.
- If the conditions are improper or dangerous for ice skating, do not let people skate.

### **5. Ice skaters crowd control**

Accidents can happen when either there are too many people on a rink at one time or when certain patrons are a bit reckless. Cities have a duty to exercise ordinary and reasonable care to protect a patron from injury caused by third persons. Ice arena management must evaluate its ability to control its patrons and then set policies to facilitate its control.

#### **a. Capacity**

A city should provide an adequate level of supervision for its ice rinks. No more skaters should be allowed on the rink than what is reasonable given the size of the rink and activities taking place. To minimize liability consider the following:

- How many patrons will be in each area of the arena?
- How many patrons can an attendant reasonably monitor at one time?
- What activities will be allowed or restricted?

Finally, it should be impressed upon the attendants they need to pay attention and take corrective action when necessary.

#### **b. Skater rules**

Rules are necessary to control the actions of skaters. It is the responsibility of the ice arena to establish a set of rules, post the rules, and provide sufficient attendants to supervise and enforce the rules in a consistent manner.

Establish rules of conduct by spectators to be given to attendants/ushers so they are able to determine what kind of conduct is inappropriate and should be prevented.

The signs posted at the outdoor skating rinks should also be inspected. Signs should be legible, visible to the users of the facility and to parents or guardians who may be dropping children at the skating rink. These signs should include the following information:

## RELEVANT LINKS:

- No smoking or alcohol.
- No horseplay.
- No hockey games, sticks, or pucks on the pleasure rinks.
- “Hockey players must wear helmets/face shields.
- No broomball or hockey, or only during specified hours and post the specified hours.
- No loitering.
- All injuries and/or incidents must be reported to the rink attendant immediately.

Establish appropriate disciplinary measures. While rules will help to control the conduct of skaters on the ice, the arena has a duty to reasonably enforce those rules and take reasonable corrective action necessary to protect the other skaters. Misconduct can be better addressed when employees know when and how to take corrective action:

- Take action if you see misbehavior or someone complains.
- Enforce the rules in a nondiscriminatory manner.
- Ensure the measure of discipline reflects the severity of the conduct and the number of times the improper conduct has occurred.

Instruct attendants/ushers on rules, appropriate discipline, and how to carry out their supervision duties. Rink attendants should go through a detailed orientation program that outlines the specific safety requirements and operating procedures of the arena. Attendants should know:

- The rules.
- To inspect equipment of patrons, if certain types of equipment are prohibited from use.
- About continuous or repeated conduct on the ice; (If an employee is scheduled to be an attendant, don't give him/her other duties that draw his/her attention away.)
- To keep the ice clear of garbage.
- To mark areas where there are soft spots, holes, spills, or other dangers.
- How to clear the rink in a safe manner.
- First aid and emergency preparedness. The orientation, first aid, and emergency preparedness training should be documented in the employee's file.

Attendants don't have a duty to instruct people on how to skate, just prevent dangerous situations. Attendants should also be aware of curfew hours for minors.

## **6. Ice rink spectator area**

It is expected that spectators will be kept reasonably safe while they enjoy watching an event. In order to provide spectators with a safe environment while watching the game, the arena should consider providing protection from flying objects, adequate seating, and ushers who control unruly spectators.

### **a. Flying objects**

A city is expected to provide a reasonably safe place from which spectators can view a sporting event. Thus, ice arenas have invested more resources in constructing hockey rinks that limit the number of pucks leaving the rink.

The following should be taken into consideration when evaluating the protection afforded to spectators:

- Fencing, netting, and/or plastic walls should be provided to the extent necessary to provide reasonable protection.
- The height and circumference of fencing, netting, and/or plastic walls should reflect the number of expected spectators and the area of the facility where the danger of injury to spectators is the greatest.
- The screening must provide adequate protection for as many spectators as may be reasonably expected to desire such seating in the course of an ordinary game.
- Signs should be posted and announcements made that warn spectators of flying objects.

### **b. Crowd control**

Ice arenas have a duty to protect spectators from the acts of others that are reasonably expected to occur.

The following is a checklist of considerations in providing adequate crowd control:

- Provide an adequate number of attendants/ushers to assist and monitor spectators.
- Establish rules of conduct for spectators to be given to attendants/ushers so they are able to determine what kind of conduct is inappropriate and should be prevented.
- Establish appropriate disciplinary measures.
- Instruct attendants/ushers on rules, appropriate discipline, and how to carry out their supervision duties.

**RELEVANT LINKS:**

[Minn. R. 4620.3950.](#)  
[Acceptable Air Quality  
Measuring Devices for  
Enclosed Sports Arena Rules.](#)

Examples of unwanted spectator conduct:

- Arguing over seat assignment.
- Leaping over seats to catch a puck.
- Loitering or sitting in stairways.
- Intoxication.
- Throwing or shooting objects.
- Carrying firearms.

**c. Maintenance**

As a general rule, arenas are required to use ordinary or reasonable care to put and keep the premises in a reasonably safe condition for persons attending the arena. Therefore, management should establish a cleaning schedule that includes visual inspections in addition to a maintenance schedule of all objects and areas within the ice arena.

A written maintenance schedule that calls for routine inspection and repair of the equipment, structures, floors, etc. of the arena is crucial to establishing a successful defense in a lawsuit for injuries incurred in an arena. The maintenance schedule should include the following items:

**(1) Heating, ventilation and cooling system**

Ice resurfacing equipment that produces carbon monoxide is the main contributor to air quality problems in indoor ice arenas. Minnesota requires that the air over a one-hour period not exceed an air concentration of 20 parts per million of carbon monoxide and 0.3 parts per million of nitrogen dioxide. In order to test the air quality, the ice arena should purchase a testing equipment suitable for meeting these Minnesota rules.

**(2) Ice resurfacer**

The maintenance schedule should include the ice resurfacer, not only for general mechanical operation, but also pollutant levels in exhaust. Inspections of the ice resurfacer should include a general tune up, documenting when and what was done.

**(3) Emergency system tests**

The maintenance schedule should include a test of the emergency system. The standby generator should be periodically tested at full capacity. Fire alarms or any other emergency signals should also be tested. Finally, the emergency lighting should be inspected to ensure it would provide sufficient illumination in case of a fire.

#### **d. Cleaning schedule**

A good cleaning policy will include visual inspections and cleaning of the general premises before, during, and after hours of operation. Employees should be instructed on the items to be cleaned, the manner in which to clean the items, things to inspect while cleaning, and to report anything that needs to be repaired. It should include visual inspections of the following items:

##### **(1) Floors**

Floors include carpets and mats. Garbage should be removed. Spills or puddles should be cleared and marked until dry. Holes, snags in the carpet, or ill-fitting mats should be corrected.

##### **(2) Stairways**

Obstructions and garbage should be removed. Spills or puddles should be cleared and marked until dry.

##### **(3) Handrails**

Any substance on the handrails that causes them to be slippery should be wiped off.

##### **(4) Lights**

Burned-out light bulbs should be replaced as soon as possible.

##### **(5) Sidewalks and parking lots**

Objects and garbage should be removed from the sidewalks and parking lots. For the arenas that experience snow and ice, develop a snow plowing and sanding policy. Finally, loiterers or suspicious persons should be reported. Generally, the operator of a place of public entertainment owes a duty to keep the premises safe for its invitees. This duty includes a duty to provide a safe and suitable means of ingress and egress from the arena.

##### **(6) Restrooms**

The restrooms should be periodically inspected and cleared of garbage and/or water on the floor. Persons loitering should be requested to leave the restroom.

##### **(7) Emergency exits**

Any obstruction blocking an emergency exit should be removed. For winter locations, snow and ice should be removed from the areas around the exit so the door is not blocked.

### **(8) Boiler rooms**

The rooms that house a boiler or an electrical heater should be inspected. Flammable materials should not be placed near surfaces that become hot, e.g. the boiler or electric heater. Furthermore, obstruction to the circuit breaker should be removed so the breaker switches are readily accessible.

### **(9) Flammable liquids**

Cleaning supplies, gas and/or oil for the ice resurfacers or other equipment, and other flammable liquids should be stored in proper containers that are properly sealed and away from potential sources of ignition.

## **7. Emergency plans**

The arena should anticipate potential emergency situations and develop policies and procedures on how to respond to the various situations that could arise. Those procedures should be written and readily available to attendants on duty. All employees should receive training on how to handle emergency situations.

Make sure you have an evacuation plan in case of fire or other emergency. Include directions on what actions to take in case of severe weather. The arena office should be equipped with a first-aid kit with no ingestible medicines. It should have a telephone or other form of communication, and a list of contact names and phone numbers for specific situations such as emergencies, possible rink closures, etc. The office should also be equipped with an incident/injury log. This is used to document injuries or incidences that have occurred at that location. The following information should be recorded on the injury/incident log:

- Name of the injured party/individual involved with a specific incident, age, home address, phone number, parent's or guardian's name, address, and phone number.
- Date of the incident, rink attendant in charge at the time of the incident, where the incident occurred, and a description of the incident.
- Kind of injury, if applicable, first aid given and by whom, where the injured party was taken, if applicable, and whether or not the parent or guardian was notified.
- Eye witnesses' names, addresses and phone numbers.

## **8. Rental equipment**

Ice arenas are not required to provide rental skates to their patrons. However, it is common practice for ice arenas to do so and to profit from such rental. Accordingly, ice arenas have a duty to provide rental skates, or any other equipment, that is reasonably safe.

## RELEVANT LINKS:

See Section VII – *Specific Loss Control Recommendations for facilities.*

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-T, Special events.

MN Department of Labor and Industry Fact Sheet: [Places of Public Accommodation.](#)

Consider the following practices when handling rental equipment:

- Develop a maintenance schedule that keeps rental equipment in accordance with safety standards.
- Inspect rental equipment, at least briefly, prior to each use.
- If you provide protective equipment, make sure it is adequate for the intended use.
- If you help patrons put on the equipment, provide reasonable assistance.

## N. Community centers

Many Minnesota cities, large and small, already have or are thinking of building a community center. Community centers may be used for city activities or rented to community groups and may house a number of features and activities such as aquatics with swimming pools and water slides, gymnasiums, exercise rooms, meeting rooms, and theater auditoriums. To the extent not covered in discussions of specific facilities above the following discussion provides general loss control recommendations for a community center facility.

### 1. Negligence

The city has a duty to maintain facilities in a reasonably safe condition. The city also has a duty to review proposed public uses of property to ensure activities do not create risk to public or property. To do this, the city should review applicable laws and rules, ensure safe operation and safety standards for the particular activity, and address loss control recommendations.

Most community center claims received by LMCIT involve falls within the community center. Examples of these falls/injuries are:

- Falling down stairs of a building.
- Slipping on a surface of a building, sometimes due to water or other substance.
- Tripping over something such as a rug, chair, table, divider, rubber pad, telephone cord, electrical cord, or garden hose.
- Becoming injured while participating in a sport, for example: skating, hockey, basketball; or while using the exercise room or swimming pool.

There is potential liability for any of these types of claims if the city does not exercise reasonable care. The city needs to exercise care both in its own use of the center and in enforcing the rules and policies when the public— either as individuals or groups— use it.

## 2. Maintenance

The city should have a regular maintenance schedule for the building, equipment, surrounding sidewalks, and parking lots. The city should also have a system to respond to complaints or accidents. These two initiatives should be documented.

Special areas of concern are housekeeping, chemical handling (specifically chlorine), and fire safety. It is important to be aware that one activity may affect the safety of another activity. For example, taping a cord down is good loss control practice, but placing it directly in a walking path still invites tripping.

The city also should maintain records of these processes to show that prudent effort and planning was undertaken prior to event.

## O. Dog parks

Dog parks are always a popular attraction in pet-friendly communities. They allow dog owners to let their dogs run around off-leash and socialize with other dogs in a relatively controlled environment. While LMCIT has historically not seen too many claims issues arising from the use of dog parks, the risk for liability issues is there if key factors are not taken into consideration with both the design of the park and enforcement of its rules.

### 1. Design

Design can play a big role in ensuring a dog park is a safe environment for both the dogs and their owners. Features that a city may consider adding to the park are:

- Benches for visitors.
- Trash cans and bag dispensers to encourage owners to clean up after their pets.
- Shaded areas.
- Water source for dogs to drink from (also possibly a separate water fountain for their owners).
- Either a manmade or natural barrier to separate the dog area from the rest of the park.
- Separate areas for larger dogs and smaller dogs.

## RELEVANT LINKS:

LMC Information Memo,  
[Animal Regulation in Cities.](#)

Another thing to consider in the design of a dog park is whether or not there will be an area in the dog park where dogs are permitted to be off the leash. Any off-leash area should be fenced in to prevent any dogs from running off. A fence is good for both the dog's safety and the safety of anyone outside the dog area of the park. Fencing should be at least 4 feet high to keep larger dogs enclosed. A vinyl-covered chain-link fence is commonly used to prevent the chain from getting too hot and burning a dog or person on a hot day. Privacy measures are also commonly used to prevent the dogs from becoming agitated by someone or something outside of the pet area.

Care should also be taken to secure the entry/exit way, particularly in an off-leash area. A bull pen design, typically around 10 by 10 feet, is best. One gate to provide entry from the outside, and then a second to allow full entrance into the dog park. This will minimize the possibility of a dog escaping as visitors enter the area.

## 2. Rules

Another key factor in keeping a dog park safe for everyone in the community is to have clear guidelines for the park's use and have rules posted clearly and in plain sight at the entrance, as well as possibly throughout the park. One common guideline for use of a dog park is requiring all dogs to be licensed if your city licenses pets. This allows the city to ensure that all dogs entering the park are properly vaccinated. The city should also post any other guidelines, such as hours of operation (keeping in mind that any maintenance, such as mowing, will need to be done outside of the use hours), number of dogs allowed per person, the expectation that owners must stay in the park and within sight of their pet(s) at all times, and that all significant incidents must be reported to animal control, etc.

Some other common rules that the city may want to include are:

- Owners must clean up any dog droppings made by their pets. Bag all droppings before depositing them in provided receptacles.
- Dogs must be on leashes at all times except within the fenced dog park which is the designated off-leash areas. Dogs that are leashed may feel threatened by free roaming dogs.
- Off-leash dogs must be under voice control by their owners at all times. If voice control is not possible, do not enter off-leash areas. Voice control enables owners to stop dogs from misbehaving.
- Dog owners must have the leash in hand at all times. In the event of problems, dog owners should be able to quickly leash and remove their dogs from the premises.
- Dogs must display current licenses on their collars.

## RELEVANT LINKS:

- Dogs must have current rabies vaccination and applicable license tags clipped to their collars at all times. Rabies tags are a proof of vaccination, while license tags show compliance with state and local laws. It is also beneficial to ask owners to keep copies of their vaccination records on hand while in the park in case they are needed.
- Puppies under four months of age should not enter the park. Puppies under four months of age have not received all of their vaccinations. They should be kept away from the dog park for their own protection and that of other dogs.
- No infants or small children are permitted in the dog park. Small children, especially running children, may be regarded as prey animals by strange dogs. Dogs may also feel the urge to protect children they know. This tends to cause aggressive behavior.
- No unsupervised children under the age of 12 years old allowed. (NOTE: children of this age are considered “minors” in most states.)
- Continual, excessive barking is unacceptable.
- Aggressive dogs are not allowed in the park. Any dogs showing signs of aggression should be removed from the premises. Aggressive dogs tend to engage in fighting behavior. Any dog that engages in fighting and cannot be stopped by voice command does not belong in the dog park.
- Female dogs in heat are not permitted in the dog park. Female dogs in heat can cause aggression in male dogs. Also, females in heat should be kept at home to prevent unwanted puppies.
- Do not bring human or dog food inside the park. Small dog treats may be permitted, depending on the dog park or dog area. Obvious food can prompt aggressive behavior between dogs.
- Do not bring any dog toys inside the park. Dogs may claim toys that do not belong to them, which may lead to aggressive behavior. Small toys may be a choking hazard to some dogs, especially larger dogs.

Lastly a sign with wording similar to the following should be posted at the entrance of the dog park to further reduce the city’s liability in case of an incident: “BE ADVISED: This dog park is unsupervised. Use this dog park at your own risk. Dog owners are responsible for, and liable with respect to, the actions of their dogs and any damage to person or property of others caused by same.”

## RELEVANT LINKS:

LMC Information Memo,  
[Open Burning in Cities.](#)

## P. Fire pits

Fire pits can be a great addition to a park or campground if handled properly. There are rules and regulations that must be followed when having an open fire. The Minnesota State Fire Code (MSFC) and the Minnesota Statutes are established and enforced by city officers and the Department of Natural Resources (DNR). The MSFC establishes minimum requirements for recreational fires throughout the state of Minnesota. These regulations must be followed even if the local jurisdiction does not have an ordinance regulating recreational fires. Local ordinances may be more restrictive but, at a minimum, must meet MSFC regulations. The regulations are in place to protect the community and the person maintaining the fire in the fire pit.

Any fire larger than the dimensions for a recreational fire is considered “open burning” and is regulated by the Minnesota Department of Natural Resources. For further information on the requirements for open burning or for permits, refer to your city ordinance, contact DNR at (651) 296-6157 or [info.dnr@state.mn.us](mailto:info.dnr@state.mn.us). Another good source of information can be found in the LMC information memo, [Open Burning in Cities](#). This document also provides sample ordinance policy suggestions.

### 1. Basic fire pit safety principles

There are four basic safety principles surrounding the location, installation, and use of a wood-burning fire pit.

#### a. Location and installation

- Open recreational fires should have a minimum clearance of 25 feet to any structure, but this distance could be reduced to 15 feet if in an approved container.
- A surrounding fire barrier of non-combustible material that is at least 6 inches in height must be used.
- Clear all flammable materials away from your fire pit before using it. Five feet is a good distance. This “break” in vegetation will help prevent an escaped fire from spreading.
- Recreational fires shall be located 10 feet from LP-Gas containers that are filled on site by the LP-Gas company
- Piling dirt or rocks around the pit will also help prevent any fire on the ground from escaping.
- The fire pit should be at least 6 inches deep at the center and 2 feet across, to help keep the embers and flames contained.

## RELEVANT LINKS:

[National Weather Service.](#)

[Statewide Fire Danger and Current Burning Restrictions,](#)  
Minn. Dept. of Natural Resources.  
[Burn Permit Application,](#)  
Minn. Dept. of Natural Resources.

### **b. Lighting a fire pit**

- Check the wind direction before lighting a fire pit. Recreational fires shall not be conducted if prevailing wind conditions exceed 15 mph with wind gusts over 20 mph. A city can stipulate lower values if they choose to do so—or during any period of time for which the Minnesota Pollution Control Agency has issued an Air Pollution Health Advisory for Particulate Matter.
- Check the current weather and wind conditions on the National Weather Service website.
- Do not use any flammable fluids (gasoline, lighter fluid, etc.) to light or relight fires.
- Before lighting a fire pit, you will need to find out whether there is a fire ban in your city or if one has been issued by the state. Check the fire danger level on the DNR website.
- Do not use any flammable fluids (gasoline, lighter fluid, etc.) to light or relight fires.

### **c. Using a fire pit**

- The total fuel area being burned in any recreational fire shall not exceed 3 feet in diameter and two 2 feet in height.
- Fire pits must be constantly attended by at least one competent person 18 years of age or older, and shall be completely extinguished before being abandoned.
- Consider investing in a wire mesh cover to keep embers inside and help prevent children or pets from falling in.
- Only approved materials should be used in a fire pit. Restrict or eliminate the use of soft woods like pine and cedar. Limit or put garbage or paper products into the fire. These materials can easily spark and throw off embers or burning remnants.
- Don't wear flammable or loose-fit clothing while near the pit.
- On-site fire-extinguishing equipment—such as operable garden hoses, sand and shovels, water buckets or barrels, or a portable fire extinguisher with a minimum 4-A rating—shall be readily available for use at recreational fires.
- All recreational fires have maximum time limit of 4 hours and shall be properly extinguished at the end of activities or time limit. Regardless of when the fire was initiated it is not allowed to extend later than 11 p.m. and may begin no earlier than 7 a.m.

**RELEVANT LINKS:**

National Field Archery Association [Archery Range Guidelines](#).

**d. Extinguishing a fire pit**

- Extinguish fire with water: drown it and stir it with the shovel to make sure it's fully extinguished.
- Dispose of ashes in a safe manner; keep a metal can that is used solely for ash storage by the fire pit. Even after two to three days, ashes can still be hot enough to cause a fire.

If the city provides a fire pit at one of its park locations, it is the city's responsibility to make sure these safety guidelines are followed. Post signs with rules, and have staff regularly monitor or check in on the fire pits during times of high use.

**Q. Other specific loss control recommendations**

**1. Archery range**

Another common park and recreation feature is an archery range. Specific guidelines for the safe and proper construction of an archery range can be found from the American Field Archery Association, whose guidelines are linked in the side panel, but the key things to be sure to include are:

- A sturdy backstop that won't damage the arrows or allow them to pass through it.
- No activities or walking paths behind the backstop or in the areas immediately adjacent to the range.
- Range rules posted clearly, including guidelines for how to go about retrieving arrows.

Some common range rules include:

## RELEVANT LINKS:

- NEVER point a bow and arrow at another person.
- NEVER shoot an arrow straight up into the air. You can end up hitting another person or yourself.
- NEVER shoot an arrow off into the distance where you cannot see where it will land.  
Again, you could end up hitting another person.
- If you are looking for a lost arrow behind a target, always leave your bow leaning against the target face so that it will be seen by other archers coming up. If possible, have one archer from your group stand in front of the target to prevent anyone from shooting.
- On field archery or 3-D courses, be sure to stay on the marked path and travel only in the direction in which the targets are laid out while shooting is in progress. Going backwards on the trail or across an unmarked area could place you in the path of a flying arrow, resulting in serious injury.
- Check the condition of your bow, bowstring, and arrows frequently. DO NOT use broken or worn equipment.
- Don't draw the string back unless an arrow is on it and, especially, don't release the bowstring with no arrow on it. Doing so is called dry firing and can damage the bow.
- At practice ranges, the only safe place is behind the shooting line.
- Never shoot an arrow until you are positive that no one is in front of you or behind the targets.  
Conversely, don't stand in front of a bow while it is being shot, even if you are to one side of the shooter.
- Wait for a verbal approval from the range captain or designee before starting to shoot.
- Arrows should only be nocked on the shooting line and pointed in the direction of the targets.
- After you are done shooting, wait to hear the word "CLEAR" from the range captain or designee before going toward the targets to retrieve your arrows.
- WALK, don't run toward the targets. Remember that the arrows are sticking out and can injure you.
- When pulling arrows out of a target, stand to one side and ensure that no one is directly behind you.
- If archers will be shooting concurrently at varying distances, stagger the targets, not the people. This goes back to the previous rule about having one shooting line and staying behind it.
- If you are using broadheads, be sure that they are adequately covered when not in use.  
Treat a broadhead with the same caution that you would a razor blade.
- Carefully follow the instructions given by the range captain.

## 2. Rock climbing walls

Rock climbing walls can be a fun addition to a community center or special event, but they do pose some risks. It is important to make sure that all equipment is inspected frequently and that proper safety rules and procedures are in place.

### a. Inspections

Inspections of climbing walls may differ from wall to wall, so it is important to follow the manufacturer's guidelines. If you are renting the wall for an event be sure to have the vendor set up the wall and, if they will not be operating it for you, train your staff or volunteers on how to properly operate and inspect it. Common things that should be looked at when inspecting climbing walls include:

- Examine belay cables, especially near pulleys, for wear and deformation.
- Lift or slide the plastic or rubber sheath over belay cables on the patron/harness end and examine for wear, corrosion, etc.
- Replace cables if any are worn, corroded, or have broken wires.
- Examine carabiners, swivels, and rings for proper functioning and locking, and replace those not functioning properly.
- Examine harnesses for wear and tearing and replace if necessary.

Be sure to follow the owner/operator's manual regarding repair, maintenance, and parts replacement. This should include replacing the auto-belay cables annually, after 10,000 documented cycles, or earlier if necessary.

### b. Safety rules

Safety rules and procedures should include:

- Only allow the climbing wall to be used under trained supervision and with a trained individual belayer (if auto belay is not being used).
- Adequate padding is provided at the base of the wall.
- No horseplay.
- Proper safety equipment is worn and worn properly (at the minimum this should include a safety harness with belay cable attached and helmet).

If your city is planning on installing a climbing wall or rent one for a special event, be sure to check with your loss control consultant or underwriter to see if the city needs to purchase additional coverage.

## RELEVANT LINKS:

[USA Pickleball Association.](#)

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-T, Special events.

[LMCIT Contract Review Service.](#)  
Chris Smith, LMCIT Risk Management Attorney:  
[csmith@lmc.org](mailto:csmith@lmc.org) or  
651.281.1269.

See also Section III-B, *Terms of Agreements*.

### 3. Pickleball

Pickleball is a racquet sport in the vein of badminton and tennis that has gained popularity in recent years. It is played with a wiffle ball and paddle that is similar to, but larger than, a ping pong paddle giving it a slow, safe pace similar to that of badminton. The court size is the same as badminton (20 x 44 feet), but with a net height that is slightly lower than that of a tennis court, standing 32 inches in the center as opposed to 36 inches. The primary safety considerations when designing a pickleball court are ensuring that the nets are secured, and that appropriate court surfacing being used.

Like a tennis court, outdoor pickleball courts should typically be constructed with synthetic/acrylic surface layers coating a concrete foundation. This results in the court being less rigid and easier on a player's knees and other joints than a pure concrete court. Indoor courts are typically played on the same wooden surface as a basketball court which are likewise typically designed to be slightly less rigid than a standard hardwood floor.

## VIII. Specific loss control recommendations for events

Many cities provide special events throughout the course of the year such as fairs, parades, and fireworks displays. Cities may also work with community partners to provide recreational programs and maintain city parks and facilities in such activities as "Adopt-A-Park" programs or community clean-up days.

Written agreements and contracts are a good way to successfully manage individual and group use of city facilities for events. Cities should talk to their city attorney when developing written agreements and contracts. LMCIT will review defense and indemnification provisions free of charge in order to help protect your city's interests.

A formal contract or agreement is written with contractors, vendors, and others involved with the event. It clarifies the role of the city and the contractor. All contracts or agreements should contain:

- Event date(s), time(s) and location(s).
- Exact premises and name(s) of the individuals and/or groups involved.
- Exact reason for the agreement (for example, shelter rental).
- Compensation, and/or other consideration.
- Hold harmless/indemnity language.
- Signatures of all parties involved.

## RELEVANT LINKS:

See [Special Events Checklist](#), LMC Model Form.

See [Special Events Information Sheet](#), LMC Model Form..

Cities should also have an ordinance or policy that requires a special event and/or celebration permit. Through checklists the city can identify where reasonable conditions relating to public safety can be placed on the group requesting the permit. A city form should gather key information about proposed special events. This form helps to evaluate the event with respect to the activity itself, as well as hazards the event presents to participants, the public, the city, and its property.

Special events can create potential risks and claims against cities. Planning and evaluating the proposed event is critical to identify potential hazards and develop effective controls. Hazards often can be mitigated, and liability relationships can be established to ensure smooth handling of claims that do arise.

### **A. Evaluate the city's role**

The city's role is determined by identifying the extent of its involvement in the event. Once the city's role is established, risks and exposures can be determined and minimized. When an individual or outside organization sponsors an event, the city can transfer some liability to the organizer, thus minimizing city exposure to potential claims that arise from the event.

#### **1. Event management**

If the city controls the event for the celebration, hires a contractor for services, or has the primary responsibility for organizing and planning the overall celebration, then the city must take appropriate safety and planning measures.

#### **2. Event sponsorship**

A sponsor provides resources, which may include money, personnel, products, equipment, or other things. If the city is a sponsor, but not managing the celebration, this should be clear. This could be a source of possible liability.

#### **3. Organizations working with the city**

There often are many organizations participating in a celebration, including church groups, service organizations, celebration committees, and more. It is important to define the city's relationship to these organizations. Questions to help define the relationships include:

- Is the organization working on behalf of the city?
- Is the celebration committee a separate and distinct organization or a city's volunteer group?

**RELEVANT LINKS:**

[“Musical Performance Rights and Wrongs,” \*Minnesota Cities\* \(Nov. – Dec. 2009, p. 19\).](#)

[IMLA, music licensing agreements.](#)

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-T, Special events, and section III-G, Fireworks.

One issue in small communities is that a person may belong to more than one organization. It is often difficult to determine which organization they’re representing.

#### **4. Use of city property or equipment**

Does the event occur on city property but there is no other direct city involvement? Even if the city does not sponsor or manage the celebration, there is a good chance its facilities— streets, sidewalks, parks, equipment and buildings— may be used. If another organization uses city facilities, the city should have a permit process for the user. The application should ask for the information regarding the celebration that may affect the city. The city can place reasonable conditions relating to public safety on the permit. For example, a city can require proof that adequate parking and traffic control is available and that the organization has enough volunteers to handle the crowd.

#### **5. Use of music**

A song’s copyright owner has the exclusive right to authorize a public performance of the song. Among other places, cities may have music in their parks, festivals, or at recreational events. Royalties collected by the American Society of Composers, Authors and Publishers (ASCAP) or by Broadcast Music Incorporated (BMI), which license public performances, typically provide the single largest source of income for the copyright owner. It is important for cities to know when a use of music constitutes a public performance. Uses can include use of musical recordings, live performers, or amplification of music broadcast on the radio.

Unless exemptions cover its public performance of music, the city should obtain a license. A good option is a blanket license for its facilities, which provides a quick and inexpensive option offered through the efforts of the International Municipal Lawyers Association (IMLA).

### **B. Insurance and liability**

Liability coverage from LMCIT does not contain any general exclusion for special events. In other words, the liability coverage will apply to the city’s activities in connection with a special event unless that particular activity itself is excluded. The most important exclusions to be aware of are:

## RELEVANT LINKS:

See LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-K, Liquor liability, and section III-G, Fireworks.

- Motor vehicle races, stunts, demolition derbies, and so on.
- Motorized amusement rides, such as carnival type rides.
- Rodeos.
- Stunting activities or events that involve a significant risk of serious injury to the participant, performer, or others, such as high-wire acts, base or bungee jumping, skydiving, circus type acts, and acts involving dangerous animals.
- Liquor and beer sales, although LMCIT may be able to provide coverage.
- Fireworks displays, although LMCIT may be able to provide coverage.

In some cases LMCIT can provide coverage for exposures related to fireworks displays and liquor and beer sales. For the other excluded activities, there are two basic ways to handle the liability exposure:

- Purchase special liability coverage from an insurer who specializes in that type of risk.
- Hire an independent contractor to conduct that particular operation.

The city should ensure that when individuals and groups manage or are responsible for portions of an event, the users have insurance for the activity. As part of this process, the city should read the insurance policy, obtain a certificate of insurance, and request the city be named as an additional insured under the organization's policy.

All parties should agree how liability claims will be handled before a celebration is developed and held. Generally, liability should follow the organization or contractor that hosts the event.

The liability associated with any defects to city premises or property typically follows the city unless the city and the user mutually agree to indemnify one another and hold one another harmless. Indemnification means the contractor agrees to defend and indemnify the city for any claims by third parties who are injured through the contractor's actions. Hold harmless means the contractor agrees to hold the city harmless for any injuries or damages to the contractor's employees or property.

## RELEVANT LINKS:

See LMC information memos, [LMCIT Liability Coverage Guide](#), Section III-T, Special events.

### [LMCIT Contract Review Service.](#)

Contact Rachel Carlson,  
Loss Control Manager  
rcarlson@lmc.org  
651.281.1210; or  
Chris Smith,  
Risk Management Attorney  
csmith@lmc.org  
651.281.1269  
800.925.1122

See Section VIII-C-2,  
*Constitutional Concerns.*

See LMC information memos, [LMCIT Liability Coverage Guide](#), Section III-T, Special events.

[Community Center Rental Application](#), LMC Model Form.

[Community Center Rental Agreement](#), LMC Model Contract.

[Community Center Rental Rules and Regulations](#). LMC Model Form.

Private individuals holding a special event on city property can obtain general liability and/or liquor liability coverage through the [Tenant User Liability Insurance Program \(TULIP\)](#).

## C. Community center programs

### 1. Use by outside groups

The city needs to have a written agreement outlining the responsibilities of the parties and the rules governing the center when renting its community center to groups or individuals. A written agreement should clearly define the rights and obligations of both parties. The agreement should also address what happens if something goes wrong, for example, the facility is damaged, an event must be cancelled, or someone is injured.

The written agreement could also include the city's requirements for types and amounts of insurance and hold harmless and indemnification provisions. The city could make the renter responsible for any damage to the center as a result of the activity by including maintenance and supervision in the written agreement. The city should use content neutral and non-discriminatory criteria for renting the center and should be consistent in enforcing the rental criteria and rules. LMCIT staff is available to review any contracts or other documents related to the rental of community facilities.

Cities need to decide if users of city facilities will be required to obtain liability insurance. Some cities never require insurance; some cities always require insurance; and other cities only require insurance for certain types of events, e.g., where alcohol will be served. The decision to require insurance is within the discretion of the City Council.

LMCIT has developed model documents to assist cities when renting out a community center or other city-owned facility. These documents will not meet the specific needs of every city, as cities have different types of facilities and offer different amenities in those facilities. These documents, however, can serve as a starting point when thinking about creating rental documents for your city. Ultimately, the City Council must adopt the rules and regulations and approve any rental agreement.

LMCIT offers the Tenant User Liability Program (TULIP) to help individuals and groups—called tenant users—protect themselves and their guests at events held at city-owned facilities. LMCIT member cities automatically are eligible to offer TULIP to tenant users, at no cost to the city.

**RELEVANT LINKS:**

[U.S. Const. amend. XIV, § 1.](#)

[Minn. Stat. § 363A.09.](#)

[42 U.S.C. § 12132.](#)

[Minn. Stat. § 363A.12.](#)

TULIP provides private individuals and groups with access to low-cost liability coverage, including liquor liability coverage, of \$1 million for special events held at city facilities. These include:

- Weddings.
- Festivals.
- Job fairs.
- Concerts.
- Club events and meetings.
- Arts and crafts fairs.
- Reunions.

When a tenant user purchases coverage for a special event through TULIP, a copy of the certificate of insurance is emailed to the user. Another copy of the certificate is sent to the city, naming it as an additional insured.

## **2. Constitutional concerns**

### **a. Discrimination**

Once a community center allows groups to use its facility, it cannot discriminate against any protected class such as race, creed, religion, gender or disability, as to which groups use the center.

Courts have said that communities can make distinctions in terms of preference and charges between residents and non-residents based upon the fact residents pay taxes for the facilities. This distinction has not been upheld when it had a discriminatory effect, however.

Financial responsibility is another distinction that may be allowed as long as it is not discriminatory. The city can require a renter to show proof of insurance or the financial ability to put on the event if the financial criteria were reasonably related to the city's costs or liabilities.

Under the Americans with Disabilities Act and the Minnesota Human Rights Act, a community center or programs must be accessible to disabled people. A community center may have to make physical changes in order to accommodate wheelchairs or other disabilities or the city may have to provide accommodations so disabled people are able to participate in community center activities. For example, the city may have to provide sign language interpreters so children with hearing impairment can participate in a basketball program.

## RELEVANT LINKS:

[U.S. Const. amend. XIV, § 1.](#)

### **b. Due process**

Under its obligation to protect other users, the city can remove someone that threatens other people and can restrict their use of the facility. But since the city would be taking away a right to use a public facility, it would be wise to have a due process procedure established. Due process is generally defined as giving notice of the action and providing the person an opportunity to be heard. A hearing could be requested before the department director or the city council, for example.

### **c. First Amendment**

#### **(1) Free speech**

The United States Supreme Court has adopted a forum test in order to determine what types of restrictions a city or other government can place on the use of public property. There are four types of forums under this analysis:

- Traditional: areas where assembly and debate occur regularly, e.g. streets, sidewalks, parks.
- Designated: property that has been opened for use by the public, e.g. community centers, meeting rooms, auditoriums.
- Limited: a designated forum for limited purposes.
- Nonpublic: areas not generally used for public communication, e.g. employee mailboxes, employee charity drives, programs with selected speakers.

The community center would be considered to be a designated public forum. This means the city cannot restrict activities based upon the content of the group, program, or speech. For example, in one case the United States Supreme Court held that a city municipal theater could not deny permission for a controversial musical to be presented in that theater.

#### **(a) Traditional, designated, and limited forums**

For traditional, designated, and limited forums the government must show a compelling interest in regulation and it must be very narrowly drawn in order to have any content-based restrictions. Generally, cities should have “content-neutral” restrictions that govern time, place, and manner and have criteria set for any discretion in granting permits for the use of the property. Time, place, and manner restrictions can include provisions requiring security, insurance, number of people, and clean-up.

## RELEVANT LINKS:

[\*Thomas v. Chicago Park District\*, 534 U.S. 316 \(2002\).](#)

[\*Southeastern Promotions v. Conrad\*, 420 U.S. 546 \(1975\).](#)

[\*Perry Ed. Assn. v. Perry Local Educator's Assn.\*, 460 U.S. 37 \(1983\).](#)

[\*Lemon v. Kurtzman\*, 403 U.S. 602 \(1971\).](#)

[\*Lynch v. Donnelly\*, 465 U.S. 668 \(1984\).](#)

For example, a Chicago park district had an ordinance that required individuals to obtain a permit for any large events in public parks. The ordinance gave reasons why a permit could be denied and provided an appeal process. A group advocating the legalization of marijuana was denied some permits for rallies and the Court found the park district's restrictions were reasonable and did not violate the First Amendment and upheld the district's content-neutral permit scheme.

In another case, the court decided the city could not refuse to allow the use of its auditorium for a production of the play, "Hair." It found the refusal was a prior restraint of First Amendment-protected speech in a designated public forum. The publicly leased auditorium was specifically used for "expressive activities."

### **(b) Nonpublic forums**

For nonpublic forums, governments can have restrictions that are reasonable and viewpoint-neutral. Nonpublic forums provide only "selective access" and people must obtain prior permission to use the forum. For example, the courts found it was reasonable to limit the use of a school's internal mail system for official business. It said there was "no indication in the record that the school mailboxes and interschool delivery system are open for use by the general public. Permission to use the system to communicate with teachers must be secured from the individual building principal."

### **(2) Freedom of religion**

A city cannot do things that establish a government religion. There have been many cases involving religious symbols on public property, such as Ten Commandment monuments. The tests for whether the religious symbols violate the Establishment Clause are:

- Is there a secular legislative purpose?
- Is the primary effect one that neither advances nor inhibits religion?
- Is there "excessive government entanglement" with religion?

For example, the court looked at a Christmas display that included a Santa Claus house, a Christmas tree, a "Season's Greetings" banner, and a crèche or nativity scene. It found "The city had a secular purpose in including the crèche and had not impermissibly advanced religion or created an excessive entanglement between religion and government." The Court viewed the crèche as a passive symbol of the origins of Christmas.

**RELEVANT LINKS:**

[Good News v. Milford Central School](#), 533 U.S. 98 (2001).

LMC information memo, [LMCIT Liability Coverage Guide](#), Section III-K, Liquor liability.

[Minn. Stat. § 340A.309.](#)

[Minn. Stat. § 340A.401;](#)  
[Minn. Stat. § 340A.414,](#)  
[subd. 1.](#)

See Section VIII-A and VIII-B.

In another case, the Court found a school violated the free speech rights of a private Christian club when the school would not let the club meet after school in the school building. The Court said the meetings would not violate the Establishment Clause because the school did not sponsor the club and the meetings were held after school hours. It did not feel that allowing these meetings would be considered an endorsement of religion.

**3. Alcohol**

A city needs to decide if it will allow alcohol to be served or sold at private events in city facilities. If alcohol is allowed, the city may restrict the type of alcohol. For example, the model agreement only allows beer (no kegs), wine, and champagne.

If there is any use of alcohol in the center, there is potential for greater liability. Any sale of alcohol could result in liability under the Minnesota Dram Shop Act if there was an illegal sale to an underage or obviously intoxicated person. If the city is involved in the sale, it should have adequate liquor liability coverage. It should require adequate liquor liability coverage for any group selling alcohol in the center.

If alcohol is served but not sold, there still is possible liability. People under the influence of alcohol may be more prone to falls or fights. Also, state law makes parties in control of a site, such as a community center, liable if they recklessly allow minors to drink and someone is injured as result of that.

If alcohol will be sold, it is clear under state law that the user will need to obtain a liquor license. The mere rental of a public facility is not a “commercial transaction” under the state liquor laws. Accordingly, if the user only serves (not sells) alcohol, a liquor license will not be required.

**D. Parades**

Everybody loves a parade. Parades bring people of all ages and abilities together to celebrate holidays, share a viewpoint, support their country, city, town or block and, just have fun. Parades are classic community celebrations. Whether your city celebrates with a 4th of July parade or a city-specific parade the best parade is fun, safe, and inclusive.

General loss control recommendations for events apply to parades. Here are some other steps to address parade safety:

## RELEVANT LINKS:

### 1. Check parade route

Check the parade route and adjoining sidewalks, if any, for potholes, cracks or obstacles. Repairing or marking significant cracks, holes, or uneven surfaces and making a record of that action may help a city in case of a slip-and-fall injury on a street or sidewalk during a parade. Look for other things in the public's way such as scaffolding in front of a building where spectators might climb up and then fall and injure themselves. Look for movable basketball hoops or skateboard ramps in the street that children might play on or try to move. Walking the route is a great way to think about reasonable steps a city may take before the parade begins.

### 2. Traffic control

Consider traffic control at all phases of the parade route. Determine where people, floats, and animals gather before the parade (commonly known as the staging area) and how to deal with the influx of traffic into that area as people drop off participants. Separate the units with animals from other parade units—especially horses from bands and floats. Claims involving runaway horses spooked by loud sounds or flying banners typically involve more extensive injuries and more costs. Determine where traffic barriers and street closings are necessary on the parade route. Consider if law enforcement or security personnel are required for staffing the parade route on the day of the event.

### 3. Applications and rules

One way to get parade participants to comply with safety measures and get them information about the parade is by use of a parade application. You can use application materials to inform participants of the rules. Applications focus on safety and reasonable ways to regulate a large gathering that eventually moves down the street. In an application your city might:

- Require proof of current insurance for any vehicle in the parade, whether it is towing a float or carrying the local celebrities.
- Inform parade participants that throwing candy is not allowed.
- Inform participants that public consumption of alcohol is not allowed in the staging area, on the parade route, or after the parade.
- Spell out regulations regarding traffic controls such as dropping off people or picking up people in the parade staging area.
- Require horses or animals be under the owner's control at all times, and inform participants with animals of staging area requirements for animals.
- Require a waiver of liability in the application materials.

See Section IV-F, *Waiving Liability*.

**RELEVANT LINKS:**

[Minn. Stat. § 211B.205.](#)

**a. Throwing candy**

One particularly important rule to have in place is disallowing candy to be thrown from vehicles or floats. The distribution of candy and prizes, traditionally thrown from vehicles, is a favorite component of a parade. The problem is that the combination of excited children and large vehicles/trailers with poor visibility can lead to tragedy. The solution is to have walkers handing out these items, thus reducing the temptation for children to go near the parade vehicles. Implementing this rule, and reminding participant of its importance, will help prevent tragedy.

**4. Participants**

None of the application materials or waivers can include restrictions on who can march to express their opinions.

Citizens have constitutionally protected rights to express their opinions on politics, religion, or current events in public places, including parades. The courts call this “protected speech.” Cities may impose reasonable restrictions on protected speech, but such restrictions must not regulate what a person or a group says. Cities can regulate the time, place, or manner of protected speech in a way that does not touch on content. Restrictions can only address city interests such as safety and preservation of city streets, and must do so carefully to ensure protected speech is not violated.

Candidates for elected office often register to walk in city parades, distributing campaign material. If a fee is charged to participate in the parade candidates must be allowed to participate for a fee that is no more than what others pay to participate.