



INFORMATION MEMO

LMCIT Liability Coverage Guide

Learn about liability (casualty) coverage offered by the League of Minnesota Cities Insurance Trust (LMCIT), including unique coverage situations for land use litigation, airports, sewer backups, special events, joint powers entities and more. Understand coverage limits and various incentive programs. Includes information on filing a liability claim.

RELEVANT LINKS:

LMC information memos, [LMCIT Property, Crime, Bond, and Petrofund Coverage Guide](#); [LMCIT Auto Coverage Guide](#); [LMCIT Workers' Compensation Coverage Guide](#), and [LMCIT Eligibility Requirements](#).

For more information contact the LMCIT Underwriting Department
651.281.1220
800.925.1122.

LMC information memo, [Comparing Coverage Quotes](#).

For more information on liability see Handbook, [Insurance and Loss Control](#). Handbook, [Liability](#).

I. About the League of Minnesota Cities Insurance Trust

LMCIT's fundamental purpose is to cover the workers' compensation, property, liability, and auto risks of Minnesota's cities and to mitigate hazards—not to show a profit for stakeholders. The organization was created by cities, for cities, and makes serving cities a priority. LMCIT funds not needed for claims, expenses, or reserves are returned to members as a dividend.

This Coverage Guide provides a summary of liability coverage available through the Trust. LMCIT urges members to examine the coverage document for actual wording. In all cases, the coverage document outlines coverage, exclusions and limitations.

II. Liability coverage

The LMCIT liability coverage is designed to meet members' coverage needs as simply as possible. LMCIT uses its own unique coverage document to provide liability coverage to member cities. It uses a single coverage document, rather than issuing separate policies to cover general liability, errors and omissions, police liability, and so on.

The industry term "general liability" or a "commercial general liability" (CGL) policy refers to coverage issued to organizations to protect them from liability claims for bodily injury, property damage, and advertising and personal injury. The LMCIT liability coverage is technically not a CGL, but it encompasses coverage for risks typically covered by a CGL. The LMCIT liability coverage is tailored specifically for cities in Minnesota and is much broader than a regular CGL policy.

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:

See Section III.I, *Joint powers entities* and Section III.Q, *Separate city boards and commissions*.

A. Covered parties

Generally, the following are covered parties under the LMCIT municipal liability coverage.

- City and its officers, employees, and volunteers.
- Relief associations.
- Some joint planning boards.
- Additional covered parties, on a limited basis, for organizations from which the city leases a premise or equipment. This additional insured status is only granted if the city is contractually obligated to have the lessor named as an additional insured. It only applies to bodily injury, property damage, or personal injury for claims that are made by the lessor due to the city's acts during the terms of the lease agreement.
- Independent contractors acting in the administrative capacity of medical director or medical advisor to the city ambulance service; or serving as a member of, or representing the city as a member of a committee, subcommittee, board, or commission.

If the city is required to add another party as an additional insured or additional covered party, LMCIT can add the party on the city's municipal liability coverage by endorsement. Also, joint powers entities and the following city boards, commissions, and agencies are not covered parties unless they are specifically named or added by endorsement.

- Gas, electrical, or steam utilities commissions.
- Port authorities, housing and redevelopment authorities, economic development authorities, municipal redevelopment authorities, or similar agencies.
- Municipal power or gas agencies.
- Welfare or public relief agencies
- School boards.
- Independent contractors.

B. Liability claims

The LMCIT liability coverage provides protection for claims someone else makes against the city, an officer or employee, or another covered party. The coverage only protects these persons for actions arising from the course and scope of his or her duties.

The coverage applies to damages and defense costs. Damages is specifically defined in the coverage document, but essentially it means money. However, certain items are specifically included and others are specifically excluded by the definition.

RELEVANT LINKS:

LMC information memo,
[The Agent's Role and
Compensation in LMCIT.](#)

See Section III.M, *Open
meeting law and bankruptcy
lawsuits.*

See Section III.A, *Airports*;
Section III.C, *Dams and
downstream liability*;
Section III.G, *Fireworks*;
Section III.I, *Joint powers
entities*; and Section III.Q,
*Separate city boards and
commissions.*

The LMCIT municipal liability coverage is claims-made. That is, to be covered, the claim must be reported either within the coverage period or within an applicable extended reporting period if the city has left LMCIT (there are a few types of claims to which the extended reporting period does not apply). For certain types of claims, the coverage document further specifies when the claim is deemed to be made.

Coverage only applies if the occurrence giving rise to the claim occurred after the applicable retroactive date, which is specified in the declarations. It is generally the date when the city first joined LMCIT or added the specific coverage in question. The coverage document further spells out how the occurrence date is determined for specific types of claims. Most cities have been LMCIT members long enough that the retroactive date is rarely an issue.

C. Liability exclusions

Since the LMCIT liability coverage is broad, it's easier to first look at what's not covered. Following are some of the standard exclusions. Members should contact their agent or underwriter if coverage is needed in any of these areas. It's possible LMCIT may be able to find a way to provide coverage, or at least help find coverage elsewhere.

1. Liability not covered

- Damages arising out of a city's bankruptcy, except some defense cost reimbursement coverage is available for city officials under the LMCIT defense cost reimbursement coverage.
- Criminal proceedings.
- Most non-sudden pollution.
- Nuclear hazards.
- War.
- Amounts owed under contract.
- Condemnation, except some regulatory takings.
- Damage the city does to its own property.
- Fixing the city's own work.
- Not paying employees for the work they did.
- Recalling defective products.

2. Risks that must be specifically underwritten

- Airports.
- Dikes or Class I or Class II dams.
- Fireworks the city sponsors.
- Joint powers entities.
- Separate boards, commissions, and agencies.

RELEVANT LINKS:

See Section III.K, *Liquor liability*.
See Section III.T, *Special events*.

See Section III.T, *Special events*.

See Section III.T, *Special events*.

[Minn. Stat. § 466.04.](#)

See Section II.D.3.a, *Statutory limits may not apply*.

3. Risks for which specialty coverage is needed

- Aircrafts (a drone is not considered an “aircraft” if it’s not designed for the transport of persons or property).
- Architects.
- Big boats.
- Doctors, most nurses, dentists, pharmacists, and psychologists.
- Liquor sales.
- Motorized amusement rides, such as carnival rides.
- Motor vehicle demolition derbies, racing, pulling contests, or stunt driving.
- Prisons.
- Railroads.
- Rodeos.
- Specialty type operations such as hospitals, clinics, nursing homes and licensed child care programs.
- 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.

D. Coverage limits

LMCIT gives members options for structuring their liability coverage. Members can also choose either to waive or not to waive the monetary tort caps the statutes provide. It can also select from among several liability coverage limits.

1. LMCIT primary liability limits

The statutory municipal tort liability is limited to a maximum of \$500,000 per claimant and \$1.5 million per occurrence. These limits apply whether the claim is against the city, against the individual officer or employee, or against both. LMCIT’s liability coverage provides a standard limit of \$2 million per occurrence. Higher limits are in place for a couple reasons.

First, the statutory liability limit caps the city’s liability for many types of claims. But some types of liability claims aren’t subject to the statutory tort caps, so the city’s potential liability is unlimited for some types of claims.

RELEVANT LINKS:

See Section II.D.3,
*Purchasing higher liability
limits.*

See Section III.B, *Data
security breach and
computer-related risks.*

See Section III.J, *Land use
and special risk litigation
and Land Use Incentive
Program.*

See Section III.D,
*Employees' activities in
outside organizations.*

[Minn. Stat. § 466.04.](#)

Second, it's increasingly more common to see contracts require more than the statutory limit of \$1.5 million; a more common figure is \$2 million. LMCIT's higher limit meets this requirement, but if even higher limits are required, there is the option to carry LMCIT's excess liability coverage to meet the additional requirements. LMCIT can in some cases also issue an endorsement to increase the city's coverage limit only for claims relating to a particular contract.

In addition to the LMCIT coverage limit of \$2 million per occurrence, there are annual aggregate limits (that is, limits on the total amount of coverage for the year regardless of the number of claims), for certain specific risks.

Aggregate limits apply to claims arising out of the following:

- Products \$3 million annually
- Failure to supply utilities \$3 million annually
Coverage applies for the failure to supply water, electricity, gas, or steam service. It also applies to damages arising out of the failure to supply phone and internet or other electronic data transmission services.
- Data security breaches \$3 million annually
A \$250,000 annual aggregate/sublimit (part of and not in addition to the \$3 million aggregate) applies for Payment Card Industry (PCI) fines and penalties and data security breach regulatory fines and penalties resulting from a data security breach claim.
- Electromagnetic fields \$3 million annually
- Limited contamination \$3 million annually
Includes the sudden and accidental release of pollutants; herbicide and pesticide applications; sewer ruptures, overflows, and backups; lead and asbestos claims; mold claims; organic pathogen claims; hostile fire claims; and excavation and dredging claims. Excavation and dredging claims are subject to an annual \$250,000 sublimit. These limits apply to both damages and defense costs.
- Land use/special risk litigation \$1 million annually
Land use litigation coverage is provided on a sliding scale percentage basis, which is based on participation in LMCIT's land use incentive. Coverage applies to both damages and litigation costs.
- Activities in outside organizations \$100,000 annually

2. Statutory liability limits

The statutory municipal tort cap is limited to a maximum of \$500,000 per claimant and \$1.5 million per occurrence.

These limits apply whether the claim is against the city, against the individual officer or employee, or against both. The LMCIT liability coverage provides a standard limit of \$2 million per occurrence.

RELEVANT LINKS:

See [Summary of LMCIT Liability Coverage Options](#) and the effects of choosing the various coverage structure options.

See Section II.D.3, [Purchasing higher liability limits](#).

See Section II.D.3, [Purchasing higher liability limits](#).

At the city’s coverage renewal each year, it must decide whether to waive or not waive the statutory limits. There is no right or wrong answer on this point, and it’s a discretionary decision that each governing body must make.

a. Waiving the statutory limit

Members who choose to waive the statutory limits are waiving the protection of the statutory limits, up to the amount of coverage the city has. Someone with a claim against a city that has waived the statutory limits would be able to recover up to the LMCIT standard limit of \$2 million, rather than the statutory limit of \$500,000 per claimant. Because the waiver increases the exposure, the premium is a few percentage points higher for coverage under the waiver option.

A city may choose to pay more in premium for the waiver option because the statutory liability limit only comes into play in a case where the city is in fact liable and the injured party’s actual proven damages are greater than the statutory limit. Some cities as a matter of public policy may want to have more assets available to compensate their citizens for injuries caused by the city’s negligence. Waiving the statutory liability limits is a way to do that.

There is no increase in risk if the city waives the statutory liability limits. In other words, there is no risk for the city to end up with liability if LMCIT doesn’t cover it. The LMCIT waiver form specifically says the city is waiving the statutory tort caps only to the extent of the city’s coverage. That’s not to say there is no risk the city’s liability could exceed its coverage limits. There are certain situations in which this could happen, but the waiver doesn’t increase that risk.

In those cases where the city waives the statutory limit, but also purchases the LMCIT excess liability coverage, a claimant could potentially recover more. For example, if the city has \$1 million of excess coverage and chooses to waive the statutory tort caps, the claimants (whether it’s one claimant or several) could then potentially recover up to \$3 million in damages in a single occurrence. If the city carries higher excess coverage limits, the potential maximum recovery per occurrence is correspondingly higher.

Carrying LMCIT’s excess coverage under the waiver option is a way to address an issue that some cities find troubling, and that’s: the case where many people are injured in a single occurrence caused by city negligence. An example is if a city vehicle negligently ran into a school bus full of children causing multiple serious injuries.

The statutory limit of \$1.5 million divided 50 ways may not go far in compensating those injuries. Excess coverage under the waiver option makes more funds available to compensate the victims in this kind of situation.

RELEVANT LINKS:

See Section II.D.3,
*Purchasing higher liability
limits.*

See Section II.D.3.a,
*Statutory limits may not
apply.*

[Minn. Stat. § 3.736.](#)

The cost of the excess liability coverage is higher if the city waives the statutory tort caps. The cost difference is proportionally greater than the cost difference at the primary level because for a city that carries excess coverage, waiving the statutory tort caps increases both the per claimant exposure and the per occurrence exposure.

b. Not waiving the statutory limit

For cities who choose not to waive the statutory limits, the city's liability is limited by the statute to no more than \$500,000 per claimant and \$1.5 million per occurrence. LMCIT's higher coverage limits would only come into play on those types of claims that aren't covered by the statutory limit.

3. Purchasing higher liability limits

LMCIT makes available the option of carrying higher coverage limits than the basic limit of \$2 million per occurrence. This coverage, called excess liability coverage, is available in \$1 million increments up to a maximum of \$5 million.

There are several different reasons why cities may consider carrying LMCIT's excess liability coverage.

a. Statutory limits may not apply

The statutory tort caps either do not or may not apply to several types of claims. Some examples include:

- *Claims under federal civil rights laws.* These include Section 1983, the Americans with Disabilities Act, and so on.
- *Claims for tort liability the city has assumed by contract.* This occurs when a city agrees in a contract to defend and indemnify a private party.
- *Claims for actions in another state.* This might occur in border cities that have mutual aid agreements with adjoining states or when a city official attends a national conference or goes to Washington to lobby.
- *Claims based on liquor sales.* This mostly affects cities with municipal liquor stores, but it could also arise relating to beer sales at a fire relief association fundraiser, for example.
- *Claims based on a "taking" theory.* Suits challenging land use regulations frequently include an "inverse condemnation" claim, alleging the regulation amounts to a "taking" of the property.

RELEVANT LINKS:

See Section II.D, *Coverage limits*.

LMC information memos, [LMCIT Auto Coverage Guide](#) and [LMCIT Workers' Compensation Coverage Guide](#).
See Section III.L, *Medical payments*; Section III.D, *Employees' activities in outside organizations*; and Section III.K, *Liquor liability*.

LMC information memo, [Making and Managing City Contracts](#), Section IV.B.6, *Umbrella/excess insurance*.

See Section III.Q, *Separate city boards and commissions*.

b. Annual limits apply in LMCIT's coverage for specific risks

Besides LMCIT's overall coverage limit of \$2 million per occurrence, there are also annual aggregate limits for certain specific risks. If the city has a loss or claim in one of these areas, there might not be enough limits remaining to cover the city's full exposure if there is a second loss of the same sort during the year.

There are, however, a couple important restrictions on how the excess coverage applies to risks that are subject to aggregate limits. The excess coverage does not apply to the following types of risks.

- Failure to supply utilities.
- Mold.
- Lead and asbestos.
- Excavation and dredging.
- Sudden and accidental release of pollutants below ground or within or on the surface of any body of water.
- Auto no-fault claims.
- Uninsured/underinsured motorist claims.
- Workers' compensation, disability, or unemployment claims.
- Claims under the medical payments coverage.
- Claims arising from the activities of outside organizations.
- No-fault sewer backup
- Liquor liability, unless the city has specifically requested it.

c. Contracts may require higher coverage limits

Occasionally, a contract might include a requirement the city carry more than \$2 million per occurrence in coverage limits. Carrying excess coverage is a way to meet these requirements. Cities can also contact LMCIT and request an endorsement to increase the city's coverage limit only for claims relating to that contract. There's a small charge, and the contract and additional underwriting information may be required.

d. Multiple political subdivisions

There may be more than one political subdivision covered under the city's coverage.

A housing and redevelopment authority (HRA), economic development authority (EDA), or port authority are separate political subdivisions.

RELEVANT LINKS:

LMC information memo,
[Making and Managing City Contracts](#), Section
IV.B.1.b, *Additional insured provisions.*

See Section II.D.3,
Purchasing higher liability limits.

If the city EDA, for example, is named as a covered party on the city's coverage and a claim were made that involved both the city and the EDA, theoretically the claimant might be able to recover up to \$1.5 million from both the city and the EDA since there are two political subdivisions involved. Excess coverage is one way to provide enough coverage limits to address this situation. Another solution is for the HRA, EDA, or port authority to carry separate liability coverage in its own name.

The issue of multiple covered parties can also arise if the city has agreed by contract to name another entity as a covered party, or to defend and indemnify another entity.

e. Courts may overturn statutory liability limits

Cities sometimes carry higher coverage limits because of a concern the courts might overturn the statutory liability limits. However, those limits have been tested and upheld several times in Minnesota. While it's always possible a future court might decide to throw out the statutory limits, this is less of a concern.

III. Coverage details on specific liability exposures

The LMCIT liability coverage is broad, but there are some situations where the city needs to take additional action or be aware of special coverage terms and limits.

A. Airports

LMCIT offers optional airport liability coverage to members of the property/casualty program. Coverage is available for airports that are operated by a city, by a joint powers entity that includes at least one city, or by a special purpose district. Coverage is available for most municipal airports; however, larger airports that have scheduled service are not eligible.

1. Coverage limits

The airport liability coverage is very broad and carries a per occurrence limit of \$2 million and an annual aggregate limit of \$3 million. It is subject to the same deductibles that apply to the city's municipal liability coverage. Higher limits can be provided through LMCIT's optional excess liability coverage, although it is not available as an option for airport risks only.

RELEVANT LINKS:

2. Coverage terms

Cities or joint powers entities that choose the LMCIT airport coverage option are provided coverage under the city's existing LMCIT liability coverage document. It is provided under an endorsement that modifies the airport exclusion in the basic municipal liability coverage document.

Since the airport liability exposure is wrapped under the basic LMCIT liability coverage document, the coverage for liability related to airport operations is extremely broad. It is specifically designed to address several important airport exposures, including:

- Damage to an aircraft that's in the city's care, custody, and control or what is commonly referred to as hangarkeeper's liability.
- Products liability coverage for city fueling operations.
- Claims relating to noise, vibration, and so on.
- Exposures related to errors and omissions such as employment liability and liability for damages other than bodily injury, personal injury or property damage (the errors and omissions risk is covered under the city's existing LMCIT liability coverage).

There are only a few specific airport-related exclusions to be aware of, including:

- Any aircraft exhibitions, racing, stunting, aerobatics, skydiving or similar activities the city sponsors or participates in.
- Liability relating to any fixed-based operator activities such as aircraft service, maintenance, or repair which the city performs (there is an exception related to fueling operations by the city).
- Liability relating to any aircraft products the city sells.
- Liability for damage to an aircraft that's in the city's care, custody, and control while the aircraft is in flight.
- Liability arising from operation of an aircraft by the city is generally excluded, although there is an exception for situations where the city might operate someone else's aircraft simply for moving it around on the airport premises. If a city employee flies airplanes on city business, separate liability coverage is needed.

An independent contractor is not a covered party under the city's coverage. If the city contracts with an independent contractor for airport management or other services related to the airport, the contractor needs his or her own liability coverage.

See Section III.H,
Independent contractors.

RELEVANT LINKS:

[Transportation Security Administration.](#)

It's also important to note the Transportation Security Administration requires airports with scheduled passenger flight service to have arrangements in place for law enforcement officers to provide backup security service. In many cases, city police are performing this function. If the city police are providing this type of airport security service, contact LMCIT and have the city's LMCIT liability coverage endorsed to cover this exposure. Without that endorsement, the city's liability coverage won't respond to claims arising from this activity.

3. Premium costs

LMCIT doesn't make a specific charge for the airport operations endorsement. However, premium for the exposure is accounted for indirectly through the standard liability rating system for all city operations. Under this system, annual expenditures and number of employees are two of the key rating factors for the liability premium calculation, so to the extent that annual airport expenditures and the number of airport employees are reported along with regular rating factors, premium for the airport operations exposure is accounted for in the same manner as any other city department or operation.

4. Evaluating coverage under another carrier

LMCIT's primary goal in offering airport liability coverage is to improve cities' protection for the risks associated with operating an airport. In reviewing some conventional airport liability insurance policies, there are three things to be aware of:

- Airport liability policies are often very convoluted and hard to read, with complicated language, multiple endorsements, and endorsements modifying other endorsements. Many airport operators may find it difficult to understand what the coverage is for.
- Airport liability policy wording is not standardized. There can be subtle and sometimes not so subtle variations in how an exclusion or definition or coverage grant is worded in one policy compared to another. Those variations can make a significant difference in what is and isn't covered under one policy compared to another.
- Airport liability policies sometimes leave some surprising and potentially problematic coverage gaps.

The following are a few examples of exclusions and limitations found in some airport liability policies. Not every airport liability policy has these provisions, and how the provisions are worded varies from policy to policy. Most times these things won't matter until, of course, a claim is tendered.

RELEVANT LINKS:

[Minn. Stat. § 604A.01.](#)

[LMCIT Contract Review Service.](#)

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- *Personal injury.* This could leave the city with no coverage for a defamation claim relating to the airport operations. For example, if an airport board member or employee made a critical comment about a contract service provider, the individual could be sued for defamation.
- *Products/completed operations.* If the city sells fuel, this could be a problem. Imagine a crash caused by contaminated fuel or even a contaminated sandwich in a vending machine.
- *Noise and interference.* There are common exclusions for noise, interference with the use of property, or electromagnetic interference. A city airport might very well face these kinds of claims, especially if there are residences or businesses near the airport. Even a successful defense could be expensive.
- *Medical malpractice.* This exclusion is often worded so it applies to any medical treatment, not just treatment provided by medical personnel. It could leave an airport employee without coverage if she or he provides CPR or other first aid in an emergency and a liability claim results. The Good Samaritan law may ultimately provide protection, but defense costs could still be significant.
- *Malicious act or act of sabotage.* Suppose vandals damage runway lights or beacons, or place an obstruction on a runway. This exclusion would leave the city airport without coverage.
- *Damages arising out of an air traffic control facility.* This exclusion is sometimes written so it applies even if it isn't the city's air traffic control facility. If an accident were caused by an air traffic control problem, the city airport could be named in the lawsuit. The city's defense would be to show the problem was caused by the air traffic controller and not by the city. This would also require proof the coverage doesn't apply.
- *Combined claims.* Normally the rule is that if a lawsuit involves a combination of covered and non-covered claims, the insurer must defend the entire suit. Some provisions say that in a "combined claim," the insurer will only reimburse the insured for that portion of the defense costs which the city proves can be attributed to a covered claim. This effectively eliminates the benefit of the doubt, which the insured normally gets on coverage issues. In some cases, it could be very expensive.
- *Airmeets.* Most policies have this exclusion in one form or another. Sometimes it's worded so broadly that the exclusion would apply to a simple fly-in type event that doesn't involve any racing or stunting.

LMCIT's Contract Review Service is a free program that helps guard member cities against common contract liability exposures by identifying defense and indemnification language that may be problematic. Advice and recommendations are provided to help ensure contracted activities fall within the scope of LMCIT coverages. This service does not replace the services of city attorneys. Review can be as broad or as narrow as needed to respond to the city's concerns and protect the city's interests.

RELEVANT LINKS:

LMCIT information memo, [Computer and Network Loss Control](#).

See also LMC information memo, [Coverage for Cyber and Computer-Related Risks](#).

[Minn. R. 6115.0340](#).

B. Data security breach and computer-related risks

Computers at city hall and in city offices can be bombarded with viruses on a regular basis, and may even be subject to hacker attacks or cybercrime. This might impact city systems like email, and could also affect computerized billing or records management systems.

LMCIT's municipal liability coverage responds to claims resulting from data security breaches or other computer-related risks. The standard limit is \$2 million per occurrence. However, there are a couple annual aggregate limits to note:

- There is a \$3 million annual aggregate (total amount of coverage for the year, regardless of the number of claims) for third-party liability claims arising out of data security breaches.
- A \$250,000 annual aggregate/sublimit (part of and not in addition to the \$3 million data security breach aggregate) for PCI fines and penalties and data security breach regulatory fines and penalties resulting from a data security breach claim.

C. Dams and downstream liability

The LMCIT liability coverage contains an exclusion for damages arising out of the failure or bursting of any dike, levee, or similar structure, as well as any Class I or Class II dam as classified by the commissioner of the Department of Natural Resources pursuant to Minnesota Rules. Damages arising out of the failure of a wastewater lagoon embankment is not subject to this exclusion.

Upon request, LMCIT can review the downstream liability exposure for structures that are excluded from coverage and may be able to remove the exclusion depending on the specific circumstances.

D. Employees' activities in outside organizations

It's important for cities to be aware of what organizations city employees are participating in, and to decide whether the city considers participating in those organizations to be part of the employee's duties as a city employee. It's in both the city's and the employee's interest to address that question up front. Not doing so could leave a gap in liability coverage not only for the city, but for the individual employee as well.

The goal of the LMCIT liability coverage is to protect LMCIT members' funds by controlling the risk of very large loss costs that could result from these types of claims and provide some certainty as to when these types of claims are covered and when they are not.

RELEVANT LINKS:

See Section III.Q, *Separate city boards and commissions.*

See Section II.D, *Coverage limits* and Section II.D.3, *Purchasing higher liability limits.*

1. Coverage limits and terms

City officers and employees often participate in outside organizations that are related in some way to their city duties. Examples include:

- Associations of wastewater operators.
- Fire instructors.
- Finance officers.

These organizations may engage in a wide variety of activities such as holding conventions, fundraising activities, and training. If the employee's activities in those organizations lead to a liability claim against the individual, the organization may or may not have insurance or assets to defend and indemnify the employee for the liability claim. If the organization is unable or unwilling to defend the individual, she or he will very likely look to the city for protection.

The LMCIT liability coverage includes provisions addressing when and how the coverage will respond to claims against city officers or employees arising from their individual activities as officers or members of outside organizations (this section only affects organizations where an individual is a member of an outside organization, not organizations where the city is a member such as a joint powers entity or HRA). The definition of an outside organization includes:

- A formally organized membership organization.
- A professional organization.
- Any for profit or nonprofit corporation.

For purposes of when and if the LMCIT coverage applies, the first step is for the city council to determine whether an employee's activities in an organization are within the scope of his or her city duties. The council's decision is final for purposes of coverage, and this determination can be made at any time either in advance or after a claim has already occurred.

When the city council makes this determination, coverage for claims arising from that employee's activities in that organization are subject to a \$100,000 annual aggregate limit. If the city purchases LMCIT's excess liability coverage, it cannot be applied to these types of claims.

When the city decides that participation in an organization will be within the scope of an employee's duties as a city employee, it also has implications for other areas besides liability. Here are a couple considerations to keep in mind:

RELEVANT LINKS:

LMC information memos, LMCIT *Workers' Compensation Coverage Guide* and *Fair Labor Standards Act (FLSA): Determining Exempt vs. Non-Exempt Status*.

See Section II.D, *Coverage limits*.

- If the employee is injured, it would be covered by the LMCIT workers' compensation coverage if the city is a member of the LMCIT workers' compensation program.
- For employees who are not exempt from the Fair Labor Standards Act, time spent on organization activities would likely have to be considered work time for purposes of calculating overtime and other measures.

The reason LMCIT leaves it to the city council to determine whether an employee's activities in an outside organization are within the scope of his or her city duties is because LMCIT does not have the ability to be aware of the activities of these organizations, to evaluate the risks of those activities, or to provide risk management assistance to control and minimize those risks.

Essentially, it can put LMCIT in the position of being the “insurer by default” of risks that it didn't know about or didn't have any opportunity to control. It also eliminates any potential factual disputes about whether coverage applies.

The reason for a \$100,000 annual aggregate limit is because employees from many different cities might be involved in the same organization, which could lead to a lawsuit in a single incident. That in turn could mean there's a claim under several cities' LMCIT liability coverages. The \$100,000 annual aggregate limit greatly reduces the potential for catastrophically large loss costs to LMCIT. At the same time, it provides some safety net protection that should be enough to address many of the surprise situations that might occur.

2. Determining employees' status

The LMCIT liability coverage applies to claims against an individual while within the scope of duty. Determining whether an employee's activities in an organization are within his or her city duties is sometimes difficult.

There are a wide range of organizations that relate in different ways to city activities. Some organizations clearly have the purpose of benefiting the city; some are focused on broader public benefit, and benefit the city only indirectly if at all; and others are clearly more focused on benefiting the individual, rather than the city.

The city council might not have a clear idea of what activities the outside organization is engaged in or even that the employee is involved in such an organization. At the same time, though, most cities also don't want to leave the employee hanging if he or she is sued; and that may lead the city after the fact to take an expansive view of what's part of the employee's duties.

RELEVANT LINKS:

[Employees' Activities in Outside Organizations, LMC Model Letter Form.](#)

See Section II.D, *Coverage limits*.

[Minn. Stat. § 466.07.](#)

As a first step, it's a good idea to find out what organizations city employees are involved in as members or officers that might arguably be considered city-related. The city will want to find out what the purpose of each organization is and what sorts of activities the organization is involved in. For coverage purposes, the city can make the determination of whether participating in an organization is within the employee's duties at any time either in advance or after a claim has already occurred.

However, because of the potential effect on the employee (i.e., in the case where the city decides that participating in the organization is not part of the employee's job), it makes sense to make the determination in advance to avoid unpleasant surprises for the employee and potentially difficult decisions later for the council. Depending on the city, that determination might be made by the council or delegated to the city manager or other officer.

In cases where the city determines that participation in an organization is not part of the city employee's city duties, the city should let the employee know that if she or he chooses to participate in the organization, she or he is doing so on her or his own. It is good practice to provide that information to the employee in writing. Some cities may prefer to handle those communications as a general memo to all employees rather than as an individual communication to each employee. Either way is workable, but the key is to make sure employees know the city's position and understand the implications.

In cases where the city concludes an employee should be encouraged or even required to participate in an organization, the city will want to find out whether the organization has liability coverage to protect its members and officers for claims arising from those activities. If the organization hasn't done anything to cover the liability risks its officers and members face because of the organization's activities, the city has several options:

- The city can decide it's comfortable simply assuming the risk that the damages and defense costs for a liability claim against a city employee arising from his or her activities in the organization will not be greater than the LMCIT liability coverage limit of \$100,000. If the city determines that participation in an organization is within the scope of an employee's duties, state law requires the city to defend and indemnify the employee for tort claims arising from that activity. If the cost exceeds the \$100,000 coverage limit, the rest will be the city's responsibility.
- The city can decide that participating in the organization will not be considered part of the employee's city duties. In that case, the city should make sure the employee understands that if she or he chooses to participate, she or he is doing so on his or her own.

RELEVANT LINKS:

For more information see [HR Reference Manual, ch. 7, Personnel Policies.](#)

[Minn. Stat. § 317A.257.](#)

[Federal Volunteer Protection Act, Public Law 105-19.](#)

[Equal Employment Opportunity Commission.](#)

[MN Department of Human Rights.](#)

See Section II.A, *Covered parties.*

- The city may want to encourage the organization to obtain liability coverage. In some cases, depending on the organization's purpose and structure, LMCIT may be able to provide coverage.

If a city pays an employee for time spent working with or participating in an outside organization, it will be very hard for the city to argue the activity is outside the scope of the employee's duties. At the very least it puts the city in a very odd position of telling the employee the activity wasn't part of his or her duties even though they were being paid. If the city treats the employee's time spent participating in an outside organization's activities as paid work time, it will almost certainly be interpreted to mean the city does in practice consider it part of the employee's duties. That in turn would trigger both the LMCIT coverage and the city's own duty to defend and indemnify, notwithstanding the city's stated intent to the contrary.

If the city wants to allow use of paid work time to participate in an organization that the city does not consider part of the employee's city duties, the best approach might be to formally structure it as a type of paid leave. The city could adopt a formal policy allowing the employee to take paid time off for this purpose, like sick, vacation or funeral leave. Treating it as a form of paid leave might help avoid creating the implication that participating in the organization is part of the employee's city duties.

In evaluating the risks involved when city employees are participating in outside organizations, it's important to note that state law provides some, but by no means complete, protection from liability claims for unpaid officers or members of a nonprofit corporation. The Federal Volunteer Protection Act also provides some liability protection for volunteers performing services for nonprofit or governmental organizations. Again, though, that protection is not complete and is subject to exceptions.

E. Employment practices

There is not a separate coverage part for employment practices liability coverage. In other words, LMCIT coverage applies for employment practices claims even though there is no specific coverage part for it. Most employment-related claims filed, including administrative charges made to the Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights (MDHR), or a local human rights commission, are deemed to be claims for damages.

F. Firefighters

There is no separate coverage part for fire department operations. The basic LMCIT liability coverage contains no general exclusions for claims arising out of fire departments or firefighter operations.

RELEVANT LINKS:

LMC information memo, [Fire Department Management and Liability Issues](#).

See Section III.I, *Joint powers entities*.

See Section II.C.2, *Risks that must be specifically underwritten*.

To determine whether LMCIT can provide coverage for fireworks, complete the [City Fireworks Sponsorship Questionnaire Form](#).

LMC information memo, [Fire Department Management and Liability Issues](#).

[Minn. Stat. § 624.22](#), State Fire Marshall.

[Minn. R. 7511.3308](#).

Fire relief associations and their members, officers, and employees are also covered parties under the LMCIT liability coverage. They do not need to be scheduled or endorsed onto the city's liability coverage.

However, the basic LMCIT liability coverage contains an exclusion for claims arising out of joint powers entity activities. It is therefore very important that coverage is specifically arranged for joint powers fire departments or districts.

G. Fireworks

The LMCIT liability coverage contains an exclusion for any liability arising out of the city's ownership, sponsorship, or operation of fireworks displays. This exclusion applies both if city employees or volunteers are setting off fireworks and if the city itself sponsors or contracts for a fireworks display.

This exclusion does not apply to a fireworks display that is sponsored and operated by someone else. Where the city's only role is in regulating, licensing, or providing public safety services, the city's LMCIT liability coverage will cover liability the city incurs because of those activities.

If the city is involved in fireworks as an operator or as a sponsor, the city won't have liability coverage for any damages arising out of the display, unless the city takes special steps to put coverage into place. In some circumstances, LMCIT can delete the exclusion and provide liability coverage for a fireworks display.

In considering whether the city should contract with someone else or operate a fireworks display itself, it's important to remember that every fireworks display must be supervised by an operator who has been certified by the State Fire Marshal. State law also requires that any fireworks display meet safety guidelines developed by the State Fire Marshal.

If the city contracts with someone else to operate the fireworks display, which is the preferred loss control approach, he or she must apply to the city for a display permit, and before granting the permit the city fire chief must make sure the applicant is properly certified and that the proposed display will meet the applicable safety requirement and guidelines.

The city should also make sure the contractor has adequate insurance limits and lists the city as an additional insured under the contractor's insurance. By doing the latter, LMCIT can then on request delete the fireworks exclusion from the city's coverage for a small cost. The city's LMCIT liability coverage would then apply as excess over the contractor's coverage. This would give the city additional protection in case of a very large claim, if the contractor's insurance company went broke, for example.

RELEVANT LINKS:

[Minn. Stat. § 624.22.](#)

[State Fire Marshall.](#)

To determine whether LMCIT can provide coverage for a fireworks display, complete the [City Fireworks Sponsorship Questionnaire Form](#).

See Section II.A, *Covered parties*.

LMC information memo, [Making and Managing City Contracts](#), Section IV.B.1, *Commercial general liability insurance*.

[LMCIT Contract Review Service](#).

Chris Smith, LMCIT Risk Management Attorney
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csmith@lmc.org

See Section II.C.2, *Risks that must be specifically underwritten*.

Unfortunately, it's not always possible for cities to hire a private contractor to handle the fireworks display. Sometimes the only feasible option is for the city to put on the display itself, using city staff and volunteers. In this situation, LMCIT can by endorsement provide the needed liability coverage, provided the city has adequately trained staff and a safe location for the display and meets the State Fire Marshal's requirements for operator certification and fireworks display safety. Cities should contact LMCIT as early as possible to allow the underwriting staff enough time to evaluate whether LMCIT will be able to provide the requested coverage.

H. Independent contractors

Independent contractors are not covered parties under the city's LMCIT liability coverage. The only exceptions are independent contractors acting in the administrative capacity of medical director or medical advisor to the city ambulance service and independent contractors serving as a member of, or representing the city as a member of, a committee, subcommittee, board, or commission.

Cities need to be concerned about a contractor's liability coverage. LMCIT strongly encourages cities to make sure that every contractor has liability insurance, which is typically in the form of a commercial general liability (CGL) policy. LMCIT recommends the city attempt to get the city named as an additional insured on the contractor's policy.

If certain types of law enforcement contracts and some other types of non-professional service contracts are arranged in a manner that adequately reduces the city's liability exposure, cities can potentially reduce their LMCIT municipal liability coverage premium. Because of this, cities should carefully review all contracts and requests for additional insureds with the city's legal counsel and through LMCIT's Contract Review Service.

LMCIT's Contract Review Service is a free program that helps guard member cities against common contract liability exposures by identifying defense and indemnification language that may be problematic. Advice and recommendations are provided to help ensure contracted activities fall within the scope of LMCIT coverages. This service does not replace the services of city attorneys. Review can be as broad or as narrow as needed to respond to the city's concerns and protect the city's interests.

I. Joint powers entities

A joint powers entity is not a covered party on the city's LMCIT liability coverage unless special arrangements have been made. Cities must ensure that any joint powers entity in which they participate has liability coverage.

RELEVANT LINKS:

[Minn. Stat. § 471.59.](#)

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

Contact Chris Smith to
evaluate joint powers
agreements.

Chris Smith, LMCIT Risk
Management Attorney:
csmith@lmc.org
651.281.1269

If not, the city can be left with a coverage gap if it is sued because of something the joint powers board did or if a personal injury or property damage arises from the activities of the joint powers entity. LMCIT makes available two ways in which coverage can be provided for a joint powers entity and its members.

1. Definition

A joint powers entity is an operating entity created by two or more governmental units entering into an agreement as provided by statute for the joint exercise of governmental powers. The agreement is deemed to create a joint powers entity if it establishes a board with the effective power to do any of the following, regardless of what the specific consent of the constituent governmental units may also require:

- To receive and expend funds.
- To enter contracts.
- To hire employees.
- To purchase or otherwise acquire and hold real or personal property.
- To sue or be sued.

In evaluating whether a joint powers agreement creates a joint powers entity, it is important to review what the agreement does, not just what it is called. For example, most mutual aid agreements simply say that each city agrees to provide specified assistance to the other under specified circumstances. This situation does not usually involve a joint managing board with the kinds of powers to enter into contracts, hire employees, and so on. Thus, it would not be considered a joint powers entity for coverage purposes (keep in mind, though, that LMCIT has reviewed joint powers agreements that were titled mutual aid agreements, but which did create a joint powers entity).

In situations that involve a pure mutual aid agreement or other type of agreement that does not create a joint powers entity, the city does not need to take any special action to have coverage for liability claims arising out of activities under these kinds of agreements. The city's LMCIT liability coverage will cover claims arising from activities pursuant to that agreement.

2. Obtaining coverage

There are two ways in which LMCIT can provide coverage for a joint powers entity and its members.

RELEVANT LINKS:

Reimer v. City of Crookston, 421 F.3d 673, (8th Circ., Aug. 30, 2005).

Minn. Stat. § 471.59.

- The usual practice is for LMCIT to issue a separate liability coverage document to the joint powers entity. Covered parties includes the entity itself; its officers and employees; the political subdivisions who are members of the joint powers entity; and the officers and employees of those political subdivisions. The idea is to get all the liability coverage for the entity's activities in one place, so that everyone who might be sued because of the entity's activities is covered in the same place.
- The second less common option is to add the coverage for the joint entity to one of the individual city's coverages. This might make sense, for example, if the relationship between the member cities is such that one city controls the joint entity's activities and decision making. If the member cities prefer, LMCIT can provide the coverage this way, by naming the joint powers entity as a covered party on one of the constituent city's policies. However, it's important to understand that if only one city is assuming the coverage for the joint powers entity, any claims related to the joint powers' activities will affect the one city's experience, deductibles, and premium.

It would not make sense to add the joint entity to *both* member cities' coverages. That would result in duplicate coverage and create the potential for the kind of conflicts among defendants that members of a joint powers entity should try to avoid.

In those cases when governmental entities in other states are acting on behalf of a joint powers entity who is an LMCIT member, the out-of-state entity will be considered a covered party by LMCIT only if allowed by pooling or insurance laws of the other state.

3. Coverage limits

A 2005 federal court decision, *Reimer v. City of Crookston*, created a concern that liability arising from a joint powers entity's activities could exceed the then statutory tort cap of \$1 million. In that case, the Court said a claimant could make a claim against each political subdivision that was a member of the joint powers entity, for damages caused by the joint powers entity's activities. The Court also ruled that a claimant could "stack" the statutory liability limits of each member, effectively multiplying the statutory tort caps by the number of members in the joint powers entity.

In response to *Reimer*, the League of Minnesota Cities, in cooperation with other local government organizations, was successful in getting the state legislature to address the concerns caused by this decision. The state legislature amended the joint powers law by adding two provisions.

RELEVANT LINKS:

[Minn. Stat. § 466.04.](#)

See Section II.D, *Coverage limits* and Section II.D.3, *Purchasing higher liability limits*.

- A governmental unit is liable for the acts or omissions of another governmental unit in a joint venture or joint enterprise only if it has so agreed in writing.
- Governmental units operating together under the Joint Powers Act, and any joint boards created thereunder, are a single governmental unit. The total liability for the governmental units and any joint board may not exceed the limits on liability for a single governmental unit.

The risk of liability for the activities of a joint powers entity is now no greater than the risk of liability for a single political subdivision acting alone. A city, however, will still be separately liable for its own independent acts or omissions that are not related to the actions of the joint powers entity.

In addition to these provisions, part of the legislation that addressed the “limit stacking” problem like that exhibited in *Reimer* was to amend the municipal tort law to increase the tort caps, which today stands at \$500,000 per claimant and \$1.5 million per occurrence.

It is important to keep in mind there is still a risk of liability above the tort caps because some types of claims are not governed by the statutory liability limits, such as a federal civil rights claim. For this reason, LMCIT’s liability coverage provides a higher limit of \$2 million per occurrence for both a joint powers entity and an individual city. There could still be the risk of liability above this limit, which is why it’s important for one city or cities cooperating as a joint powers entity to consider carrying the LMCIT excess liability coverage.

4. Overlooked joint powers entities

If a joint powers entity is inadvertently overlooked for purposes of liability coverage, LMCIT makes available a limited amount of retroactive coverage issued to any joint powers entity of which the city is a member and which does not already have coverage in its own name. This coverage carries the same retroactive date and the same inception date as the city's own coverage. It will then protect the joint powers entity, its member political subdivisions, and their respective officers and employees for claims arising from the joint entity's activities, including claims that have already been made at the time the coverage is issued. In effect, this provision lets cities put in place, after the fact, the kind of coverage that should have been in place originally for the joint powers entity's activities.

There are two important limitations on the retroactive coverage.

RELEVANT LINKS:

See Section II.D, *Coverage limits*.

- Retroactive coverage for joint powers entity liability carries a \$200,000 annual aggregate limit, including defense costs. By contrast, standard LMCIT coverage provides a \$2 million per occurrence limit for most claims, regardless of the number of claims per year. And for most claims, that \$2 million per occurrence limit applies only to damages; defense costs are in addition to the limit.
- The premium for the retroactive joint powers entity liability coverage is higher than LMCIT's standard rates for many joint powers exposures.

J. Land use and special risk litigation

Litigation relating to a city's land use regulation decisions, development and redevelopment activities, franchising, city enterprise operations, or debt obligations can be very expensive. For a city that's hit with this kind of litigation, the legal costs can be a significant financial burden. For this reason, LMCIT has created a specialized approach to cover these types of litigation.

Compared to conventional liability insurance, a key difference of the LMCIT coverage is that litigation relating to these types of special litigation risks is covered regardless of whether the litigation includes a claim for damages.

1. Coverage terms

LMCIT provides coverage for five broad classes of land use and special risk litigation, which is known as Coverage D in the LMCIT liability coverage document.

- *Land use regulation.* Any litigation relating to the city's regulation of the use of land or real property or the application or interpretation of a land use, zoning, subdivision, or similar ordinance or regulation.
- *Development.* Any litigation relating to the city's participation in or financing of any housing, development, or redevelopment project.
- *Franchising.* Any litigation relating to the granting, refusal, interpretation, or enforcement of any franchise, ordinance, permit, license, or other mechanism through which the city authorizes or regulates parties other than the city, regarding the provision of telecommunications, electricity, gas, heat, sewage treatment or refuse collection within the city.
- *Enterprise operations.* Any litigation relating to a city's authority to engage in enterprise operations. "Enterprise operation" means any arrangement under which the city offers goods or services for a fee, such as utilities, telecommunications services, or similar things.
- *City debt obligations.* Any litigation relating to bonds, notes, financing certificates, lease-purchase agreements, or other similar debt instruments or financial obligations proposed, guaranteed, approved, issued, or entered by the city.

RELEVANT LINKS:

Under the land use and special risk litigation coverage, the following types of litigation are excluded.

- *Physical takings*. Litigation that seeks only compensation or other relief for an actual or alleged physical occupation, invasion, or use of property by the city.
- *Special assessments*. Litigation that seeks only reduction or invalidation of a special assessment.
- *Negligent inspection*. Litigation that seeks only compensation for damages based on the city's actual or alleged negligent inspection or enforcement of the state building code or the state plumbing, electrical, fire, or similar state codes.
- *Contractual obligations*. Litigation that seeks only amounts owed pursuant to the explicit terms of any contractual obligation, including but not limited to any city debt obligations.
- *Ordinary land use enforcement*. Litigation which was initiated by the city to enforce a land use regulation, and which does not involve a challenge to the constitutionality or interpretation of the regulation.
- *Criminal prosecution*. Criminal prosecutions by the city.
- *Other covered parties*. Litigation brought by LMCIT or the city against any other covered party.
- *City bankruptcy*. Litigation that arises from or is related to the actual, pending, or threatened bankruptcy of the city.
- *Pollution*. Litigation that makes only a pollution claim.
- *Unaffected property*. Litigation brought by an LMCIT member against a regulatory entity when that member's own property is not affected.

The land use and special risk litigation coverage applies to the following types of litigation costs.

- Costs for legal counsel selected jointly by the city and LMCIT to represent the city.
- Necessary legal fees for counsel to represent the city which the city incurs prior to reporting the litigation to LMCIT (these fees are covered at 50 percent).
- Necessary litigation expenses other than legal fees.
- Most damages the city is required to pay.
- Supplementary payments, including up to \$200,000 of statutory attorney's fees.

Most money damages that might be awarded against the city are covered as well. This specifically includes two types of damages that are frequently excluded under conventional liability insurance policies:

RELEVANT LINKS:

- Awards of attorney’s fees in federal civil rights or state human rights actions.
- “Temporary taking” damages; inverse condemnation damages awarded for the claimant’s loss of use of property prior to the time that a land use regulation has been ruled by a court to be unconstitutional as a “taking” of property.

The following types of monetary damages that might be awarded against the city are not covered:

- Exemplary or punitive damages or attorney’s fees awarded against a city officer or employee, unless he or she was acting within his/her duties and not guilty of malfeasance, willful neglect of duty, or bad faith.
- Fines or penalties.
- The cost of complying with an injunction or similar order.
- Repayment of any taxes, assessments, fees, or other charges that the city wrongfully collected, or any interest on that repayment.
- Amounts paid for the permanent acquisition of property or property rights, or for the right to permanently enforce a land use regulation or restriction.
- Amounts owed pursuant to the explicit terms of any contractual obligation, including but not limited to city debt obligations.
- With respect to any litigation relating to city debt obligations, any profit, advantage or remuneration to which the covered party was not legally entitled.

2. Coverage limits, co-pays and deductibles

There is a \$1 million annual aggregate limit for land use and special risk litigation claims. Coverage for litigation costs is based on a sliding scale and on whether members participate in the land use incentive program. (For litigation between LMCIT members, the coverage pays only one-half of the percentages described below, subject to a \$500,000 maximum.)

See Section II.D, *Coverage limits*.

[Land Use Incentive Program](#)

Coverage for members participating in land use incentive program	Coverage for members not participating in land use incentive program
<ul style="list-style-type: none"> • 100% of first \$25,000 • 85% of next \$225,000 • 60% of amounts above \$250,000 • 50% of necessary legal fees members incur prior to reporting litigation to LMCIT • \$1 million annual aggregate limit 	<ul style="list-style-type: none"> • 85% of first \$250,000 • 60% of amounts above \$250,000 • 50% of necessary legal fees members incur prior to reporting litigation to LMCIT • \$1 million annual aggregate limit

RELEVANT LINKS:

If the city’s liability coverage is written with a deductible, the deductible is applied to the percentage of the costs that would otherwise be paid by LMCIT. The city’s co-pay amounts (that is, the percentages of litigation costs and damages for which the city is responsible, as outlined above) do not count toward satisfying the city’s deductible.

For example, if the litigation costs on a case are \$75,000, and the city carries a \$10,000 deductible, the city’s share of the \$75,000 is determined as follows:

	Members participating in land use incentive program	Members not participating in land use incentive program
LMCIT’s share	\$57,500 (100% of the first \$25,000 plus 85% of the next \$225,000, less the \$10,000 deductible)	\$53,750 (85% of the first \$250,000, less the \$10,000 deductible)
City’s share	\$17,500 (15% of the amount in excess of \$25,000, plus the \$10,000 deductible)	\$21,250 (15% of the first \$250,000, plus the \$10,000 deductible)

In calculating whether the aggregate limit has been met, city co-payments are not included, but city deductible obligations are. For example, for a city that qualifies for the land use incentive, a city would have to incur total litigation costs of \$1,556,250 to exhaust the \$1 million aggregate. For a city that does not qualify for the incentive, a city would have to incur total litigation costs of \$1,562,500 to exhaust the \$1 million aggregate limit. In either case, if the city’s coverage was subject to a \$25,000 deductible, the maximum amount LMCIT would pay is \$975,000.

3. Litigation procedures

Coverage for land use and special risk litigation is triggered when the litigation is first filed or served on the city. Litigation counsel is selected by agreement between the city and LMCIT. Decisions on settlement and strategy are also made by agreement, in consultation with the attorney the city and LMCIT have agreed to retain.

a. When to report litigation

Coverage for land use regulation, development, franchising, enterprise authority, or city debt obligation disputes is triggered when the litigation is first filed or served on the city. Cities should report the litigation to LMCIT immediately upon filing or being served with the summons and complaint that formally commences the litigation.

RELEVANT LINKS:

If the city is the plaintiff, the matter should be reported to LMCIT before the litigation is commenced, or as soon as the city becomes aware its ordinance's constitutionality or interpretation is being challenged. Litigation must be reported to LMCIT no later than one year after the litigation commences for coverage to apply.

Even if there is the likelihood of litigation, LMCIT encourages cities to report it before the litigation is formally commenced. While general legal advice from the city attorney is not normally considered part of the litigation costs, it is possible the city could incur some litigation-related costs in anticipation of the litigation. If the city incurs litigation costs before reporting the actual or anticipated litigation to LMCIT, those costs will be reimbursed at 50 percent.

b. Selection of counsel

Litigation counsel is selected by agreement between the city and LMCIT. If in some unusual circumstance an agreement cannot be met, LMCIT will give the city a list of five qualified attorneys who are experienced in that type of litigation. The city then can select any of the five.

Except in very unusual circumstances, the city's own city attorney will not be appointed to represent the city in the covered litigation. LMCIT takes this approach because the city attorney has often been intimately involved in providing legal advice to the city about how to handle the situation. If the city attorney was selected to represent the city in the litigation, it is conceivable the attorney could become involved in having to defend his or her own recommendations, and to some degree the city might lose the benefit of an independent, detached evaluation of the strengths and weakness of the case.

c. Litigation management and strategy

Decisions on settlement and strategy are made by agreement of the city and LMCIT, in consultation with the attorney the city and LMCIT have agreed to retain. Neither LMCIT nor the city has the authority to agree to a settlement without the other's consent.

This collaborative decision-making process reflects the nature of this type of litigation. Unlike the tort claims that conventional insurance policies are designed to cover, the issues in this kind of litigation are often not just a matter of whether and how much money damages the city owes. The real issues at stake may be questions like whether a permit is issued, a financing package approved or a franchise granted – things which involve local policy issues and which may require legislative or other official action by the city council.

RELEVANT LINKS:

LMC information memo,
[Liquor Licensing and Regulation](#).

[Comparison of Dram Shop and Social Host Liquor Liability](#).

See Section II.C.2, *Risks that must be specifically underwritten*.

Contact your LMCIT underwriter for an application to obtain a quote for liquor liability coverage.
651.281.1200
800.925.1122.

Find a pre-approved vendor in the [LMCIT Alcohol Awareness Brochure](#).

See Section II.D.3, *Purchasing higher liability limits*.

At the same time, it's important to keep in mind the funds used to pay LMCIT's share of the costs are really the joint property of all LMCIT member cities. Those other member cities are entitled to know that their funds aren't being wasted on frivolous disputes or in pointlessly prolonging litigation in which the city has little chance of prevailing. Involving both the city and LMCIT in the decision-making process is a means of trying to balance those potentially competing interests. The cost-sharing provisions are incorporated in the coverage for much the same reason.

K. Liquor liability

When alcohol is sold, whether by the city or some other entity, there should be liquor liability (dram shop) coverage in place. The greatest possibility for liability is sale of alcohol to an obviously intoxicated person. Illegal sales can also include after-hours sales, sales to minors, and furnishing alcohol to minors. Even if the sale of alcohol is not involved, Minnesota law still provides liability for persons who illegally furnish alcoholic beverages.

In addition to specific alcohol-related liability, there is also potential liability for negligence related to the use of alcohol. There could be possible injury or damage if a city or group did not provide adequate maintenance, supervision, or security when alcohol is used.

1. LMCIT coverage for city-related liquor liability

The LMCIT liability coverage contains an exclusion for liquor liability, but optional coverage can be provided under a separate, standalone covenant. The coverage is available for off-sale municipal liquor stores, on-sale municipal liquor stores, and special event liquor or beer sales by an organization that is an instrumentality of a member city, including cities that do not operate a municipal liquor store.

a. Eligibility

Members are required to demonstrate annual server training has been completed as a condition of coverage. The training must be obtained by a training vendor pre-approved by LMCIT.

b. Coverage limits and deductibles

Cities can choose limits of either \$500,000 per occurrence / \$500,000 annual aggregate or \$1 million per occurrence / \$1 million annual aggregate. Higher limits can also be provided through the LMCIT excess liability coverage.

RELEVANT LINKS:

[Minn. Stat. § 340A.603.](#)

[Minn. Stat. § 340A.409.](#)

For cities that carry the LMCIT excess liability coverage, the excess coverage does not automatically apply to liquor liability. The excess coverage can on request be endorsed to apply to liquor liability for an additional charge.

c. Coverage terms

The LMCIT liquor liability coverage provides coverage for the liquor liability exposure. Coverage is on an occurrence basis. The city and the city's officers, employees, and volunteers are all covered parties.

Each premise at which liquor sales are conducted must be specifically scheduled on the declarations page or by endorsement for coverage to apply. Similarly, the coverage will not apply to any liquor, beer, or wine sales at city-sponsored special events unless that event has been specifically scheduled. This includes both sales by an organization such as a fire relief association under a temporary license or sales by the municipal liquor store at a temporary off-premises location.

Rates are based on the gross receipts of the municipal liquor store or licensee. There is a simple 10 percent debit that applies if the city has had a liquor liability claim within the past 5 years.

If the renewal date of the city's municipal liability coverage is different from the inception date of the liquor liability coverage, the initial liquor liability coverage can be issued for a short term to coordinate the renewal dates.

d. Selecting limits

There's no easy or infallible rule for deciding how much coverage is adequate for a municipal liquor store. No matter what coverage limits the city buys, it's possible to imagine a situation in which it won't be enough. Ultimately the city council needs to exercise its own judgment in deciding how much coverage to carry. LMCIT recommends that any city with a municipal liquor store carry limits of at least \$500,000, but cities should strongly consider higher limits of \$1 million or more.

While LMCIT can't give the city a definite answer for how much is enough, cities should note that if it has a municipal liquor store, it must meet the same statutory financial responsibility requirements as a private liquor licensee. In general, the statute requires liquor sellers to have the following liquor liability insurance limits. LMCIT's liquor liability coverage meets these requirements.

- \$50,000 of coverage because of bodily injury to any one person in any one occurrence;
- \$100,000 because of bodily injury to two or more persons in any one occurrence;
- \$10,000 because of injury to or destruction of property of others in any one occurrence;

RELEVANT LINKS:

- \$50,000 for loss of means of support of any one person in any one occurrence;
- \$100,000 for loss of means of support of two or more persons in any one occurrence;
- \$50,000 for other pecuniary loss of any one person in any one occurrence; and
- \$100,000 for other pecuniary loss of two or more persons in any one occurrence.

If the insurance policy includes an annual aggregate policy limit, that annual limit must be at least \$300,000. The statutes do allow a liquor seller to post a surety bond with the same limits or to self-insure by depositing at least \$100,000 with the state treasurer, but these options are seldom used.

The limits noted above are the minimum limits the city must have, but they are not the limits on how much the city can be sued for or held liability for. If the city's liability on a liquor liability claim exceeds its coverage, the city is still on the hook for the excess. Ultimately, it will come from the city's general fund or from the city's taxpayers.

This is an important difference between a municipal liquor store and a private liquor vendor. If a private liquor seller is found liable for damages that exceed his or her insurance and assets, the seller can declare bankruptcy and that's pretty much the end of the matter. The injured party simply doesn't recover the excess damages.

A private liquor licensee might decide the reasonable thing to do is to incorporate the business, keep minimal assets in the corporation, and minimize premium costs by buying minimum insurance limits. The private licensee would simply hand over the keys and walk away if liability should exceed the insurance. Effectively, it's the injured party that bears the risk that the private licensee's insurance limits aren't enough.

The city doesn't have that option. The taxpayers bear the risk if the city's liquor liability coverage limits aren't enough to cover its liability. Thus, a coverage limit that might seem a reasonable business decision for a private licensee may be very inadequate for a city with a municipal liquor store.

2. Coverage for other groups' or individuals' liquor liability

The city should consider many coverage-related issues in those cases when beer and liquor sales take place at a special event where the city does not sponsor it but the event is held on city property, and when the city contracts with an alcohol vendor.

See Section III.T, *Special events*.

RELEVANT LINKS:

[Minn. Stat. § 340A.409.](#)

See LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII, for more special event loss control recommendations.

[Minn. Stat. § 340A.418](#) and [Minn. Stat. § 340A.419.](#)

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 \(TULIP\)](#).

See Section III.T, *Special events*.

a. **Require liquor liability coverage for special events not sponsored by the city**

Even though Minnesota statutes state that the liquor liability insurance requirements do not apply to licensees who establish by affidavit any one of the following, cities should still strongly consider requiring the vendor or individual to obtain coverage.

- They are on-sale 3.2 percent malt liquor licensees with sales of less than \$25,000 in the preceding year.
- They are off-sale 3.2 percent malt liquor licensees with sales of less than \$50,000 in the preceding year.
- They are on-sale wine licensees with sales of less than \$25,000 in the preceding year.
- They are temporary wine licensees.
- They are wholesalers who donate to an organization for a wine tasting conducted under Minn. Stat. §§ 340A.418 or 340A.419.

When thinking about the insurance requirement for liquor or beer sales and whether to require it if an event is held on city property, the city will want to consider:

- As a matter of public policy, it is arguably desirable to have coverage available to make sure that an injured party is compensated if an illegal beer or wine sale caused the injury.
- It's not just the organization running the beer garden that can be sued. The individuals who tend the bar and sell the beer could also be sued as individuals.

In addition to making sure liability coverage is in effect, the city should also consider making a couple other coverage provisions. First, make sure the liquor liability coverage applies to the city premises location. Most companies require a vendor to notify them if alcohol will be sold somewhere other than its normal place of operation. Second, the city should have general liability coverage itself and require groups that are using city facilities to have general liability coverage. If an organized group does not have liability coverage, there is a greater risk to the city of being the target of a negligence claim or lawsuit.

b. **Transfer risk if the city contracts with an alcohol vendor**

If the city contracts with an alcohol vendor, the liability should rest with the vendor and therefore the agreement should have a hold harmless and indemnification provision.

RELEVANT LINKS:

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

See Section III.U,
Volunteers.

This provision would ensure the vendor defend and pay for any claim against the city related to the sale of alcohol by the vendor.

If a community group serves the alcohol in a social host setting, cities may require a representative to sign a hold harmless and indemnification provision. In an organized group, such as a nonprofit corporation, a representative can bind the group for the indemnification. If it is not an organized group but a group such as a wedding reception or snowmobile club, a representative cannot bind the individuals in the group to a hold harmless provision if an individual was injured.

Cities should talk to their city attorney when developing written agreements and contracts. LMCIT will review defense and indemnification provisions free of charge to help protect the city's interests.

If the city hires an alcohol vendor or allows a vendor to sell alcohol on city premises, another protection would be to have the city be named as an additional insured on the vendor's liquor liability insurance policy. The city should also consider being named as an additional insured on a general liability insurance policy of a group serving alcohol on city premises. This means the city would be covered automatically under the other party's policy and would not depend upon any interpretation of language in any agreement.

If the city requires this, it should ask for a copy of the certificate of insurance showing the city was named as an additional insured. There have been cases where a party agreed to do this but never contacted its insurance company.

Generally, cities do not require the additional insured status if their only contact with the alcohol sales is that they license the seller. The city's risk is remote in that type of situation.

L. Medical payments

Many cities carry premises medical coverage. Premises medical coverage provides a relatively small amount of coverage for medical expenses to anyone whom may be injured by a condition on city-owned property. This is no-fault coverage which means the injured person receives the benefit without having to show the injury resulted from the city's negligence. The coverage limits are \$2,500 per person and \$10,000 per occurrence. Essentially it is meant to cover medical costs that an individual might otherwise be responsible for under the deductible on his or her health coverage.

Some question whether there is a valid purpose for cities to pay these funds in situations when the city is not legally liable. Others argue the payments provide a simple and inexpensive way to possibly head off what might turn into a more expensive liability claim. LMCIT therefore gives the city the option to delete this coverage if it's not wanted.

RELEVANT LINKS:

[Minn. Stat. § 13D.](#)

[Minn. Stat. § 13D.06.](#)

[Minn. Stat. § 13D.06.](#)

See Section II.C.1, *Liability not covered.*

M. Open meeting law and bankruptcy lawsuits

Coverage for open meeting law (OML) and bankruptcy lawsuits is automatically issued to any member that has LMCIT liability coverage. It is called defense cost reimbursement coverage and provides defense protection to city officials that may be accused of violating the OML or to city officials involved in a city bankruptcy lawsuit.

The reason LMCIT provides this coverage is because it recognizes that defending an OML charge can cost a city official a lot of money, that many OML violations are inadvertent and some may even occur on an attorney's advice, and that it's easy to make an accusation of an OML violation which can then force a city official to expend significant sums on defense regardless of the merits of the allegation.

Defense costs are often the most significant financial consequence of OML lawsuits. The statutory penalty of \$300 might be relatively minor, but defense costs can easily run to thousands of dollars. And those costs are incurred whether the official is ultimately found to have violated the law. Sometimes, too, the threat of litigation could be used as a tactic to intimidate or coerce councilmembers in some cases. LMCIT assumes that most councilmembers try in good faith to comply with the law, but sometimes even best faith efforts are not enough to head off an OML lawsuit.

One might ask why public funds should be used to pay for someone who violated the OML and whether that encourages city officials to violate the law. The law clearly defines penalties for violating the law. A violation carries a \$300 civil penalty; potential loss of office for repeated violations; and possibly an order to pay the plaintiff's attorneys' fees if the court finds the individual intended to violate the law. If a city official must pay the defense costs, the real monetary penalty to the individual can be many times greater than the penalty the legislature provides in the statute. The amount of defense costs may not have much relation to how serious the violation was.

Regarding the city bankruptcy exposure, claims which arise from or relate to a city bankruptcy is excluded from the LMCIT liability coverage. The goal of this is that in the unlikely event that a city declared bankruptcy, the exclusion would avoid a situation where the city's creditors could turn the city's LMCIT liability coverage into an additional asset in the bankruptcy by using this kind of backdoor approach.

At the same time, though, LMCIT wants to make sure individual city officials have some protection in these circumstances. Therefore, the defense cost reimbursement coverage provides defense costs to city officials for these types of claims.

RELEVANT LINKS:

It's important to note, however, that coverage is excluded for independent contractors' activities related to a city bankruptcy and that are representing the city as a member of a committee, board, or commission.

1. Covered parties

Any elected or appointed official or employee of the city is covered. Excluded from the coverage, unless specifically named in the coverage document, are officials or employees of a utilities commission, port authority, HRA, EDA, redevelopment authority, municipal power or gas agency, hospital or nursing home board, airport commission, or joint powers board.

2. Coverage limits and terms

The most LMCIT will reimburse any one city official for defense costs commenced during the coverage term is \$50,000, regardless of the number of suits or the number of actual alleged violations. It covers defense costs incurred by the city official in defending two types of lawsuits:

- An OML lawsuit.
- A lawsuit against a city official that arises from the actual, pending, or threatened bankruptcy of the city.

There is also an aggregate limit of \$250,000. This is the most LMCIT will pay for defense costs for all the city's officials for lawsuits commenced within the coverage term.

The coverage protects a city official who is accused of attending not only an illegal meeting of the city council but the meeting of some other board or commission as well. For example, suppose a city official is accused of violating the OML at a meeting of a joint powers board the official serves on. The city's OML coverage would apply to that charge, but it would not pay for defending the other members of the board. Unless the joint powers board has OML coverage itself, the other members would only be covered if their own cities have OML defense coverage.

This coverage will not cover any legal costs the city might incur if the city itself were somehow made party to the OML or city bankruptcy litigation; unless, of course, it was part of a suit that included a covered claim for damages. It will also not reimburse to the official any fine or penalty for violating the OML or any award that orders the city official to pay for the opposing party's attorney's fees in an OML lawsuit.

The coverage is triggered when an OML or city bankruptcy lawsuit is served on the city official. If a lawsuit is filed during the term of the agreement, the city official needs to immediately notify LMCIT of the litigation. The city official retains the ability to select a lawyer of his or her choosing.

RELEVANT LINKS:

See Section II.C.2, *Risks that must be specifically underwritten* and Section III.I, *Joint powers entities*.

See Section III.D, *Employees' activities in outside organizations* and LMC information memo, *Police Department Management and Liability Issues*, Section IV.B, *Off-duty employment (moonlighting)*.

See Section II.C.1, *Liability not covered*.

See Section II.D.1, *LMCIT primary liability limits*.

The defense cost reimbursement coverage does not pay the legal costs on the city official's behalf. Instead, LMCIT will reimburse the city official for defense costs to a maximum of \$50,000 after the official has incurred those costs. The city official remains responsible for paying the defense attorney, as well as any costs beyond the \$50,000 limit.

The city official retains control of the litigation and decides, among other things, what attorney to hire, whether to settle or compromise the litigation, and whether to appeal.

N. Police

The basic LMCIT liability coverage contains no general exclusions for claims arising out of law enforcement activities, but there are three specific situations where coverage is excluded.

First, there is an exclusion for damages arising out of detention facilities intended and regularly used for confinement of persons for periods longer than 30 days. Contact LMCIT if the city is involved in this type of operation.

Second, if the city is involved in a joint powers police or task force operation, it's very important coverage is specifically addressed for that operation. The LMCIT liability coverage contains an exclusion for claims arising out of the activities of a joint powers entity but coverage can be provided.

Third, an officer acting outside of his or her capacity as a city employee is not a covered party for purposes of the LMCIT liability coverage.

O. Pollution

There is a broad exclusion in the LMCIT liability coverage for any pollution claims, but there are a few limited exceptions.

A pollution claim includes any claims for damages arising out of the actual, alleged, or threatened existence, discharge, dispersal, seepage, migration, release or escape of pollutants. Pollutants are defined as any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

The LMCIT liability coverage includes an exception for "limited contamination liability claims." There is a \$3 million annual aggregate for the following types of claims:

RELEVANT LINKS:

- Any claim for damages arising out of pesticide or herbicide application operations.
- Any claim for damages which resulted from a sudden occurrence which took place on or after the city's retroactive date and prior to the expiration date of the city's coverage, and which was caused by an actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants; or arises from the accidental rupture, backup, or overflow of the city's sanitary sewer, storm sewer, or water supply systems.
- Any lead claim or asbestos claim, unless the actual, alleged, or threatened discharge, dispersal, release, escape, use, distribution, or handling of lead or asbestos took place at or from any landfill, dump, or other site or location presently or formerly used by or for the city or others for the handling, storage, disposal, processing or treatment of pollutants.
- Any excavation and dredging claim.
- Any mold claim.
- Any organic pathogen claim.
- Any claim for damages arising out of heat, smoke, or fumes from a hostile fire or controlled burn. A hostile fire is a fire which becomes uncontrollable or breaks out from where it was intended to be.

The term sudden occurrence means an accident or a related series of accidents where the release of pollutants may have resulted and for which begin and end within 72 hours. In the case of a related series of accidents, the sudden occurrence is considered to have taken place when the first accident took place. The only exception is if the city's sanitary sewer backs up into a building. Each incident is considered a separate sudden occurrence.

P. Public official's liability

There is no general exclusion in the LMCIT liability coverage for acts or errors and omission of public officials.

Q. Separate city boards and commissions

Statutes and some charters allow cities to create independent administrative boards to manage certain city operations. Utility commissions and hospital boards are common examples. Other statutes allow cities to create separate public corporations for certain purposes, such as a port authority, HRA, and EDA. The statutes generally give these boards and authorities full power to manage the activities for which they are responsible, including the authority to purchase the appropriate liability, property, and other coverages needed for those activities.

If the city has one or more of the following, it needs to ensure there is adequate coverage for the board's or commission's activities:

RELEVANT LINKS:

- Gas, electrical, or steam utilities commission.
- Port authority, HRA, EDA, municipal redevelopment authority, or similar agency.
- Municipal power or gas agency.
- Airport board or commission.
- Hospital, nursing home, or medical clinic board or commission.

Different types of boards and commissions pose different kinds of coverage issues and problems. Here are some of the issues, questions, and problems that arise with some of the more common types of independent city boards and commissions.

1. Port authority, HRA, or EDA

An HRA, EDA, and port authority are legally separate political subdivisions. These are not covered automatically under the city's LMCIT liability coverage. This is true even if the councilmembers themselves also make up the board of the political subdivision. Unless the city has specifically indicated these entities are to be covered, a claim against one of these political subdivisions would not be covered. The city would also not be covered for claims against the city which arise from the activities of these entities.

LMCIT offers two ways to provide coverage for the activities of an HRA, EDA, or port authority. One is having the EDA, HRA, or port authority named as an additional covered party on the city's coverage. The other is to have separate coverage issued to the EDA, HRA, or port authority in its own name.

a. Additional covered party on city's coverage

Cities choosing this approach should keep in mind that since these entities are separate political subdivisions, theoretically a claimant could collect up to the \$1.5 million statutory liability limit from both the city and the EDA, HRA, or port authority if both were involved in a single claim. Since the LMCIT liability coverage limits are \$2 million per occurrence regardless of the number of defendants, there is some additional protection but there is a possibility that the combined liability of the city and the entity could exceed the limit. One way to address this risk is to obtain the LMCIT excess liability coverage.

b. Separate coverage

Under this option, LMCIT will automatically name the city as a covered party on the entity's policy, and the city's coverage will be endorsed to make the city's coverage apply as excess over the entity's coverage.

[Minn. Stat. § 466.04.](#)

See Section II.D.1, *LMCIT primary liability limits.*

See Section II.D.3, *Purchasing higher liability limits.*

RELEVANT LINKS:

This effectively makes the entity's coverage primary for both the city and the entity while at the same time making the city's coverage available as excess in case the combined liability exceeds the limits of the entity's coverage.

If an HRA, EDA, or port authority decides to purchase coverage from a private insurer, the city and the entity need to review a few questions to assure adequate coverage. Remember, LMCIT does not automatically provide coverage to the city for claims arising from these entities' activities.

Following are some of the key questions to consider.

- What type of coverage is being provided to the city and the board?
- Is the coverage as broad as provided by LMCIT?
- Is public officials' errors and omissions coverage included?
- Does it cover employment-related liability?
- Does it cover defense costs on litigation related to land use regulation or development which don't involve damage claims?
- Is the city named as an additional insured on the entity's board or commission policy? If the city isn't covered under the entity's policy and hasn't added coverage under the city's own LMCIT coverage, there's no coverage anywhere if the city gets sued because of some activities of the HRA, EDA, or port authority. LMCIT can add coverage for this risk.

The LMCIT liability coverage is designed to provide as much coverage as possible under one covenant, and to effectively coordinate coverages to eliminate most of the potential gaps in coverage. If the city needs to address a coverage gap that's left by an HRA, EDA, or port authority's private insurance, contact LMCIT. In most cases LMCIT should be able to fill such gaps, though there may be a premium charge to do so.

2. Gas, electrical, or steam utility commission

Gas, electrical, or steam utility commissions or agencies are not covered automatically under the city's LMCIT liability coverage. This is true even if the councilmembers also serve as the utilities commission. Unless the city has specifically indicated these entities are to be covered, a claim against one of these entities would not be covered. The city would also not be covered for claims arising from the activities of these entities.

In most cases LMCIT can provide the needed coverage for these entities' activities either by adding the board or authority onto the city's policy or by issuing separate coverage to the board or authority itself.

a. Additional covered party on city's coverage

Unlike an HRA, EDA or port authority, a utilities commission is normally not a separate political subdivision or separate corporation.

RELEVANT LINKS:

See Section III.Q.1.a,
*Additional covered party on
city's coverage.*

Thus, there normally is not the same problem with diluting limits that arises if a city HRA, EDA or port authority is added as a covered party under the city's LMCIT coverage.

However, there are very few utilities commissions created under city charters which are in fact separate political subdivisions. For these few cases, the coverage issues are the same as those that arise with an HRA, EDA or port authority.

b. Separate coverage

If separate LMCIT coverage is issued to a utilities commission for the utilities operations, that covenant responds to claims arising out of the utilities operations, regardless of whether the claim names the city, the commission, or any city or commission officers or employees as defendants.

If the utilities commission chooses to purchase coverage separately from a private insurer, the city and the utilities commission need to carefully review the arrangements to assure adequate coverage. Remember that LMCIT does not automatically provide coverage to the city for these activities. If the utilities commission purchases separate private insurance, the city can't just assume the city's LMCIT liability coverage will protect the city and fill any gaps that the utilities commission's insurance leaves. Here are some important questions to consider about separate private insurance.

- What type of coverage is being provided?
- Is the coverage as broad as provided by LMCIT?
- Is public officials' errors and omissions coverage included?
- Does it cover employment-related liability?
- Does it cover claims for failure to supply utilities?
- Does the carrier understand the city and the utilities commission aren't two separate legal entities?

One possible way the city could clarify the last question is by having the private carrier issue the coverage in the name of, for example, "City of Mosquito Heights, dba Mosquito Heights Utilities Commission." Another solution might be for the carrier to simply name the city as a covered party. The important thing is to make sure that the carrier is covering the liability arising from the utilities operations.

If the private carrier won't agree to cover everyone who might be the target of a claim arising from the utilities commission's activities, or if the utilities commission's private insurance leaves other gaps, contact LMCIT. In most cases LMCIT should be able to fill such gaps, though there may be a premium charge to do so.

RELEVANT LINKS:

See Section III.A, *Airports*.

See Section III.I, *Joint powers entities*.

See Section III.A, *Airports*.

3. Airport board or commission

The city's basic LMCIT liability coverage does not cover claims for bodily injury, property damage, or personal injury arising from airport operations. However, for most city airports, the city's LMCIT liability coverage can be endorsed to cover this airport liability exposure. The cost is typically comparable to purchasing airport liability coverage from a private specialty insurer.

The city's LMCIT liability coverage does cover other types of liability claims that might arise from airport operations including claims other than bodily injury, property damage, or personal injury. This is true whether the airport is managed by a separate board or directly by the council. If the city decides to cover these kinds of airport liability exposures through LMCIT, members of the airport board or commission will be automatically covered. The airport board will be covered for claims related to errors and omissions and employment-related liability; these boards do not have to be specially listed as a covered party.

Airports are often set up as a joint powers entity which the city runs in cooperation with one or more other cities and/or counties. The city's LMCIT liability coverage will not automatically cover claims – either bodily injury, property damage, personal injury, or errors and omissions claims - arising from the operations of a joint powers airport. However, a joint powers board or entity with at least one city member is itself eligible to purchase liability coverage through LMCIT, including the LMCIT airport liability coverage.

If the city chooses to purchase airport liability coverage from a private specialty carrier, it's important to review that insurance coverage carefully. Remember that the basic LMCIT coverage will not cover any bodily injury, property damage, or personal injury claims relating to airport operations. In other words, if the private insurance doesn't cover them, the city doesn't have any coverage. This is true regardless of whom that claim is brought against, whether it be against the airport board, the city, the city council, or any individual officer or employee.

4. Hospital, nursing home, or medical clinic board or commission

Specialty liability coverage is needed for city hospital, nursing home, or clinic operations, since LMCIT does not provide or offer the professional malpractice coverages that hospitals, nursing homes, and clinics need. The city's LMCIT liability coverage excludes coverage for bodily injury, property damage, or personal injury arising out of hospital, nursing home or clinic operations. The professional liability of physicians, nurses, pharmacists, and dentists is also excluded.

RELEVANT LINKS:

[Minn. Stat. § 453.52.](#)

LMC information memo,
[LMCIT Eligibility Requirements.](#)

See Section III.R.2, *No-fault sewer backup coverage.*

[Sanitary Sewer Incentive Program.](#)

See Section III.R.2, *No-fault sewer backup coverage.*

The city's LMCIT liability coverage does, however, cover other types of liability claims that might arise from city hospital, nursing home, or clinic operations. This is true whether the hospital, nursing home, or clinic is managed by a separate board or directly by the council. If there is a separate managing board, the members of that city board are automatically covered parties under the city's liability coverage. These boards do not need to be specifically named as covered parties in the declarations. One very important exposure LMCIT covers is employment-related liability claims arising from these activities.

5. Municipal power or gas agency

The statutes provide that a municipal power agency or municipal gas agency is legally a separate political subdivision and municipal corporation created by agreement between or among two or more cities. Thus, these organizations have some characteristics both of political subdivisions and of joint powers entities.

Any city that participates in a municipal power or gas agency should make sure the agency does have appropriate liability coverage. The city's own LMCIT liability coverage does not cover claims arising from the activities of a municipal power or gas agency. As a special purpose political subdivision, a municipal power or gas agency is eligible to become a member of LMCIT and obtain coverage.

R. Sewer backups

Liability coverage for sewer backups is a standard feature of the LMCIT liability coverage. There are no specific exclusions for claims arising out of sewer backups for which the city is negligent in causing. LMCIT offers no-fault sewer backup coverage as an extra cost option to those cities who want to provide coverage to property owners irrespective of whether the backup was caused by city negligence.

1. Coverage limits and deductibles

A mandatory deductible of \$2,500 per occurrence applies to all liability claims for sanitary sewer backups caused by city negligence, unless the city participates in LMCIT's sanitary sewer incentive program. Cities using a higher deductible on their liability coverage are not affected by this; cities using an aggregate limit are only impacted if the aggregate limit is reached and the maintenance deductible is less than \$2,500; and cities using the LMCIT no-fault sewer backup coverage automatically meet the criteria to avoid the mandatory minimum deductible.

RELEVANT LINKS:

[Sanitary Sewer Incentive Program.](#)

See [LMCIT Sanitary Sewer Backup Incentive Questionnaire.](#)

To qualify for the sanitary sewer backup incentive, cities must complete a sanitary sewer system questionnaire and return it to LMCIT. If a city can confirm it meets the criteria, it will not be subject to the higher mandatory deductible. A city may certify they meet the criteria at any time. If qualification occurs midterm, LMCIT will issue an endorsement removing the minimum deductible.

2. No-fault sewer backup coverage

As an option, no-fault sewer backup coverage is available for members that meet certain underwriting criteria. The optional coverage comes with an additional charge and will reimburse a property owner for cleanup costs and damages resulting from a city sewer backup or from a city water main break, irrespective of whether the backup was caused by city negligence.

The no-fault sewer backup coverage option is intended to:

- Reduce health hazards by encouraging property owners to cleanup backups as quickly as possible.
- Reduce the frequency and severity of sewer backup lawsuits (i.e., property owners may be less inclined to sue if they receive conciliatory treatment at the time of the backup).
- Give cities a way to address the sticky political problems that can arise when a property owner learns the city and LMCIT won't reimburse for sewer backup damages because the city wasn't negligent and therefore not legally liable.

Many cities and their citizens may find this coverage option to be a helpful tool. However, it's also important to realize it's not a complete solution to sewer backup problems, and not every possible backup will be covered.

One may wonder whether it is considered a gift of public funds to pay for damages the city isn't legally liable for. The legal basis for this coverage is that it helps reduce health hazards by encouraging prompt cleanups. That's clearly a public purpose and in the public interest.

Also, the law and facts surrounding most sewer backup claims are rarely clear. There's virtually always a way that a claimant's attorney can make some type of argument for city liability. Having this coverage in place should help eliminate the need to spend public funds on litigation costs in many of these cases.

a. Coverage terms

The no-fault coverage will reimburse the property owner for sewer backup damages or water main breaks, regardless of whether the city was legally liable, if the following conditions are met:

RELEVANT LINKS:

LMC information memo,
[National Flood Insurance Program.](#)

[42 U.S.C. §§ 5121-5206.](#)

- The sewer backup resulted from a condition in the city’s sewer system.
- The sewer backup was not the result of an obstruction or other condition in sewer pipes or lines which are not part of the city’s sewer system or which are not owned or maintained by the city.
- The water main break damage to property of others was not caused by city negligence.
- The sewer backup or water main break was not caused by or related to an excluded incident.
- The date of the occurrence giving rise to the claim for sewer backup or water main damages must be on or after the retroactive date shown on the city’s endorsement.

The no-fault coverage will not pay for any damages or expenses which are or would be covered under a National Flood Insurance Program (NFIP) flood insurance policy, whether such insurance is in effect; or for any costs which the property owner has been reimbursed or is eligible to be reimbursed by any homeowners’ or other property insurance.

Following are other incidents that are specifically excluded under the no-fault coverage:

- Any weather-related or other event which has been declared by the President of the United States to be a major disaster pursuant to the Stafford Act.
- Any interruption in the electric power supply to the city’s sewer system or to any city sewer lift station which continues for more than 72 hours.
- Rainfall or precipitation which exceeds any of the following amounts:
 - 2.0 inches in a 1 hour period; or
 - 2.5 inches in a 3-hour period; or
 - 3.0 inches in a 6-hour period; or
 - 3.5 inches in a 12-hour period; or
 - 4.0 inches in a 24-hour period; or
 - 4.5 inches in a 72-hour period; or
 - 5.5 inches in a 168-hour period.

RELEVANT LINKS:

See Section III.R, *Sewer backups*.

LMC information memo, *Experience Rating in LMCIT's Liability and Workers' Compensation Premiums*.

b. Coverage limits

The basic limit for sewer backups is \$10,000 per building per year, regardless of the number of occurrences or the number of claimants. The city also has options to purchase higher limits of \$25,000 or \$40,000 per building. For purposes of the limit, a structure or group of structures that is served by a single connection to the city's sewer system is considered a single building.

Only true no-fault claims are counted toward the limit. Claims for damages caused by city negligence, for which the city would be legally liable in any case and for which would be covered under the standard LMCIT liability coverage, are not charged against that limit.

The basic limit for water main breaks is \$10,000 to any claimant, with the option to purchase higher limits of \$25,000 or \$40,000 per building. LMCIT will not pay more than \$250,000 for water main break damage resulting from any single occurrence. All water main breaks which occur during any period of 72 consecutive hours is deemed to result from a single occurrence.

c. Premium costs

The no-fault sewer backup premium charge is based on a per sewer connection basis as follow.

\$10,000 limit	\$1.79 per connection manual rate
\$25,000 limit	\$2.11 per connection manual rate
\$40,000 limit	\$2.63 per connection manual rate

The coverage also includes an experience-rating component. Members that have incurred no losses under this coverage within a three-year rating period receive a 10 percent credit. Members that have incurred losses within the rating period at a per-connection frequency that is higher than the LMCIT program average receive a 10 percent debit.

d. Eligibility

To be eligible for the no-fault sewer backup coverage, the city must meet these underwriting criteria:

- The city must have a policy and practice of inspecting and cleaning its sewer lines on a reasonable schedule.
- If there are any existing problems in the city's system which have caused backups in the past or are likely to cause backups, the city must have and be implementing a plan to address those problems.
- The city must have a system and the ability to respond promptly to backups or other sewer problems at any time of the day or week.

RELEVANT LINKS:

For assistance in developing sewer policies, practices, and schedules, please see the [Sanitary Sewer Toolkit: A Guide for Maintenance Policies and Procedure](#).

- The city must have in place an appropriate program to minimize storm water inflow and infiltration.
- The city must have in place a system to maintain records of routine sewer cleaning and maintenance, and of any reported problems and responses.

The goal of these criteria is to focus on reasonableness rather than on creating specific standards. The intent isn't to set an arbitrary requirement that sewers be inspected and cleaned every six months, every three years, or every five years. What makes sense in one city with some older and sometimes sagging clay lines probably wouldn't make sense in a city with newer plastic lines, and vice versa. From LMCIT's standpoint, the real concern is that the city has considered its own situation and developed policies, practices, and schedules that make sense for its own situation.

e. Applying for no-fault sewer backup coverage

Cities interested in applying for the no-fault sewer backup coverage should first contact LMCIT. If the city qualifies for coverage, LMCIT will send the city a formal quote. If the city decides to purchase the coverage, the city council must then pass a formal resolution making the no-fault sewer backup protection part of the agreement between the city and the sewer customer. Once LMCIT receives a copy of the resolution, coverage can be bound.

LMCIT requires a resolution because the coverage is really a contract between the city and the sewer user. In other words, the basis for the no-fault payments to the property owner would be the contract between the city and the sewer user. The idea is that by paying their sewer bill, the sewer user is purchasing not just sewer services but also the right to be reimbursed for certain specified sewer backup costs and damages.

f. Discontinuing no-fault sewer backup coverage

If the city decides to discontinue coverage sometime in the future, make sure the city or its agent notifies LMCIT. The council should also formally rescind the resolution that made the no-fault sewer backup protection part of the agreement between the city and the sewer customer. The city should also notify its sewer users that the coverage was discontinued.

S. Skate parks

The LMCIT liability coverage applies to claims arising out of skate park operations. However, due to the various types of skate park configurations and the various exposures presented by them, coverage is only provided if certain loss control practices are in place. The coverage and premium charge will also vary based on the type of skate park facility, which is for coverage purposes identified as either a tier 1 or tier 2 skate park.

RELEVANT LINKS:

See LMC information memo, [Park and Recreation Loss Control Guide](#) for more loss control recommendations.

1. Tier 1 skate parks

Tier 1 skate parks have features 48 inches or less in height, pyramids 6 feet or less in height, and bowls 6 feet or less in depth. No additional premium is charged for this type of skate park.

LMCIT requires the following loss control practices for tier 1 parks:

- Skaters must wear personal protective equipment such as a helmet, flexible wrist guards or gloves, elbow and knee pads, and proper shoes.
- Facility rules and safety guidelines must be posted in a conspicuous location.
- Periodic security inspections must be conducted by city personnel (law enforcement, park and recreation supervisor, etc.) to ensure skate park rules are being observed.
- Any skate park feature, including bowls or pyramids, that are 48 inches or higher must have a safety guardrail on the back or corner to help prevent falls.
- Skaters must be prohibited from bringing in their own ramps, handrails, or other structures that could be used to perform stunts.
- There must be documentation of a formal maintenance program for the skate park. The frequency of maintenance inspections will depend upon the hours of operation, facility use and park features.
- Maintenance and inspection documentation must show that the structural integrity of each feature and the skate park overall is inspected frequently.
- All skate park features must be in fixed positions (not portable).
- An accident report must be completed by a city employee upon report of any accident or injury occurring at the facility.
- Competitions must be restricted to only those sponsoring organizations that are able to provide separate insurance coverage and a contract holding the city harmless and indemnified.

2. Tier 2 skate parks

Tier 2 skate parks have features greater than 48 inches in height, pyramids greater than 6 feet in height, and bowls greater than 6 feet in depth.

Tier 2 skate parks that comply with LMCIT's loss control practices are charged a premium of \$500 to \$1,000 per feature or structure with a minimum premium of \$2,500 and a maximum premium of \$7,500. A city that has not implemented the loss control guidelines for tier 2 skate parks are charged a premium of \$1,000 to \$2,000 per feature with a minimum premium of \$5,000 and a maximum premium of \$15,000.

To be eligible for the lower premium charge on tier 2 skate parks, LMCIT requires all tier 1 practices as well as the following:

RELEVANT LINKS:

See LMC information memo, [Park and Recreation Loss Control Guide](#) for more loss control recommendations.

See Section III.K, *Liquor liability*, for more information about city-related liquor liability and individuals and groups that serve or sell alcohol on city property.

See LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII, for more specific loss control recommendations for special events.

See Section II.C, *Liability exclusions*.

- Fencing and/or other appropriate security measures must be in place to control access to the park when it is not in operation.
- Adequate, on-site supervision of the park must be present during all park operating hours.
- Waivers of liability must be signed by park users if they are age 18 or older. For park users under age 18, waivers must be signed by the user's parent or legal guardian.
- An accident report must be completed by a city employee assigned to the skate park following any accident or injury occurring at the facility.

T. Special events

Many Minnesota communities either sponsor or let others use city property for different kinds of special events, such as community festivals, weddings, walkathons, dances, fundraisers, ski races, and centennial celebrations.

The LMCIT liability coverage does not have a general exclusion for special events that are sponsored by the city, but there are exclusions that apply for specific types of events or activities. The two questions that are addressed in this section are what kinds of activities are and are not covered and which individuals and organizations are and are not covered.

There are a different set of questions to ask when the city allows a private party to hold an event on city property where there is no city involvement. The question becomes whether the city should require private groups to have insurance and whether insurance should only be required from certain groups depending on its criteria.

1. Events sponsored by the city

a. Coverage terms

The LMCIT liability coverage applies to the city's activities connected with a special event unless that activity itself is excluded. The most important exclusions to be aware of are these:

- 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.

RELEVANT LINKS:

See Section III.K, *Liquor liability* and Section III.G, *Fireworks*.

See Section III.H, *Independent contractors*.

LMC information memo, [Making and Managing City Contracts](#), Section IV.A, *Defense and indemnification*.

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

See Section III.Q, *Separate city boards and commissions*.

See Section III.U, *Volunteers*.

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

When hiring an independent contractor, the city should require that the contractor agree in the contract to hold the city harmless and indemnify the city for liability arising out of the activity.

The contract should also require the contractor to carry appropriate types and limits of liability coverage, and to name the city as an additional insured on that insurance policy. Using a contractor to run some of these riskier activities has another advantage besides solving the liability coverage question. It also means, hopefully, the city has experienced professionals involved who know how to run these operations safely.

Cities should talk to their city attorney when developing written agreements and contracts. LMCIT will review defense and indemnification provisions free of charge to help protect the city's interests.

b. Covered parties

For events that are run and sponsored by the city, LMCIT covers not only the city itself but also the city's officers, employees, and individual volunteers and volunteer organizations acting on behalf of the city. There is also coverage for city boards, commission, and committees, but there are some exceptions.

If a volunteer organization like the Lion's Club were to provide volunteer assistance to the city in putting on a festival, LMCIT's coverage would cover both the individuals and the organization for any claims arising out of their activities as city volunteers. This assumes, of course, that the claim isn't one of the types that are excluded (e.g., a claim arising out of running a demolition derby).

RELEVANT LINKS:

What can get confusing is determining whether an individual volunteer or volunteer organization is acting on behalf of the city. In many cases, the organization itself is really the entity that's in charge of the event. A common approach is to form a nonprofit festival corporation whose only function is to operate an annual festival. This kind of organization will obviously rely heavily on volunteers, but these volunteers would not be acting on behalf of the city. Rather, they would presumably be acting on behalf of the organization that is sponsoring, organizing, and operating the festival. Since these people are not acting on behalf of the city, the LMCIT coverage would not provide them any protection.

In many cities, of course, those community-minded people who tend to get involved in city government are the same ones who tend to be willing to donate their time to a civic organization putting on a community festival. One problem is that it can get difficult to determine on whose behalf the individual is acting at any time.

One suggestion for dealing with this problem is for the city council simply to pass a resolution declaring the festival to be a city function and the organization putting it on to be city volunteers. The idea is that this is a way to bring the whole event under the city's liability coverage, but it's not that simple.

From the standpoint of LMCIT coverage, the real question is whether this is, in fact, a city event or merely in the name. Certainly, a resolution declaring the council's intent would be one element in making that determination, but simply saying it doesn't make it so. Other factors to look at include:

- How the decisions relating to the special event are made and by whom.
- How and in whose name contracts are let.
- How the funds are handled, if the money from the event is run through the city treasury and disbursed by city check with council approval, it looks more like a city operation. If another group has its own bank account in which it places and expends money, it doesn't really look like a city operation.

Even with an event organized and run by a private group, the city will often have some sort of role. For example:

- The group may conduct some activities in a city park or use city streets.
- City police may be involved in traffic or crowd control.
- The city recreation department might be responsible for organizing some recreational activities as part of a festival organized by a community group.

RELEVANT LINKS:

LMCIT's [Tenant User Liability Insurance Program \(TULIP\)](#) provides access to low-cost liability coverage for the city's "tenant users".

See LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII, for more specific loss control recommendations for special events.

Where the city has this kind of involvement in a privately-sponsored event, the LMCIT coverage will apply to suits and claims against the city, the city's officers and employees, and the city's volunteers, if those claims arise out of acts on behalf of the city.

LMCIT would not provide any protection for the organization or the individuals responsible for organizing a privately-sponsored event, even if those individuals or organizations were sued because of something the city did. If LMCIT ended up covering some city liability which arose out of some negligent action of the private group, LMCIT would very likely try to recover those damages from that group and/or the responsible individuals.

c. Planning considerations

It can be very confusing to try and sort out who is and who is not responsible for an event after an injury has occurred or damage has been done. The time to address these questions is in advance. Here are some things to keep in mind when the event is in the planning stage.

(1) Think about who is running the show

If the event is truly a city-sponsored event, it should be run like a city event with the council ultimately in charge. On the other hand, if a private group is going to organize and run the event, make sure they understand how and where the city's liability coverage does and doesn't apply. If they use city facilities, encourage them to obtain liability insurance of their own and to name the city as an additional insured as a condition of using the city facilities.

(2) Think about hazardous activities

Liquor and beer sales, motor vehicle events, rodeos, rides, and fireworks are the major examples of hazardous activities. If any proposed activity seems to involve any kind of hazard, it's always best to speak with LMCIT or the city's insurance agent about liability coverage in advance. Regardless of who is sponsoring the event, ask these key questions:

- Is there adequate liability coverage for the event?
- Does that liability coverage protect everyone who might get sued because of the event?

RELEVANT LINKS:

Joel Muller, Loss Control
Field Services Manager
jmuller@lmc.org
651-215-4079.
[LMCIT Contract Review
Service.](#)

Chris Smith, LMCIT Risk
Management Attorney:
csmith@lmc.org or
651.281.1269.

See LMC information
memo, *Park and Recreation
Loss Control Guide*, Section
VIII, for more specific loss
control recommendations for
special events.

See Section III.K, *Liquor
liability*.

[LMCIT Contract Review
Service.](#)

Chris Smith, LMCIT Risk
Management Attorney:
csmith@lmc.org or
651.281.1269.

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
\(TULIP\)](#).

(3) Contact LMCIT

LMCIT will help the city and its insurance agent try to identify any potential coverage problems. The LMCIT loss control staff can help review plans for the event and offer suggestions for ways to avoid or minimize risks. LMCIT's attorneys can review draft contracts or permits and offer suggestions on wording indemnification and hold harmless agreements.

2. Events sponsored by private groups

Many cities allow groups to use its facilities for a variety of difference purposes such as weddings, meetings, and athletic events. There are a few questions to consider when determining whether the city should require private groups to have insurance for their event.

a. Insurance requirements

There are three different ways to handle insurance requirements for private groups using city facilities.

(1) Don't require anyone to have insurance

If the city doesn't require insurance coverage from private groups using its facilities, the city can still have rules and conditions to reduce risks. For example:

- Prohibit riskier activities such as the sale of alcohol.
- Require renter to provide maintenance and security during their event.
- Have individuals sign waivers for particularly dangerous activities such as rock climbing.
- Have organizations sign indemnification agreements to shift the liability to them.

Cities should talk to their city attorney when developing written agreements and contracts. LMCIT will review defense and indemnification provisions free of charge to help protect the city's interests.

(2) Require all to have insurance

If all private groups are required to have insurance, the city should be named as an additional insured on the renter's coverage certificate. In addition, the agreement between the private group and the city should defend and indemnify the city for any third-party claims. This is the best way to transfer risks to the private groups and its insurance company.

RELEVANT LINKS:

LMCIT's [Tenant User Liability Insurance Program \(TULIP\)](#) provides access to low-cost liability coverage for the city's "tenant users".

See LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII, for more specific loss control recommendations for special events.

(3) Require some to have insurance

When the cost to obtain insurance is too burdensome for the private group renting the city's facility, the city can have pre-established criteria as to the types of organizations or events where insurance will be required.

It is important to establish the criteria ahead of time and to treat the organizations fairly and consistently based upon those criteria. If the city doesn't do that, there could be allegations of unequal or discriminatory treatment. Questions to ask when establishing criteria include:

- What type of organization is holding the event? For example, require insurance for public or for-profit organizations.
- What type of event is being held? For example, require insurance for riskier activities such as street fairs, casino shows, or karate meets.
- Is there an admission charge for the event?
- Will children be participating in the event?
- Is the event open or not open to the public?
- How many people are participating in the event? For example, require insurance if there are more than 50 people.
- When will the event be held? For example, require insurance for Friday and Saturday night events.
- What is the length of the event?
- What types of risks are involved? Are there any security issues?
- Are there any risks not covered by the city's liability insurance? For example, rodeos and motor vehicle races are not covered by the city's LMCIT coverage. Require insurance for these types of activities.
- Will there be alcohol at the event? For example, require liquor liability insurance if alcohol will be sold or require general liability insurance if alcohol will be given away.
- Are there any vehicles involved? Will parking be an issue?
- Will there be any valuable materials left on city property for an extended period?

3. Coverage limits

If a private group doesn't have insurance and a claim occurred, the city's liability coverage will apply to the city's activities associated with that event unless that activity is excluded (e.g., motor vehicle races, rodeos, and fireworks displays).

The reason cities may want to consider requiring private groups to purchase private insurance is to assure the city will be protected from claims arising from an event held on city property. When private insurance is purchased, the private group is named as the primary insured and the city is the additional insured.

RELEVANT LINKS:

See Section III.K, *Liquor liability*.

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 \(TULIP\)](#).

See LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII, for more specific loss control recommendations for special events.

LMC information memo, [Park and Recreation Loss Control Guide](#), Section VIII.C.1, Community center programs, use by outside groups, for model community center rental documents.

For example, if a claim were filed for property damage during the private group's event, the claim would be submitted to the private insurance company, not to LMCIT. The claim would therefore not affect the city's loss experience rating, premium rates, dividend amounts, etc.

It is common for cities to require one set amount of insurance coverage for all parties, such as \$1 million. LMCIT recommends a minimum of \$500,000 for liquor liability, but \$1 million is even better. The city can vary the amount required depending upon the type of organization, event, or the criteria established by the city. For example, the city may determine that insurance is not required for a meeting with ten people because there is a probable chance there won't be much risk involved. The city may though require insurance for a wedding reception with alcohol and 100 people.

Private groups may be personally responsible for paying claims for bodily injury or property damage during their event or activity. Private groups have the option of purchasing insurance through their homeowner's insurance (although the policy may be limited and not all claims may be covered), a private insurance carrier, or the Tenant User Liability Insurance Program (TULIP).

TULIP helps 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.

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. The coverage automatically lists the city as an additional insured.

4. Rental agreements for use of city facilities

It is important the city has an application procedure established so they know what type of event will be taking place. If the city has criteria for insurance requirements, they'll need to know whether the group meets the criteria. The city also may have restrictions against events that are excluded from the city's liability insurance coverage, such as rodeos. Having forms and procedures supports consistent and fair treatment of all groups that apply.

It is common in rental agreements to have indemnification agreements where the organization agrees to "hold the city harmless and defend and indemnify the city against any claims related to its use of the city's facilities." These can be used to reinforce the insurance requirements but also can be used when a city does not require insurance. It is important to note that formal organizations will be able to hold the city harmless for damage to the organization's property but they do not have the ability to waive claims from individual members of their group.

RELEVANT LINKS:

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

[Minn. Stat. § 466.](#)

See Section II.A, *Covered parties.*

The defense and indemnification provision means the organization will handle any third-party claims. Organizations that have insurance and assets are going to be able to cover this indemnification agreement.

Cities should talk to their city attorney when developing written agreements and contracts. LMCIT will review defense and indemnification provisions free of charge to help protect the city's interests.

U. Volunteers

City volunteers are protected against tort liability in the same manner as the city's officers and paid employees. The tort liability act protects the city volunteer in two important ways:

- The statute limits the volunteer's maximum liability. The state tort caps are \$500,000 per claimant and \$1.5 million per occurrence.
- The statute 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.

The second provision provides an important protection for volunteers. It essentially means that when a person is performing duties as a city volunteer, the risk of tort liability rests with the city, not the volunteer. The only exception to this duty to defend and indemnify a volunteer is if the volunteer's actions constituted malfeasance, willful neglect of duty, or bad faith. The statutes don't require a city to protect an individual from consequences of his or her own intentional wrongdoing.

For members of LMCIT, volunteers and volunteer organizations are covered parties under the city's LMCIT liability coverage, if they are acting on behalf of the city and volunteering under the city's direction and control. LMCIT coverage responds to claims whether brought against the city, the volunteer, or both.

It's important to keep in mind that not every volunteer who performs a community service is a city volunteer. Individuals often volunteer for a project sponsored by a private organization or other governmental unit. One example is the Minnesota Department of Transportation's Adopt a Highway Program. These individuals perform a community service on their own, without city sponsorship or request.

LMCIT coverage also includes the cost to defend a claim against a volunteer, even if the claim accuses the volunteer of an action that would constitute malfeasance, willful neglect of duty, or bad faith. LMCIT would not cover the damages awarded against the volunteer, however, if it is determined that the volunteer's action did constitute malfeasance, neglect of duty, or bad faith.

RELEVANT LINKS:

For guidance when contracting with railroads, contact Chris Smith, LMCIT Risk Management Attorney
651.281.1269
800.925.1122
csmith@lmc.org

LMCIT Underwriting Department
651.281.1220
800.925.1122

LMCIT Underwriting Department
651.281.1220
800.925.1122

V. Work within railroad crossings

For cities doing work within a railroad crossing, the best practice is for the city to contact the railroad and find out what it will require for the project well before the construction contract is let and before the city releases the bid specifications for the project. The city will then know what the railroad requires and can include the insurance requirements in the specifications and the contract.

Specific insurance requirements may differ depending on the railroad and the type and scope of the project. In most cases though, the railroad will be looking for the following.

1. City coverage

In most cases, the railroad will require the city to meet insurance requirements as a condition of allowing the city to work within the right-of-way. The city will also need to provide a certificate of insurance to the railroad, showing that the required coverages are in place.

2. Limits

Most railroads have standard requirements that they request on all projects, but those requirements are often negotiable. Railroads often require liability limits in excess of a city's LMCIT liability coverage. However, most railroads will agree to reduce the liability limits to match city coverages. If higher limits are required, contact LMCIT and it can generally provide a "laser" endorsement that increases the city's liability coverage limits only for claims arising under this specific contract.

3. Additional insured

The railroad will usually require that it be named as an additional insured on the city's liability coverage.

4. Primary coverage

The railroad may require that the city's coverage be "primary and non-contributory." LMCIT liability coverage is automatically primary for any party that has been added as an additional insured, so no endorsement is needed to meet this requirement.

5. Waiver of subrogation

The railroad may require a "waiver of subrogation" endorsement on the city's liability coverage. The city's underwriter can endorse the city's coverage to waive subrogation for an additional insured.

RELEVANT LINKS:

[ISO endorsement CG 24 17](#)

[Workers' Compensation Reinsurance Association](#)

[LMCIT claim forms, information sheets, and other resources.](#)

6. Railroad contractual liability

The railroad's insurance requirements may include a requirement that the "railroad exclusion" be deleted or may refer to required ISO endorsement CG 24 17. Standard commercial general liability (CGL) policies exclude coverage for construction or demolition operations within 50 feet of a railroad. Unlike standard CGL policies, the LMCIT liability coverage does not exclude work near railroad rights-of-way, so no special endorsement is needed for railroad projects. Since the LMCIT coverage is unusual in this respect and to avoid any confusion, LMCIT will note on the certificate of insurance that it does not have this exclusion.

7. Workers' compensation

The railroad will often require the city to have workers' compensation coverage and may require the city to endorse that coverage to waive subrogation against the railroad. The Workers' Compensation Reinsurance Association (WCRA) requires that LMCIT get their prior approval on a case-by-case basis before issuing a waiver of subrogation endorsement.

8. Railroad protective insurance

The railroad may require purchase of a "railroad protective" insurance policy. As the name suggests, "railroad protective" insurance is a liability policy that is purchased by the city or by the contractor to protect the railroad from liability claims arising from the project. The railroad protective policy provides coverage for general liability, injuries to railroad employees, and damage to the railroad's rolling stock and other real and personal property. Some railroads have standard arrangements in place under which the city or contractor can simply purchase the railroad protective insurance. If so, it can be an attractive option for the city or contractor because the railroad will have already been pre-approved on the coverage form and the cost is typically modest.

9. Contractor insurance

The railroad may require the contractor performing the work to have liability insurance that meets the railroad's specifications. Even if the railroad doesn't require this, it's in the city's interest to require the contractor to have the appropriate insurance. This should be reflected in the project bid specifications and contract.

IV. Filing a liability claim

Claims can be submitted to LMCIT using any of the following methods.

RELEVANT LINKS:

[Submit a claim online.](#)

Email: claims@lmc.org

Fax: 651.281.1297 or
888.234.7839

Mail: 145 University Ave
W, St. Paul MN 55103-2044

Phone: 651.281.1200 or
800.925.1122

- Online
- Email
- Fax
- Mail
- Phone