

Risk Management Policy Adopted to Reflect Member Best Practices

ABAG PLAN recently approved a new Risk Management Policy for reducing member claims in the liability and property pool programs. After four years of strategic planning activities, the ABAG PLAN Board of Directors approved a new Risk Management Policy in May to provide a strong risk management framework for city/town operations. This program also allows members to pick and choose from available financial resources in support of individual activities.

The Risk Management Policy objectives:

- Establishing criteria for admission and continued membership in ABAG PLAN
- Monitoring compliance with criteria and criteria effectiveness
- Providing resources, incentives, and technical expertise to members to assist with implementation.

This new process will effectively identify and analyze risks, establish recommended strategies (best practices), monitor effectiveness, and provide incentives to maintain and improve results.

New Risk Management Strategy Details

The ABAG PLAN Risk Management Policy criteria will govern all aspects of the pooled insurance program. New member criteria will include evaluating an application, loss history, and risk audit (similar to the risk assessments done with each member). Continuing ABAG PLAN membership will be based on implementing and maintaining performance standards, including best practices. These best practices were identified during the membership-wide risk assessment process and reflect member activities.



ABAG PLAN practices in action at the Sewer Summit.



The results of each member's risk management plan will be monitored for compliance using self audits, claim reviews, staff assessments, and

additional risk management assessments conducted by external experts.

Additional financial support for risk management activities is available to assist members with training, inspections, public education, and grants. New flexible program grants can take members beyond meeting the standards. For example, the Program requires members to perform playground equipment inspections. According to ABAG PLAN Risk Manager, Marcus Beverly, "In the past, we were able to assist with inspections, now we can also provide members with funding to replace old or defective

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What to Say When

The choice of words used when talking to possible claimants makes a difference both in the situation and also in settling the claim. Consider the following real life scenario:

After a police officer lost control of his vehicle and drove over the claimant's lush and well-established landscaping, she was discussing the situation with another police officer. When she asked what the City would do to replace her garden, the second officer reportedly remarked, "Well, we don't know the condition of your yard before this happened." This comment was taken as an insult, making it very difficult to discuss additional details of the situation and to complete the claims process.



Communications with potential claimants should:

- Provide instructions about any immediate actions that need to be taken to secure the property
- Explain the steps necessary for filing claims.

If the claimants ask questions about damage evaluation or settlement, employees can simply say the City will refer the matter to a claims examiner who will be happy to handle the claim and address all of the claimant's concerns.

How to handle people in difficult situations is the topic of an ABAG PLAN training course titled "Verbal Judo." According to this course, it is a three-step process:

1. Respond with empathy: "I understand,...it is upsetting to see your garden destroyed."
2. Clarify with questions: "What are you most concerned about at this time?"
3. Provide an answer: "We will provide a claims form for you to file with the City Clerk and will forward your concerns to our claim administrator."

Verbal Judo has been used effectively in many situations. For more information about bringing Verbal Judo training to your jurisdiction, contact Marcus Beverly, Risk Manager at 510-464-7969 or marcusb@abag.ca.gov.



ABAG PLAN Corporation A Pooled Liability Assurance Network

Providing self-insured coverage to cities in the San Francisco Bay Area

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Changes in State Law Impact Claims Filing Process

A change in Government Code Section 910.4 has revised the process for filing a claim against a city, town, or county. In 2003 and 2004, this code section required that the claimant submit a claim against a public entity on the public entity's claim form.

According to ABAG PLAN's attorney, it appears that *only the state* can require claimants to submit a claim form. Based on this, cities should not return a claim that is not on the city claim form.

If you have any questions, please contact your ABAG PLAN claims adjuster.

EVALUATING TASER USE

Taser use has been criticized in the media.

The risk management perspective is noticeably different, examining both the negatives and positives of Taser use. Tasers provide an option for less than lethal force and, as with any tool used by law enforcement, it is necessary to evaluate and re-evaluate the usage guidelines and policies.

ABAG PLAN encourages members to continue to evaluate their policies regarding Taser use. Under consideration are policy revisions and procedures for Taser use including requiring video recording. A recent



"to protect and to serve"

report on tasers issued by the International Association of Chiefs of Police (IACP), titled "Nine

Step Strategy For Effective Deployment," provides other strategies.

According to the IACP, the report is "intended to help law enforcement leadership develop policies, procedures, and training curricula that are responsive and relevant to the needs of the communities they serve." The steps are shown in the column on the right.

ABAG PLAN members are encouraged to continue to track Taser success stories to illustrate the positives, such as these recent incidents in the City of Morgan Hill.

- A 6-2, 220 lb 14 year old wanted to fight the police. The officer told him "If you fight, I will "Taser" you," and directed the laser dot to the boy's chest. He gave up immediately without a fight and without being Tasered.
- An officer chased a wanted parolee and "Tasered" him when he resisted. The device brought the parolee down without a fight and there were no injuries to anyone.

Case studies help to tell the whole story to the media and the public. Having the information to evaluate current practices is key. For more information about ABAG PLAN recommendations on Taser use, please contact Marcus Beverly, Risk Manager at 510/464-7969 or marcusbv@abag.ca.gov.

Excerpt from Nine Step Strategy For Effective Deployment

The following is from the International Association of Chiefs of Police (IACP): The IACP nine-step strategy for deploying Electro-Muscular Disruption Technology (EMDT) should be used to engage departments and communities in a partnership to develop policies and procedures that reflect public safety priorities and provide clear and concise instructions for using this less-lethal force option. For those departments across the country that have already deployed EMDT, we urge retroactive review of the nine-step strategy. This review can provide direction for measuring performance and improving policies, procedures, and training in their existing program.

Step 1: Build the Leadership Team

Build an EMDT Leadership Team with members that can address the host of issues relative to acquisition, costs, policies, training, liability and evaluation.

Step 2: Place EMDT on the use-of-force continuum
Determine placement within the local use-of-force continuum based on an assessment of the technology.

Step 3: Assess the Costs and Benefits of Using EMDT
Include an assessment of the costs for EMDT when making a deployment decision.

Step 4: Identify the roles and responsibilities of staff with respect to the EMDT deployment plan and the use of EMDT.

Step 5: Engage in Community Outreach

Employ an outreach strategy with key stakeholders and the community. Their acceptance of EMDT is essential to successful deployment.

Step 6: Develop Policies and Procedures for EMDT

Write decisions about use, training, reporting requirements, medical evaluations, legal constraints, and other operational considerations as policies and procedures before deployment of EMDT.

Step 7: Create a Comprehensive Training Program for EMDT Deployment.

Create a comprehensive training program that reinforces policies and procedures before deploying EMDT

Step 8: Use a Phased Deployment Approach for EMDT
Adopt a phased deployment approach for EMDT.

Step 9: Assess EMDT Use and Determine Next Steps
Conduct assessments of EMDT use to determine whether further action will improve future use-of-force outcomes.

The complete report is available at www.iacp.org/research/rcdcuttingedgetech.htm.

Solving High Sidewalk Claims Costs

Trip and fall claims impact cities and towns across the United States.

The San Francisco Bay Area is no different, with sidewalk falls as ABAG PLAN's second most frequent claim, and \$4.5 million paid during the past 15 years. Member cities and towns have an opportunity to bring costs down by adopting sidewalk liability ordinances, that make the property owner liable for failure to maintain the sidewalk, a risk management best practice.

Sidewalk liability ordinances are a strong deterrent against claims and lawsuits. A recent article about the benefits of ordinances in Contra Costa County stated that "...the ordinances have been a very strong tool in defending our most frequent lawsuit, and getting major settlement contribution from the fronting property owner."

According to a recent survey, 11 ABAG PLAN members have sidewalk ordinances. However, not all of them require the adjoining landowner to pay for repairs or any resulting claims. Newark and Burlingame, both "Tree Cities," take on the responsibility largely due to maintenance caused by city-planted trees. At least two members require the landowner to pay for repairs even

though they have no specific ordinance, which is allowed under the California Streets and Highways Code Section 5610.

California Codes Streets And Highways Code Section 5610-5618

5610. The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

Sidewalk cont. on page 5

Court Rulings Involving Sidewalk Liability Ordinances

Courts have upheld the ordinances with the following comments.

The appellate court in *Williams v. Foster* told San Jose that if it wanted to pass an ordinance transferring responsibility for injured third party users of sidewalks to the fronting property owner, to do so; the court said such an ordinance would likely be valid.

A 1996 Supreme Court case, *Alcaraz v. Vece*, 39 Cal App 4th 1447, found that fronting property owners are already responsible for their actions that cause damage to the sidewalk and thus, injury to users of that sidewalk. The court stated, "who is in a better position to be aware of dangerous conditions, the fronting property owner that is there every day, or the public entity that must rely on notice from others of a problem?"

On December 16th, 2004, the court of appeal (sixth district) handed down its decision in *Gonzales v. City of San Jose*. The court found that the ordinance was constitutional and not preempted by state law. In doing so, the court stated that property owners are "often in the best position to quickly identify and address potentially dangerous conditions that might occur on the sidewalks." Without such an ordinance imposing liability, landowners would have no incentive to maintain adjacent sidewalks in a safe condition.

In its ruling, the court emphasized that the ordinance did not serve to absolve the city of liability for dangerous conditions on city-owned sidewalks in the event the city created the dangerous condition or knew of its existence and failed to remedy it.

Sidewalk cont. from page 4

Cities do not have to pass an ordinance to ask people to maintain sidewalks. The rest of State law as defined in code Section 5610 spells out a process for repairing and billing the owner if necessary. Your ordinance should define the specific process. Sample ordinances are available on the ABAG website.

Sidewalk Ordinances Are Good Risk Management

Passing an ordinance is good risk management because the homeowner is responsible for repairing the sidewalk and is considered the most able to recognize and respond to a potential hazard. A property owner already has a duty to inspect and maintain the area, so implementing the ordinance does not create an additional burden. An ordinance specifies the homeowner or property owner's



responsibilities. It increases the number of people looking for problems, which helps reduce hazards and is more effective than just the city or town inspecting and maintaining the sidewalk.

Transferring the cost is also appropriate because the person who created the condition is the one paying for maintenance. Additionally, the liability cost is

transferred to property owner's insurance, saving additional city taxes and budget.

ABAG PLAN offers a sidewalk workshop to discuss these risk issues in detail. Conducted by ABAG PLAN's risk manager and an attorney, this seminar is available by contacting Marcus Beverly, Risk Manager, 510-464-7969.

Turn off the Claims for Tap Water

As of 2004, chloramine is used by San Francisco Public Utilities Commission (SFPUC) in Bay Area water

as a disinfectant for both residential and commercial use. The SFPUC services a number of ABAG PLAN members. Recent claims stated that chloramine caused allergies and "picked up" more lead from water pipes. These were rejected as chloramines have been extensively analyzed and no medical evidence supported the claims.

Chloramine is a public water system disinfectant approved by the U.S. Environmental Protection Agency and by the California Department of Health Services. Chloramine is a more effective residual disinfectant than chlorine, and is used extensively in California, the U.S., and around the world for decades. Using chloramine as a residual disinfectant allows compliance with U.S. EPA rules regarding levels of disinfection by-products in drinking water.

For more information, please visit the SFPUC website at www.sfwater.org and the U.S. EPA website www.epa.gov/region09/water/chloramine.html.



Sewer Loss Mitigation Activities: Notes and News

The “Be Sewer Smart” public education campaign is in its second year of helping homeowners and their communities prevent costly sewer backups. Yet, conflicting requirements of various government organizations and regulatory bodies hamper the overall effort to reduce this leading cause of loss in our communities.

To open the dialogue between the various agencies and private sector organizations, ABAG PLAN conducted a half-day sewer summit to address sewer backup prevention challenges. The Sewer Smart Summit fostered conversation between representatives from government, regulatory agencies, and business organizations that influence sewer backup and backflow issues — and

identified resolutions to the conflicts that currently limit prevention efforts.

For more information or to receive copies of handouts, contact Vina Maharaj by email at vinam@abag.ca.gov.

National Recognition

ABAG PLAN recently achieved national recognition for its Sewer Smart Public Education Campaign. Marcus Beverly, ABAG PLAN Risk Manager, accepted the Public Risk Management Association (PRIMA) Achievement Award in the Pool Category at the June annual meeting. This nationwide organization provides practical education and training for public sector risk management practitioners.

Preventing Lawsuits – Traffic Stops and Emergency Services Fees

Several ABAG PLAN members were part of a lawsuit filed in Alameda County against 28 cities, several police departments, and counties. The case concluded with jurisdictions making payments reimbursing emergency response and booking fees as well as attorney fees. This action is a reminder to re-examine policies and procedures regarding traffic violations and driving under the influence arrests.

Arrested for driving under the influence, individuals were billed for emergency response costs and county booking fees under Government Code §53150 et seq. and booking fees under Government Code §29550, respectively. The court found that these DUI events did not meet the extraordinary costs created by an accident or other emergency situations. As a result, this practice caused the cities to violate the general laws of California and the California Constitution.

Claimants demanded relief from the fees, plus any interest or other fees that may have accrued for non-payment,

attorney’s fees, and “debt relief” for other class members (extending backward in time to a point one year before the lodging of this complaint). They also demanded that the City cease collection efforts against class members for the costs claimed by the City.

Claims filed with ABAG PLAN were denied for non-coverage. These incidents involved disputes over monetary sums as restitution, attorneys’ fees or costs and fees, fines, sanctions and penalties. Such items are not covered. Damages were then the members’ responsibilities and responsible for the full amount of restitution.



Applicable Government Code Sections

Government Code §53150 authorizes the public entity to collect fees from “any person who is under the influence of an alcoholic beverage...whose negligent operation of a motor vehicle...proximately causes any incident resulting in an appropriate emergency response.”

Government Code §53156 defines “expense of an emergency response” as reasonable costs in reasonably making an appropriate emergency response to the incident...and shall include the costs of providing police, firefighting, rescue and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident.”

Certificates and Endorsements – What Does It all Mean?

Members’ various mortgage holders, lessors, partners, and others all request verification of coverage from the member (certificate of insurance) and either a loss payee (for property coverage) or additional “insured” (for liability coverage) endorsement. ABAG PLAN provides certificates of insurance, but what are they?

The certificates ABAG PLAN issues are proof of coverage for both the liability and property programs only. They do not include verification of Workers Compensation nor do they extend any rights to the certificate holder.

If the city or town leases equipment or has property loans, such as copiers or a new library, it is common for the lessor or mortgage holder to request “Loss Payee” status on city/town property coverage. This is to protect them in case of loss by including them in any settlement, up to their interest in the property. The endorsement we issue is from our property insurance policy.

Other entities may require “Additional Insured” status on liability coverage. Common examples are use of private property for a festival parking area, firing range, or recreational services. Additional Insured coverage may also be required for public works or construction permits.

ABAG PLAN issues “Additional Covered Party” endorsements since PLAN is not an insurance company and does not use the term “insured” when

defining who is covered in the Memorandum of Coverage (MOC). The endorsement also provides a “separation” clause, this allows for the ABAG PLAN coverage to be primary, and provides for notice of cancellation to the holder.

It is important to note the endorsement provides “blanket” coverage by referring back to the your party’s contractual obligations. In order for this to apply, the city or town **must have a written contract** agreeing to provide coverage to “additional” parties (people other than employees, officials, and volunteers while acting for or on city or town behalf). The contract must also require city or town coverage to be primary for that endorsement provision to be applicable.

Members really appreciate using the unique “request and print your own” certificate and endorsement program on the website. It is currently busy issuing new certificates for the 2005-06 program year with one little hitch – if you have Service Pack 2 for Internet Explorer program, a blank screen will appear instead of your certificate. This is due to enhanced security measures in that update.

ABAG PLAN is developing a new program to work around that issue and we apologize for the delay. If the program doesn’t work, please let us know and request the certificates by email from the website (just down from the print “your own request” button), direct to carolj@abag.ca.gov or by phone at 510-464-7969.

Strange But True Claims

Some might complain our members have too much power to regulate their lives, and that would be true if, as some people apparently believe, they were responsible even for acts of nature. Some recent examples of claims filed against our members:

- ▶ Pine cone fell from city tree and dented claimant’s car – sorry we couldn’t have timed that more conveniently.

- ▶ Dog was bitten by a rattlesnake at dog park – thank goodness in this case it was a “county” rattler, not a city rattler!

- ▶ Tick allegedly crawled on claimant in yoga class – was the beast registered?

- ▶ Rat chewed through car wires while in member parking lot – we must not be feeding them enough if they’re that hungry.

- ▶ And finally, a tale about a jogger who may have gotten his just desserts – after being repeatedly told to stay out of the path of a scheduled bike race, the jogger decided to go into traffic and stuck his arms out to his sides. He knocked three bikes over and in the process was run over and injured. Hope this guy doesn’t decide to attend the Tour de France – the sight of all those bikes in his way would drive him nuts!

2005 - 2006 Meeting Schedule

**All meetings are 10:00 a.m. to 1:00 p.m.
at ABAG's offices unless noted.**

9/8/05

Risk Management Committee
Millbrae

10/12/05

Board of Directors Planning
8:30 a.m. to 4:30 p.m.
TBD

12/13/05

Risk Management Committee
Foster City

1/25/06

Claims Committee

2/22/06

Police Chief Steering Committee

3/15/06

Finance Committee

4/6/06

Risk Management Committee
East Palo Alto

5/3/06

Actuary Committee
10 a.m. to 1:30 p.m.

5/17/06

Executive Committee, ends at 1:30 p.m.

6/7/06

Board of Directors
11:30 a.m. to 4:30 p.m.
TBD

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equipment. This new plan lets members, who meet best practice standards, provide better services to their residents without impacting budgets.”

Changes

The new Program helps members prevent or defend claims by implementing best practices in a number of key areas, such as police, sewer, sidewalk, and playground operations. Application of the best practices could change daily operating procedures for some members. However, for most members, it will not be that different. “It will just make what our members are doing better,” Beverly said.

Members are encouraged to start the process by presenting a risk management policy to their City/Town Council for approval. The policy is a broad statement of support of the members’ risk management efforts. To assist with this and implementation of the best practices, ABAG PLAN offers sample policies and will publish a risk manual on the website in July. Descriptive workshops on the new policies and implementation will be held throughout the region later this year.

Grant Programs for FY 05-06

In addition to grants to implement the Risk Management Standards, members are eligible for the following grant programs upon their completion:

Incentive Grants - up to \$10,000, upon completion of the Standards and recommended best practices.

Police Risk Management - up to \$10,000 for general order review and updates, video cameras, or other technology.

Risk Management Training - up to \$1,000 for conferences or other training sessions.

Sewer Loss Prevention - for public education and first response training.

Defensive Driving - for classes and behind-the-wheel instruction.