

TOOLS for the *New City Councilor*

How Can I Sue Thee? Let Me Count the Ways Municipal Liability for the New City Councilor

One of the early lessons a new city councilor learns is that liabilities—the obligation to pay money to someone for an injury caused by a city officer, employee, or agent—are like potholes: they lurk around every corner. And like potholes, you can't avoid them unless you can see them.

Municipal liability comes in many forms. Here are a few:

- Tort liability, which the dictionary defines a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.
- Civil rights liability, which may include discrimination in any number of forms based on age, race, gender, disability, health or family status, and more.
- Employment liability, for wrongful discharge or discipline of an employee, sometimes involving claims of civil rights violations.
- Auto liability, for damages or injuries caused by a city vehicle.

Should a city be guilty of these acts, caused intentionally or by accident, the costs can be very high.

In medieval times, city-states could not be sued by citizens because of the legal principle of sovereign immunity. The idea was that, "the king can do no wrong." Not only does the king make the law, the thinking used to go, but the king is the law; so, whatever the king does is legal. If the king ran his heavy chariot into a peasant's hay wagon and smashed it, the peasant could not sue because the king is sovereign and immune from liabilities.

As time passed, governments became democratic and leaders become accountable to their constituents. Citizens wanted the government to step up and pay for any wagons smashed by government employees. At the same time, it was recognized that there is a limit to what governments can afford to pay, if they were going to continue to serve all of their citizens. In response to this demand, the United States government passed the Federal Tort Claims Act. Oregon passed the Oregon Tort Claims Act (or "OTCA"). The OTCA applies to all cities in Oregon, and it is basically a limited exception to the idea of sovereign immunity. Citizens can sue the government, but the government has some defenses and there are some caps on the liability.

However, in the case of non-tort claims—employment and civil rights, for example—the damages can go far beyond anything allowed under the Oregon Tort Claims Act.

Since the best claim is the one that never happens, effective risk management is a city's best defense against high cost claims.

Next month – risk management techniques, more about the OTCA, and the assistance that City County Insurance Services (CIS) can provide to its city members. ■



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