

# RMPE 352 Risk Management for Public Entities

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## Chapter 3

### Exposure Identification and Analysis for Public Entities

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### ***Educational Objectives***

1. Describe the appropriate uses of, and give examples of, the types of public entity loss exposures likely to be revealed by each of the following types of public entity documents:
  - a. Risk management documents
  - b. Administrative documents
  - c. Financial documents
  - d. Contracts
  - e. Legal/public notices
  - f. Official proceedings of governing bodies, councils, boards, and committees
  - g. Annual reports
  - h. Ordinances
2. Describe and give examples of distinctive property, liability, personnel, and net income loss exposures that are likely to arise from the following public facilities and activities:
  - a. General governmental operations/administration
  - b. Public-use facilities
  - c. Recreational facilities and services
  - d. Schools
  - e. Regulatory activities
  - f. Health-care facilities
  - g. Streets and roads
  - h. Transportation
  - i. Law enforcement/emergency response
  - j. Utilities
3. Define or describe each of the Key Words and Phrases for this chapter.

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## **Exposure Identification and Analysis for Public Entities**

- ▶ Exposure identification is
  - a systematic process for examining the financial, physical, and human values of an entity
  - Identifying how these values could be impaired by an accident
  - Estimating the consequences that such an accident would have on a public entity or other organization
- ▶ Goal of chapter is for students to be able to identify and analyze the exposures to accidental loss that face almost every public entity

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## Exposure Identification Tools

- ▶ Major categories of documents
  - Risk Management Documents
  - Administrative Documents
  - Financial Documents
  - Contracts
  - Public Notices
  
- ▶ Tools are the same for public and private entities, except for two cases
  - Content of standardized questionnaires must be tailored to loss exposure
  - Public entities generate several kinds of distinctive documents

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## Exposure Identification Tools

- ▶ Risk Management Documents
  - Inspection Checklists
  - Inspection Reports
  - Loss Reports
  - Loss Control Inspection Reports
  - Incident Reports
  - Underwriting Reference Material

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## Exposure Identification Tools

### ▶ Inspection Checklists

- Provide useful information about potential exposures, loss control efforts and emergency planning in the development of contingency planning efforts.
- Can be used
  - By individuals not familiar with facility or operations
  - To ensure that routine inspections are completed and documented
  - To establish that operations are performed safely
  - To provide a benchmark for liability assessment
- When properly used, can document the entity tried to provide a safe work environment – demonstrated duty/standard of care
- Limitation is they are only intended to serve as a guide for an inspection and sometimes don't encourage to look for hazards not on the checklist

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## Exposure Identification Tools

### ▶ Inspection Reports

- Two categories of inspection reports
  - External Inspections
    - Those performed on the activities or facilities of others
    - These include fire code, building code, and health and safety inspections
  - Internal Inspections
    - Those performed on the entity's own premises
    - These include sidewalks, roadways, sewers, playground equipment, etc..
- In performing inspections, entity must ensure
  - That minimum standards are met
  - Defects are noted
  - Corrective action is taken
- Documentation is essential
  - Lack of documentation could be used against public entity

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## Exposure Identification Tools

- ▶ **Loss Reports**
  - Historical summary of losses incurred by the entity provide trends and insights into loss severity and frequency
- ▶ **Loss Control Inspection Reports**
  - Summarize the results of site inspections, analysis of activities, and assessment of exposures.
  - Can be performed internally or externally
- ▶ **Incident Reports**
  - Identify close calls or near-misses, or situations in which an incident has occurred but the party has not filed a claim yet
  - Can serve as an early warning system to reveal trends
- ▶ **Underwriting reference material**
  - AM Best's Municipal Underwriting Guide provides an underwriter's perspective on municipal operations and the potential exposures

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## Exposure Identification Tools

- ▶ **Administrative Documents**
  - Organizational Charts
  - Asset Lists, Fixed Asset Inventories, and Insurance Lists
  - Capital Spending Plans
  - Departmental Records and Reports
  - Project Summaries
  - Purchase Orders
  - Citizen Complaints

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## Exposure Identification Tools

- ▶ **Organizational Charts**
  - Identify structure of the entity and provide insight regarding operations and reporting relationships
  - Help identify responsibilities and authority of boards and commissions and any resulting risk exposures
  - Position descriptions also helpful to identify positions with larger exposures, such as driving, licensing requirements
- ▶ **Asset Lists, Fixed Asset Inventories, and Insurance Lists**
  - Listing of number and types of vehicles, buildings, equipment
  - Buildings and their contents help with valuation
  - Lists should detail the equipment, cost and location

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## Exposure Identification Tools

- ▶ **Capital Spending Plans**
  - Details of multi-year spending plans for an entity's acquisition of long-term assets
  - Important to be in the planning/design phase to engineer out potential exposures
- ▶ **Departmental Records and Reports**
  - Includes accident reports, safety records, inspections
  - Helps identify activities and indicate whether risk management practices have been followed and documented
- ▶ **Project Summaries**
  - Once project starts, project summaries can provide reports on current status and issues of theft, vandalism, or other issues that may impede project

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## Exposure Identification Tools

- ▶ Purchase Orders
  - Can be used to identify purchase of vehicles, equipment and other key material
  - Can help establish replacement costs
  - Should not review all POs, but establish procedures for threshold to notify risk manager
- ▶ Citizen Complaints
  - Pattern of complaints about certain activities or the condition of premises can serve as early warning of potential problem
  - If corrective action is not taken and someone is later injured, the entity may lose an affirmative defense that it lacked prior knowledge of the hazard
  - A complaint log can also show how entity responds to complaints

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## Exposure Identification Tools

- ▶ Financial Documents
  - Budget Documents
  - Financial Statements
  - Revenue Reports
  - Tax Assessment Rolls
  - Audit Reports

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## Exposure Identification Tools

- ▶ **Budget Documents**
  - Useful in identifying where and how an organization allocates funds
  - Show which operations and activities are being funded and identify asset acquisitions
- ▶ **Financial Statements**
  - Helpful for identifying where financial resources of an entity are located
  - For monitoring past or pending losses and the adequacy of current reserving practices
  - Determining entities capacity to fund future losses
  - Provides a measure of the entity's ability to withstand a loss and helps determine whether an entity should be insured or self-insured.

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## Exposure Identification Tools

- ▶ **Revenue Reports**
  - Indicates where public entity obtains its funding
    - Property taxes, sales tax, fees, etc..
    - Usually can help identify potential systemic issues
- ▶ **Tax Assessment Rolls**
  - Helps identify key funding sources from tax revenue
  - What if major employer re-located offices
- ▶ **Audit Reports**
  - Help provide perceived adequacy of resources, pending claims, or other issues that may impact organization financially.

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## Exposure Identification Tools

### ▸ Contracts

- Service Agreements
  - These agreements should transfer liability whenever possible and should be reviewed to ensure that minimum insurance requirements are met
- Leases
  - Entities may be lessee or lessor
  - Should be clear who is responsible for insuring premises, maintenance and how facility is used

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## Exposure Identification Tools

### ▸ Contracts

- Mutual Aid Agreements
  - Agreements in which a fire/police department will provide assistance to neighboring city
  - Should address
    - Responsibility of each party
    - Circumstances when agreement will be invoked
    - Term of agreement
    - How liability will be apportioned in the event of a claim
    - Who has supervisory control
    - How expenses will be reimbursed
    - Circumstances for responding party can return to its own jurisdiction to handle emergency calls
- Labor Contracts
  - Should monitor the number of grievances, WC claims, and employee complaints.
  - Many employment liability claims can start due to contract issues

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## Exposure Identification Tools

- ▶ Legal/Public Notices
  - Can help identify potential loss exposures from public activities
  - Also, not properly noticing agenda items could lead to liability lawsuits for open meeting law violations
- ▶ Official Proceedings of Governing Bodies, Councils, Boards, and Committees
  - Meeting agendas and minutes provide information about new programs, changes in operations, lawsuits, new ordinances, regulations, and contracts.
  - Participation in certain activities may present liability for employees and entity
- ▶ Annual Reports
  - Can be a useful reference, but don't contain detailed information
- ▶ Ordinances
  - Failure to enforce ordinances could expose entity to liability

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## Common Public Sector Exposures

- ▶ Operations/Administration
- ▶ Regulatory Activities
- ▶ Public Use Facilities
- ▶ Healthcare Facilities
- ▶ Streets and Roads
- ▶ Law Enforcement/Emergency Response
- ▶ Utilities

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## Common Public Sector Exposures

- ▶ Operations/Administration
  - Human Resources
  - Vehicles and Equipment
  - Data from Public and Historical Records
  - Communications Equipment
  - Taxes, Money, Securities, and Fees

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## Common Public Sector Exposures

- ▶ Human Resources
  - Personnel most valuable resource of any entity.  
Three main area of loss exposure
    - Key personnel loss from injury, illness, or death of senior manager or elected official
      - Workplace violence and how do you identify employees at risk
    - Net income losses from replacing or retaining staff who suffer serious injury
    - Liability losses from WC claims and employment-based lawsuits (wrongful termination, harassment)

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## Common Public Sector Exposures

- ▶ Vehicles and Equipment
  - Vehicle operation creates liability and property loss exposures, can typically be managed through driver education programs
  - Must evaluate exposure of where vehicles are garaged
  - Must also consider the special types of equipment that entity may operate (Fire trucks, sewer trucks)

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## Common Public Sector Exposures

- ▶ Data from Public and Historical Records
  - Public entities store a significant amount of data in both physical and electronic format
    - Title to property, birth/death certificates, medical records, transcripts, etc..
  - Risk manager should be concerned about loss or breach of data
  - Cyber security is viewed as risk public entities are most concerned
  - How quickly could entity resume operations?

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## Common Public Sector Exposures

- ▶ **Communications Equipment**
  - Communications are essential in the event of an emergency for all types of entities
  - Must consider the following
    - Power supply
    - Antennae
    - Mobile emergency operations center
- ▶ **Taxes, Money, Securities, and Fees**
  - Need to have proper accounting controls to prevent loss through theft and mismanagement

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## Common Public Sector Exposures

- ▶ **Regulatory Activities**
  - **Ordinances**
    - Enactment and enforcement of rules are two most high-risk activities and public entities undertake
    - Must be enforced fairly and must be perceived as fair
    - Many lawsuits arise out of zoning, land-use, and inverse condemnation
  - **Regulatory and Licensing Services**
    - Legal challenges due to issuance or non-issuance of licenses or permits
  - **Inspections**
    - Liability issues if inspections not conducted fairly or challenges to due process rights

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## Common Public Sector Exposures

- ▶ **Public-Use Facilities**
  - Museums
  - Libraries
  - Zoos
  - Stadiums, Convention Centers, and Arenas
  - Historical Properties
  - Community Centers
  - Cemeteries
  
- ▶ Main exposure is property loss, but can also create liability exposures if facilities are not properly maintained
  
- ▶ ADA facility compliance is also an exposure

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## Common Public Sector Exposures

- ▶ **Museums**
  - Concentration of high-value/priceless items
  - Items on loan from other museums
  - Fire and moisture is major concern
- ▶ **Libraries**
  - Rare books, maps and artifacts
  - Must protect collection against fire, natural perils, deterioration, and theft
- ▶ **Zoos**
  - Must protect animals and visitors
  - Plans to evacuate public and protect animals in emergency

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## Common Public Sector Exposures

- ▶ Stadiums, Convention Centers, and Arenas
  - Various types of events held each with a unique liability
  - Security, crowd control, sale of food and alcohol
  - Insurance requirements
- ▶ Historical Properties
  - How to protect, yet maintain historical value
- ▶ Community Centers
  - Facility use agreements are essential
  - Use of candles, selling of alcohol
- ▶ Cemeteries
  - Subject to vandalism
  - Maintenance of the roads and surface areas

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## Common Public Sector Exposures

- ▶ Recreational Facilities and Services
  - Parks and Playgrounds
  - Golf Courses
  - Swimming Pools
  - Waterfront areas
- ▶ Create more and different types of loss exposures for public entities because they are typically always open and unprotected.
- ▶ Programs ran by entity can also create an exposure

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## Common Public Sector Exposures

- ▶ Parks and Playgrounds
  - Parks should be inventoried and records maintained regarding installation and inspections
  - Inspection by a CPSI is recommended
  - Equipment that is age appropriate with proper signage
- ▶ Golf Courses
- ▶ Swimming Pools
  - Lifeguard on duty or unsupervised
  - Chemical usage and pool maintenance
  - Diving boards and water features
- ▶ Waterfront areas
  - Boat launch ramps, marinas, beaches
  - Ensure that facilities are in safe working condition

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## Common Public Sector Exposures

### **Schools**

Schools present a wide array of property, liability, and personnel exposures from buildings, extensive physical plants, recreational programs, play equipment, chemistry laboratories, unsupervised contact with students on field trips, and classroom security. Additional liability exposures are created when schools allow outside groups to use school facilities for meetings and other events.

Net income loss is more likely to take the form of additional expense from an uninsured or underinsured exposure. For example, fire, asbestos removal, or cleanup of chemical contamination may make it necessary to lease portable classrooms or other equipment, or temporarily bus students to another location. As a result of the diverse exposures associated with schools, every aspect of school operation must be studied to assure that all exposures have been identified and are understood and that procedures are in place to deal with them.

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## Common Public Sector Exposures

- ▶ Schools
  - Security
    - Violence against teachers and administrators, students
    - Vandalism
    - School Resource Officers (SRO)
- ▶ Laboratories
  - Must comply with OSHA regulations and Laboratory Standard
  - Must have a chemical hygiene plan and officer
  - Experiment design and know how to deal with chemical spills [http://youtu.be/g6vR0BdRCNY?list=UUXlkr0SRTnZO4\\_QpZozvCCA](http://youtu.be/g6vR0BdRCNY?list=UUXlkr0SRTnZO4_QpZozvCCA)
- ▶ Transportation
  - Commercial drivers license requirements
  - Parents driving privately owned vehicles

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## Common Public Sector Exposures

- ▶ Health–Care Facilities
  - Malpractice
  - Premises liability
  - High–value equipment
  - Patient transport
- ▶ Public entity health care facilities typically treat those without insurance, so net income losses are common due to non payment

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## Common Public Sector Exposures

- ▶ Streets and Roads
  - Roadways in General
  - Roadway Infrastructure
  - Traffic Signals and Street Lights
  - Parking Structures
  - Open Parking

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## Common Public Sector Exposures

- ▶ Roadways in General
  - Roads and streets create a myriad of liability exposures
    - Potholes
    - Cracks and lifts in sidewalks
    - Missing signs
    - Dangerous intersections
  - Who designed and owns road is important for design immunity
- ▶ Roadway Infrastructure
  - Sidewalks, roads, bridges, dams, and non transportation related infrastructure (water mains and sewers underground)
  - Road construction and traffic flow issues (MUTCD)

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## Common Public Sector Exposures

- ▶ Traffic Signals and Street Lights
  - Signals and lights are often damaged and vandalized and must be replaced
- ▶ Parking Structures
  - Physical design, including ADA
  - Damage due to earthquake
- ▶ Open Parking
  - Field parking presents a liability
  - Parking control staff must be trained

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## Common Public Sector Exposures

- ▶ Transportation
  - Public Transportation – p. 122
  - Airports – p. 123
  - Ports and Marine Terminals – p. 124
- ▶ Law Enforcement/Emergency Response
  - Correctional Facilities
    - Must ensure safety of staff and inmates – Valley Fever example
  - Jails
  - Shooting Ranges
    - Environmental issues due to lead contamination
    - Indoor vs. Outdoor issues

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## Common Public Sector Exposures

- ▶ Utilities
  - Water or Sewer Services
  - Pumping and Lift Stations
  - Power Plants
  - Dams
  - Incinerators
  - Landfills

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## Common Public Sector Exposures

- ▶ Water or Sewer Services
  - Specialized operations that require licenses and permits
  - Typically involve the use of high hazard chemicals that may require Process Safety Management Program or Risk Management Plan
  - Sewer back-ups could impact homeowners with public entity responsible.
    - Many entities require check valves on sewer lines
  - Old infrastructure is causing water mains to break
    - UCLA

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## Common Public Sector Exposures

- ▶ **Pumping and Lift Stations**
  - Failure of lift station can cause back-up in sewer system or loss of water supply or pressure
- ▶ **Power Plants**
  - Generation facilities, transmission lines, and equipment
  - In the event of major storm, should have mutual aid agreements in place to help restore power
- ▶ **Dams**
  - Need to be regularly inspected for structural damage
- ▶ **Incinerators**
  - Air emission requirements
- ▶ **Landfills**
  - Concerns regarding hazardous materials