



**NYMIR**

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# It's OUR POLICY

## New York Municipal Insurance Reciprocal



### SAFETY COMMITTEES

#### Why should our municipality start a Safety Committee?

While the cost of claims may be borne by your insurance company, the impact of frequency and/or severity of claims can have an adverse impact on your municipality's insurance premiums for many years. In addition, there can be increased operational costs to a municipality that are not covered by insurance.

Safety committees are a low cost endeavor, taking an objective look at your organizational risk management strategy to avoid accidents and minimize claims. It provides your municipality a proactive means of analyzing damage to property, bodily injury incidents or other claims focusing on what could have been done differently to prevent the loss. The process helps identify ways to improve operational procedures and correct physical hazards in various departments, facilities, roads and other exposures.

#### How does a Safety Committee work?

To be most effective the Committee must focus on two main functions:

**Accident/Incident Review** – How did the incident occur? What could have been done to prevent or minimize the mishap, accident or loss?

**Hazard Identification** – What physical hazards should be corrected? Do operational procedures or work methods need improvement? Do policies need to be reviewed, better enforced or implemented?

#### How is accident/incident/loss review conducted?

A listing of claims is presented at each meeting which could include incidents such as slip and falls on municipal premises, roads and street maintenance claims, vehicle accidents, workplace violence incidents, harassment complaints, or property damage to municipal property or the property of others.

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# NYMIR – Vehicle Breakdown Procedures

Almost all local governments own, maintain and operate motor vehicle fleets that include automobiles, trucks and a variety of over-the-road equipment. With these operations comes the responsibility of safely maintaining the fleet for roadworthy travel. It is vital that municipal fleets be well maintained, inspected and safely operated to reduce the likelihood of accidents or incidents that can lead to injuries to persons or property.

Proper breakdown procedures should be instituted by your fleet manager. These should include equipping your vehicles with proper warning devices, and properly training your drivers on the proper use of such devices should a vehicle or equipment fail while away from the garage. The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (FMCSA) has implemented standard procedures for the emergency signaling for stopped commercial motor vehicles. They are equally adaptable to municipal equipment breakdowns.

First, all municipal vehicles should be equipped with proper warning devices, including on-board flashers and temporary set-up equipment. Best practices include having the vehicle pulled safely off the roadway at the nearest shoulder or other safe pull-off location. When the vehicle or equipment is pulled onto the shoulder, emergency flashers should be engaged. Additional on-board warning devices should also be used when lighting conditions are poor (night-time, poor weather conditions, etc.) to provide illumination of the vehicle to on-coming traffic. Drivers completing the pre-trip vehicle inspection should check the working operation of these on-board lighting systems prior to leaving the garage.

If a driver detects a malfunction with the vehicle, the driver should safely stop the vehicle and engage lighting. Drivers should then look to place, in accordance with the FMCSA regulation 392.22, warning devices at the following locations: (1) approximately 10 feet on the traffic side of the vehicle in the direction of approaching traffic; (2) 100 feet away from the vehicle in the center of the traffic lane or the shoulder of the road occupied by the vehicle in the direction of approaching traffic; and (3) 100 feet away from the vehicle in the direction away from approaching traffic. The FMCSA regulation also calls for these warning devices to be deployed as soon as possible after the stop, but in any event within ten (10) minutes of the initial stop. Note that there are additional rules applicable to the use of warnings when the vehicle/equipment is stopped within 500-feet of a curve, the crest of a hill or other view obstruction.

Appropriate warning devices include, at a minimum, either three bidirectional emergency reflective triangles or six flares (or three liquid burning flares). However, liquid burning flares shall not be carried on any vehicles transporting flammable materials or class 3 hazardous materials. Determine the best devices for your department to utilize, have them in your vehicles, and train staff on their proper use.

Highway Supervisors should also refer to the FMCSA regulation Part 392 for details relating to special circumstances and rules for vehicle breakdown that include liquid-burning flares, residential districts, divided highways, one-way roads and the potential for leaking/flammable materials. The safe and appropriate use of these warning devices will help to clearly identify the vehicle obstacle on the roadway for any and all approaching traffic so that they may safely avoid any incident.



Each department representative discusses the circumstances based on an investigation of the incident, identifying contributing or causal factors which are reviewed by the committee. Ways and means are suggested to prevent or minimize any reoccurrence. This should be an **objective** process with one goal, preventing a reoccurrence with no passing of judgement or blame placing on any staff involved.

### **How is hazard identification conducted?**

Members of the Committee should periodically conduct walkthroughs of various buildings, facilities and grounds to identify any physical hazards that need to be corrected, as well as noting any unsafe practices. The members of the Committee could take part in this on a rotational basis to provide for varied outlooks.

Examples of hazard identification could be:

- damaged sidewalks or stairs that could lead to slip and fall claims
- fire and life safety features in municipal buildings
- security features in buildings
- conditions at playgrounds and recreational areas
- protection of cooking facilities
- housekeeping
- streets and roads work zone safeguards

### **How should the Safety Committee be set up?**

This largely depends on the size of your municipality and number of departments and operational exposures. In any event, it is important that the municipal governing body provide for such a Committee through a board resolution, designating who should be represented on the Committee. Participants can vary widely based on the size of the municipality. A small town or village may have 3-4 staff, while a city or county may have 15-20 and may even have Sub-Safety Committees for certain departments.

Generally speaking, a department head or a designated department representative would sit on the Committee with a representative from the elected body and administration. You may also include representatives from your municipality's insurance agent and insurance carrier. Where appropriate, it is highly recommended that a union representative sit on the Committee along with staff who have exhibited an interest in the safety process. Membership may even be rotational within departments to provide for fresh perspectives. This type of Committee structure provides expertise from all aspects of the municipal operation to provide insight into: 1) how and why an incident occurs; 2) what hazards were identified that contributed to an accident and; 3) subsequently what could or should be done differently to minimize any reoccurrence.

### **How should the Safety Committee meeting be conducted?**

It is important that a Committee chairperson be designated to lead the proceedings and be an individual with recognized authority such as a board member or administrator. The chairperson would ensure that: the agenda is followed; that someone is designated as secretary of the Committee to take accurate minutes; and also make certain that the meeting starts and ends on time by keeping the Committee on point and avoid going off on tangential topics not germane to the proceeding.

### **What should an agenda include?**

- Review of Last Meeting Minutes
- Old Business
- New Business
- Accident/Incident/Claims Review
- Review of any Hazards Identified
- Staff Suggestions
- Recommendations to Administration
- Next Meeting Date

### **What should minutes include?**

These should be taken by a staff member experienced in recording main points quickly:

- Brief Summary of the topic discussion
- Copy of Committee reports
- Evaluations and recommendations
- Administration response to Committee recommendations

### **How can NYMIR help with this?**

NYMIR has a Safety Committee Handbook that can be accessed on our on-line university. In addition, NYMIR Risk Management field specialists are prepared to work with any NYMIR client interested in organizing a Safety Committee and will sit on the Committee in an advisory capacity to assist members in this process; particularly in the area of accident review and hazard identification.

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**Please contact Roger Cuva, NYMIR Director of Risk Management, at (518) 331-8958 for more information.**  
[rcuva@wrightinsurance.com](mailto:rcuva@wrightinsurance.com)

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# Who's Driving Your Vehicles?

It is a good question to ask, and perhaps for some subscribers, not the easiest one to answer. The response to this question can have far reaching implications – legally and otherwise – if there are not sufficient controls in place to manage motor vehicle use by employees. This exposure exists not only for municipalities with large fleets and big workforces but to smaller entities who may have less structured work environments.

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## Sample Driver Use Policy

A properly drafted motor vehicle use policy will help manage vehicle use by staff, restricting vehicle use to authorized employees only. The answers to the following questions will help clarify the issue.

Questions to Ask:

- Who is authorized to drive the vehicle?
- Is personal use allowed?
- Are side trips permitted during the workday?
- Where should the vehicle be kept after hours and on weekends?
- What type of record keeping is required?

If the answer to any of these questions is yes, then the municipality should:

- Establish a clear policy. List all restrictions, rules and procedures that apply to use of municipal-owned vehicles. Explain the ramifications of failing to follow guidelines.
- Communicate the policy to all employees.
- Obtain proof that employees have received and acknowledged the policy.
- Implement and enforce the policy – use disciplinary means, if warranted.
- Involve your municipal attorney in drafting a policy for your entity.

## Driver Logs

Having drivers log in when they take a vehicle out and return helps track who is driving and when. Supervisors and managers should periodically review the logs.

## Inspections

Periodically inspecting vehicles, tracking mileage, documenting the inspection, and performing maintenance (including the type of work done and the operations involved in at the time) creates an opportunity to assess usage and compare it against what is recorded or anticipated.

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**Preventive maintenance is the key to avoiding the repair or replacement of costly major vehicle components.**

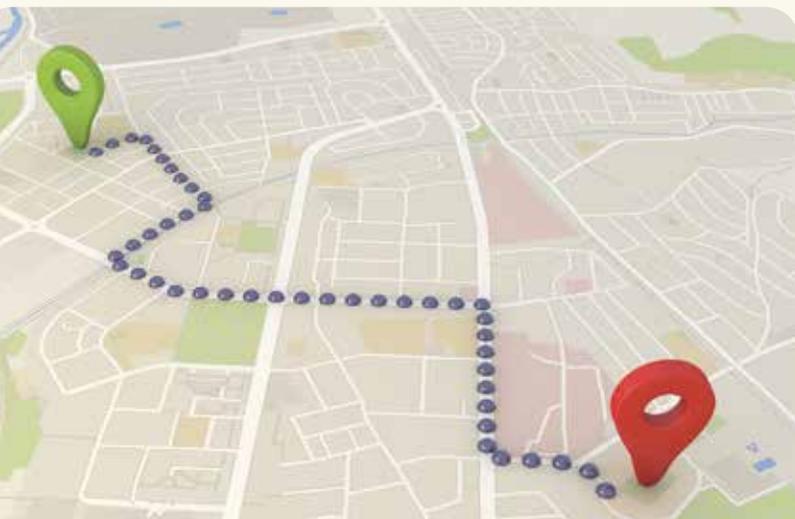
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## GPS Vehicle Tracking

Although they can be controversial, when properly used, GPS vehicle trackers provide passive and real time information on location and movement history. They allow administrators to determine the location and usage of municipal vehicles, adding an additional control method for tracking employee use. Defending fraudulent claims is also made easier since the exact location and time the vehicle was in an area can be determined. It can be proven, for example, that the vehicle was not in the area in question at the time of an accident. GPS vehicle tracking devices can also aid in the recovery of stolen vehicles.

## Volunteers

Since they are not employees, volunteer use of municipal vehicles should be closely managed and monitored. Many organizations require the same background check and license verification for volunteers as they do for employees. A road test is also a good idea, especially if usage entails trucks and vans.





### Claims Management

All insurance policies specify duties of the insured after a loss occurs. For the commercial automobile policy, they generally include:

- Prompt notice to the insurance carrier, preferably by email or fax. To comply with this important requirement, employees must be instructed to notify management in the event of any accident.
- Cooperate with insurance claim professionals in the investigation and defense of litigation or claims.
- Immediately forward legal papers to the insurance carrier.
- Submit to physical examinations, and give authorization for insurance personnel to obtain medical records and information.

Claims for loss or damage, including theft to a motor vehicle, are subject to additional duties:

- Prompt notice to the police if the motor vehicle or its equipment is stolen.
- Take reasonable steps to protect a vehicle after a loss.
- Allow insurance carrier to inspect the vehicle before it is repaired.
- Submit to an examination under oath.

*Article by Bob Bambino*

## Code Enhancement Coverage: Do You Have Enough?

In the event of a covered loss, most insurance policies include a provision that provides an allowance for any additional costs associated with meeting current building code requirements. Do you have enough coverage? The answer depends first and foremost on your insurance policy language. But key factors will also include the year your building was built or last remodeled, the nature of use of your building, and the degree of damage as a result of the covered loss.

A property insurance policy is based on the premise that your building will be brought back to the condition it was in prior to the loss. This theory presents a problem when building codes mandate that you renovate/repair to meet current code. This could include items such as: sprinkler systems; hard wired fire alarm systems; egress lighting; the number and location of exits; exterior exit stairways; changes in

window sizes to allow for proper light, ventilation and egress; and possible ADA requirements regarding elevators and rest rooms. Depending on the size of your facility, these upgrades could represent tens of thousands of dollars in additional building repair or replacement costs.

Including all of these factors when reviewing your policy limits with your insurance agent can assist in answering the question, "Do you have enough coverage?" Because of the nature of the various uses and characteristics of each building, there is no easy answer or simple formula. We strongly suggest that a comprehensive review be completed to determine if your coverage would be adequate for your individual needs to ensure the proper coverage is in place at the time of a loss.

*Contributed by Stuart Morrison, PE  
President, Morrison Engineering*

# Supreme Court Recognizes Disparate Impact Claims

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Last term, in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act (FHA). At issue in the case was Texas's distribution of federal tax credits to housing developers for the construction of low-income housing. Texas issued the tax credits after considering a variety of "selection criteria," such as construction projects in census tracts populated predominantly by low-income residents, "the financial feasibility" of the project, and the availability of "good schools." A nonprofit organization sued Texas, claiming the state caused "continued segregated housing patterns" by its disproportionate allocation of the tax credits, granting too many credits for housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods.

The FHA makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, **or otherwise make unavailable** or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." In reaching its conclusion that the FHA encompasses disparate-impact claims, the Court focused on Congress's use of the language "otherwise make available, which, in the Court's view, "refers to the consequences of an action rather than the actor's intent."

The Court first recognized disparate-impact claims in 1971 in the employment discrimination arena. In *Griggs v. Duke Power Co.*, the Court held that race-neutral employment criteria could violate Title VII as racially discriminatory if the employer cannot show the criteria relates to the job. A PhD requirement to be a school custodian is the prototypical example.

How does this concept translate to land use decisions by government? The Court explained that housing authorities and private developers have leeway to state and explain the valid interest served by their policies. "Zoning officials... must often make decisions based on a mix of factors, both objective (such as cost and traffic patterns) and, at least to some extent, subjective (such as preserving historic architecture. . . . The FHA does not decree a particular vision of urban development." "[G]overnment entities. . . must not be prevented from achieving legitimate objectives, such as ensuring compliance with health and safety codes."

Relating to this "legitimate objectives" limitation, the court explained that, before a court rejects the public interest rationale a government asserts in support of its policy, the court must determine that a plaintiff has shown "an available alternative. . . practice that has less disparate impact and serves the [entity's] legitimate needs."

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## At issue in the case was Texas's distribution of federal tax credits to housing developers for the construction of low-income housing.

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Finally, the Court emphasized that there is a "robust causality requirement" for plaintiffs at the pleading stage. The Court found that plaintiffs must plead more than a statistical disparity to establish a *prima facie* case of disparate impact. They must "point to a defendant's policy or policies causing that disparity." "Governmental or private policies are not contrary to the disparate-impact requirement unless they are 'artificial, arbitrary, and unnecessary barriers.'" The Court cautioned, "Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision."

This case is akin to many the Supreme Court issued in this area of the law. In its wake, the case produced a newly minted and vague test, leaving both lawyers and lay people to scratch their heads about how to apply it. Beyond adherence to safety codes, minimizing traffic, and preservation of historic architecture, what governmental land use policies are "legitimate" enough to survive judicial scrutiny even if they have a disparate impact on a group protected by the FHA? The answers to that question will come, as they always do, from subsequent decisions by federal District Courts and Courts of Appeals and, perhaps, another case before the Supreme Court. Until then, municipal land use officials are well advised to consult with counsel familiar with the *Inclusive Communities* case and the subsequent cases applying its rules.

Contributed Brian Sokoloff, Esq.,  
Sokoloff Stern LLP



# Q & A

**Q What impact does distracted driving have on the frequency of motor vehicle accidents?**

There are approximately 2.5 million injuries a year from vehicle accidents, with 33,600 resulting in fatalities. *Almost a third* of those can be attributed to distracted drivers. According to the U.S. Department of Transportation, distracted driving is any non-driving activity that has the potential to distract a driver from the primary task of driving and increases the risk of a crash. It can be broken down into three major types: Visual Distractions that take the driver's eyes off the road; Manual Distractions that take the driver's hands off the wheel; and Cognitive Distractions that take the driver's mind from the task of driving.

Distracted Drivers take no evasive actions prior to an accident. An accident caused by a distracted driver can often be identified by indications that there was no braking, no evasive steering, and the vehicle continued to travel at full speed at impact.

**Q Why are the consequences of a few seconds of distracted driving so detrimental?**

The activity in the area of the brain that processes moving images decreases by 1/3 when distractions occur. If one thinks of driving in terms of distance alone, the braking distance for a large 10 wheeler truck traveling 60 mph is about 360 ft. When a driver's perception and reaction Time (PRT) is added (a driver's PRT is between 1 second and 1.5 seconds to perceive and react to a situation), 4 seconds of Texting (4 sec x 88ft) added to the Perception to Reaction braking times at 60 mph means a truck will travel 352ft Texting + 302ft of PRT during braking, or a total of 654ft – *greater than the length of 2 football fields!*

**Q How can a driver reduce actual and potential distractions while driving?**

The best way to control this accident factor is by *removing the distractions* (i.e., turn off cell phones in the car, stop to eat when traveling, turn down radios and CD's, limit items stored on passenger seats, avoid looking for objects/items around the vehicle while in motion, and pull over to text). Safe driving can be further enhanced by concentrating on the elements of decision and defensive driving techniques. These include expanding your look-ahead capacity, sizing up the whole scene, and signaling your intentions early.

**Q Why is it so important to have documentation of vehicle maintenance?**

In the event of an accident, one of the first documents subpoenaed by a plaintiff's attorney will be the maintenance records of the vehicle involved in the accident. Without effective documentation of maintenance, negligence by the municipality may be alleged as a contributing factor in any incident. This could result in higher awards for the plaintiff. Quality documentation of all maintenance performed is invaluable in a successful defense of your municipality.

**Q What constitutes a 'Good' Vehicle Maintenance documentation program?**

Electronic tracking programs are available for documentation of service times and dates to assist the maintenance supervisor or his assistant in an efficient process. However, handwritten systems can be used which are just as effective. Whether the system is electronic or not, the goal is the same: documentation which simply and clearly displays all maintenance records with supporting receipts, including when and by whom the service of the vehicle was performed.



# NYMIR

*It's Our Policy* is the official publication of the New York Municipal Insurance Reciprocal.

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## OUR MISSION

NYMIR's mission is to provide the most comprehensive insurance and risk management programs for the local governments of New York State.

NYMIR represents control for its members over their own insurance future. Through an elected Board of Governors, members control the company's rates, coverages, claims handling, and risk management services.

Our motto is simple – insuring our own future – that's what NYMIR is all about.

## New York Municipal Insurance Reciprocal

### Subscriber Update

We recognize and welcome the new subscribers who have joined NYMIR since the Spring of 2015:

Town of Alden	Town of Machias
Town of Alexander	Village of Millbrook
Town of Cairo	Village of Millerton
Village of Cold Spring	Village of New York Mills
Village of Corinth	Town of Pine Plains / Pine Plains Water District
Town of Durham	Village of Tarrytown
Village of Elba	Town of Triangle
Town of Forestport	City of Utica
Village of Forestville	Town of Western
Town of Herkimer	
Village of Honeoye Falls	

### NYMIR Board of Governors

As a member-owned reciprocal insurance company, NYMIR is governed by a board made up of leaders from member municipalities. Here is our current Board.

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**John LaPointe**  
Supervisor  
Town of Putnam

**William Cherry**  
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**Margaret Miller**  
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**Daniel Depew**  
Supervisor  
Town of Walkkill

The Safety Committee Handbook can be accessed on our on-line university

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