

Public Works Steering
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Sidewalk Inspections: Knowing
Your Risks and Responsibilities



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BEST PRACTICES FOR RECORDING SIDEWALK COMPLAINTS

- ▶ Sidewalk complaints are generally received by: (1) telephone, (2) email; (3) online portal (if available); (4) walk-in or (5) reported accident;
- ▶ Designate someone from within your department to log all sidewalk related complaints and dispatch crew to investigate;
- ▶ Contact the complainant and have that person come out to the location to meet with the dispatched crew;
- ▶ If a complaint is received after a reported accident, contact the complainant, bring a camera and have the complainant identify the fall location in a photograph;
- ▶ Instruct member police department to photograph, measure and "lock in" the complainant before complainant decides to "lawyer up"

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ALWAYS EXPECT A CLAIM!

- ▶ You've received notice of a trip and fall, now what?
- ▶ No matter how trivial, ALWAYS expect that a claim will be made
- ▶ IRMA and its attorneys cannot defend trip and fall without help from its member
- ▶ Photograph and measure the condition BEFORE repairs are made!
- ▶ Claimant will ALWAYS identify the highest point of displacement as the cause of the fall

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WHY HAVE AN INSPECTION SYSTEM? (Proactive vs. Reactive)

- ▶ (b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:
 - ▶ (1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or
 - ▶ (2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.

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WHAT DOES "CONSTRUCTIVE NOTICE" EVEN MEAN?

- ▶ Constructive notice can be established where "a condition had existed for such a length of time, or was so conspicuous, that authorities exercising reasonable care and diligence might have known of it." *Finley v. Mercer County*, 172 Ill. App. 3d 30 (1998)(summary judgment properly entered when plaintiffs could not state for how long twisted stop sign existed).
- ▶ The burden of proving such notice is upon the party charging it. *Pinto v. DeMunnick*, 168 Ill. App. 3d 771, 523 N.E. 2d 47 (1988)
- ▶ It is the Plaintiff's burden to show that the Member possessed constructive notice of the identified hazard

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UPDATED MODEL INSPECTION REPAIR POLICY

- ▶ Designate person in charge of implementing the policy
- ▶ What is practical given other demands (i.e. water, streets, curbs, parkway, snow/ice removal) of the Department of Public Works?
- ▶ Designate neighborhoods with identified boundaries for inspection (Village of Flossmoor)
- ▶ Publish results and areas to be inspected on website
- ▶ Use outside contractor to conduct the study and designate point person to work with the contractor
- ▶ Expect that the results of ANY inspection will be used in litigation

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UPDATED POLICY – LESS IS MORE

- ▶ Current Policy Awareness?
- ▶ Current Policy Usefulness?
- ▶ Current Policy Understanding?

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DISCRETIONARY IMMUNITY IN A NUTSHELL

- ▶ Strongest defense is discretionary immunity (745 ILCS 10/2-201)
- ▶ Applies when notice is established or otherwise imputed on the Member
- ▶ Balance competing interests
- ▶ Applies if Member has discretion to act in response to sidewalk condition
- ▶ Does not apply if Member must act in response to sidewalk condition
- ▶ Inspection Policy is NOT a directive, but serves as a guide to the Member

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QUESTIONS?

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