



THE MASSACHUSETTS COMMUNITY USE TOOLKIT

HELPING KIDS AND COMMUNITIES BE HEALTHY AND ACTIVE

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How to Use This Toolkit

Across the nation, communities are searching for ways to encourage their residents to live active and healthy lives. The term *community use*, also known as shared use or joint use, refers to the concept of opening local buildings and grounds at times when they are usually closed in order for residents to exercise and engage in other recreational activities. The Massachusetts Community Use Toolkit is a how-to guide for community members seeking to access public buildings and spaces afterhours, such as schools, playgrounds, town halls, and libraries.

Within this toolkit, you will find information about how to develop and implement a community use initiative. From brainstorming ideas about where to find space in your town to drafting a comprehensive Community Use Agreement that lays out the expectations and responsibilities of everyone sharing the space, this toolkit offers step-by-step instructions on how to get community members active and moving in previously unused spaces.

This toolkit focuses on helping community members plan to share public buildings and grounds for the purpose of expanding opportunities for physical exercise and active recreation. Schools are used in many of the examples because they are popular sites for community use. However, the information in the toolkit applies to any municipal space, and can also be used to develop community use arrangements with private entities, such as colleges and corporations. Although schools and other public buildings can open their doors afterhours for a variety of reasons, the goal of the Massachusetts Community Use Toolkit is to increase opportunities for physical activity and promote community wellness.

About the Authors

The primary author of this toolkit is Sarah Downer, a Clinical Instructor at the Center for Health Law & Policy Innovation of Harvard Law School. Other significant contributors include Jamille Fields, Zachary Rothman, Tiffany Lopinsky, Bram Strohlic, Laura Fishwick, and Emily Broad Leib.

This 2016 edition of the Toolkit revises and replaces the Massachusetts Joint Use Toolkit published in September of 2013. The Toolkit was initially written as part of the Massachusetts Joint Use Project, an initiative by the Center for Health Law & Policy Innovation of Harvard Law School together with the Harvard School of Public Health and the Massachusetts Department of Public Health. The Joint Use Project worked to expand opportunities for physical activity and exercise through the creation of community use agreements, with a focus on serving the communities engaged in the state's Mass in Motion initiative.

The Center for Health Law & Policy Innovation provides information and technical assistance on issues related to health reform, public health, and food law. It does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney.

THE MASSACHUSETTS COMMUNITY USE TOOLKIT: HELPING KIDS AND COMMUNITIES BE HEALTHY AND ACTIVE

Community use, also known as *shared use* or *joint use*, refers to the idea of opening public buildings and grounds at times they are usually closed in order for community residents to exercise and engage in other recreational activities. Community use maximizes the use of existing resources and gives community members access to safe, familiar spaces to be active on evenings and weekends.

In a community use initiative, two entities sharing space, such as a school and a town, write a Community Use Agreement to decide how the arrangement is going to work. A Community Use Agreement is a simple contract that lays out the responsibilities of everyone involved in the initiative. It should describe, in simple language, the obligations and expectations of each entity or person who signs it.

Opening school and other municipal facilities to the broader community encourages residents to adopt healthier lifestyles by ensuring convenient access to safe places to play and exercise. In communities that do not have many resources and facilities that are open to the public, expanding access to schools and municipal buildings that already exist can have a significant impact.

Benefits of Community Use

Community use is a cost-effective way to give community members a place to exercise safely.

Community use:

- ✓ **Gives kids and community members a safe, accessible place to exercise after school or on weekends.**
- ✓ **Maximizes use of existing community resources.**
- ✓ **Saves the expense of building new recreation facilities.**
- ✓ **Increases physical activity levels among children and adults and can help decrease obesity rates.**
- ✓ **Builds taxpayer support for improvements to public spaces.**

OVERVIEW OF THE COMMUNITY USE TOOLKIT

TOOLKIT CONTENTS

In this toolkit you will find:

➤ **Frequently Asked Questions (FAQs)**

For readers looking for a quick answer to questions that commonly arise for most community use endeavors, the FAQs provide concise information and point to more comprehensive information on the topic within the toolkit.

➤ **Getting Started: A Step-by-Step How-To Guide for Community Use**

From brainstorming possibilities to evaluating the success of a Community Use agreement, this toolkit offers guidance on every step in the community use process.

Step 1: Developing a Concept: How to construct a community use plan.

Step 2: Choosing a Location: How to choose the right site to host a community use initiative.

Step 3: Identifying and Approaching the Key Players: How to build the Community Use Team.

Step 4: Creating a Budget and Identifying Sources of Funding: How to estimate costs and find funding for community use.

Step 5: Managing Risk: How to protect the people who use the shared space and the site owners from increased liability as a result of community use.

Step 6: Writing the Community Use Agreement: How to write the agreement, or contract, that describes the responsibilities and expectations of the parties involved in making community use a reality.

Step 7: Planning for Disagreement: How to design a communication and conflict resolution plan.

Step 8: Publicizing Your Initiative: How to tell your community about a new community use initiative.

Step 9: Developing a Community Use Timeline and Tracking Progress: How to create a timeline for planning and implementing your community use initiative and how to evaluate its success.

➤ **Additional Resources**

To make community use easier in Massachusetts, this toolkit provides a template Community Use Agreement. In this section of the toolkit, you will also find additional information and community use resources.

FREQUENTLY ASKED QUESTIONS (FAQs)

1. **What is community use?**

Community use, also known as shared use or joint use, refers to expanding the use of community resources, such as schools and other municipal buildings, for the benefit of the broader community. In a community use initiative, a facility will open its doors or gates after hours to give the community access to a safe, familiar place to exercise and play.

2. **What is a community use agreement?**

A community use agreement is a contract that lays out the responsibilities and expectations of the people or entities sharing a particular space. Community use agreements describe the site and designate the people who are authorized to make decisions about the space. They assign tasks that are required to open the space afterhours and maintain it. They contain provisions to manage any risk associated with sharing space.

3. What are the benefits of opening new spaces for community use?

Community use is a cost-effective way to maximize town and city resources for the benefit of the entire community. Offering residents more places to exercise helps keep communities healthy and active. Sharing schools and other buildings and grounds gives youth and adults safe, accessible spaces to engage in positive activities during their leisure time. Schools, town halls, libraries and other community spaces are familiar to residents, and are a comfortable place for them to connect and engage. Opening a school or municipal facility to the public for recreational use allows everyone, regardless of income level, to have an opportunity to exercise regularly.

4. What kind of space is right for community use?

A space for community use should be safe, easily accessible to the community, and appropriate for recreational activities. Examples include a gymnasium at a local school, a playground, a community center, a senior center, or even space in a private facility. For more information on selecting an appropriate community use space, see *Step 2: Choosing a Location*.



5. How much does community use cost?

The cost of a community use initiative will vary depending on the location and type of activity or program that happens in the space. Community use costs can include: increased expense for maintaining equipment and grounds, the cost of extra hours for custodial staff and/or staff to supervise the activities during the shared use hours, and the cost of security improvements or extra equipment. Because community use benefits the whole community, you can ask that the fees be waived or that the community use site collect a much smaller amount of money that reimburses it for costs directly attributable to the expanded use of the space. For more information about how to find funding for community use and develop a community use budget, see *Step 4: Creating a Budget and Identifying Sources of Funding*.

6. Who should be involved in writing a community use agreement?

The people who assist in discussing, writing, and reviewing the community use agreement make up the “community use team.” This team should include the administrators who control the community use space (perhaps the superintendent or principal of a school, for example), a representative from the city or town, and someone from the organization that wants to use the space (if applicable). Others who might be part of the community use team include: community members; representatives from municipal government; representatives of custodians or other staff that would maintain the space and supervise the activities; and representatives from nonprofits that focus on healthy living and community development. See *Step 3: Identifying and Approaching the Key Players* for advice on how to build your community use team.

7. How long does it take to get a community use initiative up and running?

A successful community use initiative takes time to properly develop and implement, but careful planning and organization will help the project move forward. The process can be completed in only a few weeks or can progress more slowly over the course of a few months. See *Step 9: Developing a Community Use Timeline and Tracking Progress* for a sample Community Use timeline.

8. What do I need to include in a community use agreement?

Every community use agreement will be different. The contents depend on the activities that will happen in the community use space and the specific layout of the chosen site. However, in general, a comprehensive community use agreement will include times the facilities will be used, procedures for granting access to the space and preparing the space for use, how the space will be supervised during shared use hours, and provisions about cleaning, maintenance, inspection, communication, costs, risk management, and conflict resolution. See *Step 6: Writing a Community Use Agreement* for more about what to include in your community use agreement.

9. Do I need a written agreement to share space in my community?

While you do not need a written agreement to share space, there are significant benefits to having a formal agreement in place. Many communities agree to share space informally for a variety of valid reasons. However, it’s important to remember that formal written agreements lay out responsibilities and expectations in clear terms that reduce the potential for misunderstandings, disagreement, and conflict, and make community use more sustainable and fair. They also protect the community use site hosts by describing how their space will be taken care of during the shared use hours. However, the goal of community use is to get kids and families playing actively and exercising safely on a regular basis. When a formal community use agreement is not an option, an informal arrangement to share space may be the next best thing.

10. Does community use increase liability exposure?

In Massachusetts, the Recreational Use Statute protects schools, municipalities, and private land-owners from personal injury and property damage when they open their land or facilities for public recreational use without charging a fee.¹ The community use site owner can still be reimbursed for the cost of opening the space to the public by a city, town, nonprofit, or by community users. However, the funds collected by the site owner must be tied to a particular use of the space and cannot exceed the costs directly attributable to the expanded use. When community use sites wish to charge fees for use of the space, they can manage risk of liability in other ways, such as assigning risk in the community use agreement through an indemnification or hold-harmless clause, or requiring users to sign liability waivers. For more information on community use and liability, see *Step 5: Managing Risk*.

11. Can a private college, private company, or other private entity share their space with my community?

Yes. Private colleges, private companies, or other private entities can share their space with your community in the same way that a school or municipality can. As long as these entities do not charge a fee for use of their facilities, they are also protected from liability for personal injury or property damage by the Recreational Use Statute (see *Step 5: Managing Risk*). Like schools and other municipal facilities, private entities can be reimbursed for additional costs associated with making the space available without jeopardizing the protections of the Recreational Use Statute.

12. What are some examples of community use?

Many communities in Massachusetts are successfully sharing space. In some school districts, like Holyoke Public School District, the schools host after-school programs run by outside organizations that help kids get active in the late afternoons.² In Weymouth, the town's Teen Center is sharing its gymnasium with other members of the Weymouth community as a way to increase opportunities for exercise during the work day.³ In Springfield, some public school gymnasiums are open in the evenings for a basketball program.

Community Use Policies vs. Community Use Agreements

Some communities in Massachusetts have Community Use policies in place that lay out conditions for allowing shared use of certain facilities.⁴ A community or school district policy for community use is different from a Community Use Agreement that describes a specific use of a specific site. A **policy** describes the rules for sharing space and the process for asking a space to be used for a specific purpose. A **Community Use Agreement**, on the other hand, describes a specific use of a specific space or spaces.

For example, Holliston School Committee's "Use of School Facilities" **policy** permits use of school facilities "only for educational, civic, recreational, social, cultural, charitable or other like purposes deemed in the interests of the community."⁵ Other conditions in the policy require the user to seek permission from the building administrator and comply with the rental fee schedule the School Committee approves.⁶ If a community group wanted to run an exercise class in one of the Holliston school gymnasiums, they would need to file an application with the superintendent's office, pay a fee to cover operational expenses, and sign an agreement holding Holliston School Committee and the Town of Holliston harmless from any and all liabilities.⁷ School policies like this one explain the information that needs to be included in a Community Use Agreement and explain to potential users how to approach the school with a proposal. The details of the specific arrangement between the school and the community group, such as who will open the gymnasium and supervise the children, must still be discussed.

Some of the Massachusetts district policies are based on model policies made available by the Massachusetts Association of School Committees (MASC).⁸ These model policies appear in **Appendix B**.

Community use policies can serve as a starting point for a conversation about sharing space, but community partners should always write a separate agreement for a specific use of a particular space. As you will see in the step-by-step **Getting Started** guide below, the process of creating a specific community use agreement is valuable for two reasons: first, it requires the involvement of all the important decision-makers, and second, it makes sure that the discussion covers small details, reducing the likelihood of experiencing conflict or difficulties later on.

Getting Started

This section of the toolkit outlines each step in the process of creating a comprehensive Community Use Agreement that will meet the needs of everyone who shares a particular space.

Step 1: Developing a Concept

*This section contains tips on how to develop an idea for sharing space. Below, the toolkit discusses how to **assess your community**, choose a **target population** for your community use initiative, brainstorm **spaces** in the community that might be shared, and map resources to identify **under-resourced areas** in the community where community use would have the greatest impact. It also helps you think about how to **choose what will happen** in the community use space.*

Assess Your Community

No two communities in Massachusetts are exactly alike. In some communities the focus may be on finding a space where kids can get off the streets and play safely during the after-school or evening hours. Others may lack indoor spaces where senior citizens can walk during winter months when icy sidewalks and snow make exercising outdoors difficult. Still others may look for ways that families can be active together. To develop a plan that works for your community, community partners need to identify:

- **The target population for a community use initiative:** Think about the people in your community who have the greatest need for extra recreational opportunities. The space you choose for a community use initiative and the activity that happens there will depend on the age and location of the intended users.
- **Spaces in the community that might be shared:** Create a list of spaces in your area that might be shared for exercise. This list can include: all public school buildings, school sports fields, and school playgrounds; city- or town-owned parks and recreation buildings; municipal buildings such as town halls, office buildings, and libraries; and private entities such as colleges and corporations. Be creative in your brainstorming!
- **Under-resourced areas in the community:** Community use will yield the biggest benefit in locations where other options for recreation do not exist or are not accessible for certain residents. As you review the buildings, playgrounds, fields, and existing programs in your community, try to take note of areas on the map that lack resources. Think about sharing buildings and spaces in these locations first.

Describe each space on your list as thoroughly as possible, including location, transportation options, equipment, programs that may already take place in the space, and any other aspects that might recommend it for community use.

Choose What Will Happen in the Space

Community use initiatives can range from simply opening a gate at the local high school track on the weekends so that all residents can enter at will to a structured 5-day-per-week after-school program operated by a nonprofit organization. In developing your concept, community partners should consider:

- **Activities that will be popular in your community:** If teens are your target population and you know that soccer or basketball is particularly popular in your community, you may want to focus your time

and energy on instituting an evening sports program at a local school. If your goal is to increase the time that families spend together engaged in physical activity, you may want to think about making casual sports equipment available at a designated school playground on weekends.

Once you know who you are trying to reach with your community use initiative, the locations in your community that might be able to share space, and what sort of activity or program will take place during the shared hours, you can create a plan that will guide you in making the important decisions outlined in the steps ahead.

Publicly-owned spaces that might be shared include:

- **School buildings & school grounds**
- **Municipal buildings**
- **Parks**
- **Community centers**
- **Gyms**
- **Basketball and tennis courts**
- **Town halls**
- **Auditoriums**
- **Sports fields**
- **Indoor and outdoor tracks**
- **Field houses**
- **Playgrounds**
- **Hiking trails**



Step 2: Choosing a Location

*In Step 2, you will learn about **factors that make a space ideal** for community use. You can use the **Site Visit: Preparing for Community Use** question sheet to evaluate each space in your community that could be shared.*

Once you finalize a concept that includes: (1) who would use the shared space; (2) the type of activity that would happen in the space; and (3) a list of possible location that might be good sites for community use, you are ready to move forward with choosing a space. Your ideal space should be:

- **Familiar to the intended users.** Community members are more likely to use spaces that are familiar to them. For families and children, schools are an ideal site. Others may feel comfortable using well-marked buildings that they are likely to pass on a regular basis such as spaces in libraries, town halls, or senior centers.
- **Accessible to the intended users.** Think about how your intended users will get to your site. If you expect that youth will walk or bike alone, survey the roads immediately surrounding the site to be sure that they have sidewalks and/or bike lanes. Confirm that getting to your site does not require crossing major highways or other dangerous intersections. Look at whether your site is already incorporated into a public transportation route and be sure to tailor the hours of your program so that users can be on time for buses that finish their routes in the early evening or have limited weekend schedules. If users are most likely to drive to your site, consider whether it has adequate parking facilities. Be mindful of which sites can be enjoyed by those who use wheelchairs or have other mobility issues.
- **Well-maintained.** Choose a well-marked site with good lighting and functional, safe equipment. Afterhour and weekend use of municipal space means that users will sometimes arrive at or leave the space in the dark. For personal safety and to make the site more inviting to intended users, the site should have clearly-marked signs and pathways and be well-lit both indoors (where applicable) and out. Any exercise or playground equipment should be clean and in good working order.
- **Easy to secure.** Especially when indoor space is used, it is important to be able to quickly and easily secure it before and after the shared use hours. Where only one part of a building is used, like a school gymnasium or a large conference room in a town hall, the space should be configured so that it is relatively easy to block off the rest of the building. For example, the city of Everett designated Parlin Junior High School as a community use pilot program site because users could directly enter the gym from the ground floor.⁹ Other schools in the community had second floor gymnasiums that required users to walk through the school hallways to reach them, a potential security issue.
- **Safe.** Safety is a large concern for many communities. Assess the strengths and weaknesses of a particular location with regard to the safety of both the afterhours users and those who use the building for its primary purpose. You may consider adding staff for supervision of the area, installing new security equipment, or simply adding a sign-in sheet to keep track of who uses the facility at certain times. Even small measures can contribute to making facilities safer for the community.
- **Equipped with facilities that match the intended use of the space.** Every community use site that plans to host children should have accessible restrooms and drinking water.

In choosing your community use site, think about features that make a space inviting, such as clear signs, good lighting, clean equipment, and wheelchair ramps that make the space accessible for everyone.

- **Available during the intended hours.** Schools and municipal buildings are busy places, and in many communities, these spaces are already booked almost around the clock. Remember you will need to plan programming or open access hours around the schedule of the space's primary user.

Whenever possible, you should visit each potential location and walk through the space as if you were one of the intended users.

Make a list of questions that come up as you walk through the space. These questions raise issues that need to be addressed, first in your discussions about sharing space and ultimately in the Community Use Agreement. A list of potential questions that should be answered during site visits is provided on page 11.

Once you have compared each potential location and have a clear front-runner, you are ready to begin **Step 3: *Identifying and Approaching the Key Players.***

SITE VISIT: PREPARING FOR COMMUNITY USE

Below is a list of questions that you should keep in mind as you think about engaging in community use. Answering these questions now will help you finalize the appropriate site for community use and prepare for drafting the Community Use Agreement.

SCHEDULING:

- ☐ What groups use the space? For what types of activities is the space used?
- ☐ When do groups use the space?
- ☐ Who authorizes use of the space? (i.e. School Board, Superintendent, Business Office)
- ☐ Is the space used at night?
- ☐ Is the space used during the weekend?
- ☐ Is the space used during holidays and/or school vacation periods?
- ☐ Who has priority use of the space?
- ☐ When are custodians on duty?

FACILITIES:

- ☐ Does use of the space require certain attire? (e.g., sneakers)
- ☐ Are bathrooms available for use?
- ☐ Are bathrooms separated from the rest of the space?
- ☐ Is drinking water available?
- ☐ Is equipment (i.e. basketballs, soccer nets) available for use?
- ☐ Where is equipment stored?

ACCESSIBILITY:

- ☐ Is the space easily accessible to the community?
- ☐ Are there dangerous intersections nearby?
- ☐ Will youth be able to walk or bike to the space?
- ☐ Is it incorporated into public transportation routes (if applicable)?
- ☐ Is there a way for people with limited mobility, such as those who use wheelchairs, to access the space?
- ☐ Is parking available?

CLEANING AND MAINTENANCE:

- ☐ Who is responsible for cleaning the space? Who pays for regular cleaning?
- ☐ Who is responsible for maintenance of the space (repairing wear and tear)? Who pays for maintenance?

SAFETY:

- ☐ Is the space safe for use by children?
- ☐ Are there any apparent dangers in or near the space?
- ☐ If people will enter or leave the space in the dark, is there adequate lighting?
- ☐ Do other parts of the building need to be secured/blocked off?
- ☐ Is there an AED (automated external defibrillator) on site?

SECURITY:

- ☐ Where are the doors/gates? Where is the main/preferred entrance?
- ☐ How many doors/gates need to be unlocked to get to the activity site?
- ☐ Who is responsible for opening and closing the space?
- ☐ Who has key access to the space?
- ☐ Can key access be delegated? Will it be necessary for authorized personnel to open and close the space?

POTENTIAL COSTS:

- ☐ Will custodians or maintenance staff be required?
- ☐ Are there necessary repairs to be made before the space is used?
- ☐ Will use of the space incur additional expenses for maintenance?
- ☐ Will staff be needed to supervise activity?
- ☐ Will extra security measures be needed? (e.g., new locks, gates, or lighting)

NOTES:

A printable version can be found in the library section of CHLPI's website at www.chlpi.org.

Step 3: Identifying and Approaching the Key Players

*In Step 3, you will learn **how to construct your Community Use Team**, including the key people to approach in schools and beyond.*

By this point, you know a lot about the specific needs and resources of your community. You have identified the group of people you hope will take advantage of a Community Use Agreement. You know the type of activity you'd like to be available to your intended users during the shared use hours. Finally, you have reviewed possible locations for community use and have chosen a site that is convenient, safe, and available.

The next step is to seek out the people who will be affected by opening the space afterhours (the community use stakeholders or "Community Use Team") and involve them in the Community Use Agreement process. Potential stakeholders that should be involved in putting together a successful community use agreement may include:

- **School personnel:** Members of the School Committee, school superintendant, school principal, school custodial staff, school employees that sit on the Parent Teacher Association, school attorneys, etc.
- **City or town officials and agency personnel:** Mayor's Chief of Staff, head of Parks and Recreation, staff from health or public health departments, building administrators, custodial staff, town or city attorneys, transportation officials.
- **Mass in Motion Coordinators:** Or other personnel involved with healthy living advocacy in the community.
- **Nonprofit organizations in the community:** Boys & Girls Clubs and other nonprofits focused on youth, advocacy organization for senior citizens, organizations that focus on promoting exercise and living healthy lifestyles.
- **Community members:** Intended space users, parents of children at schools where community use is planned, residents in the community use site's immediate neighborhood.

Develop a list of advantages that apply to your community and use them to build support for your proposal! Promote community use to your team of key players by making some of the following arguments:

- ✓ Active, healthy residents are less likely to suffer from the variety of chronic illnesses tied to poor diet and sedentary behavior.
- ✓ Youth who are engaged in active play and exercise in safe environments have less opportunity to make unhealthy or potentially dangerous decisions about how to spend their time outside of school.
- ✓ Community use strengthens the relationship between the community and the shared site, and helps to build support for capital improvements and greater municipal investment.

Key Players in Schools

Public schools in Massachusetts are divided into over 300 separate districts, each of which is controlled by a **School Committee** that selects the district's superintendent, among other duties.¹⁰ With the approval of the

School Committee, a city or town can rent or lease extra space in a school building provided that the additional use does not interfere with the educational programming.¹¹ In addition to renting or leasing space for a fee, School Committees can also empower superintendents and principals to enter into Community Use Agreements.

- **Review the school district website.** A school district's website often contains a great deal of information about individual schools, including contact information for school administrators, extracurricular activity and event schedules, and in some cases, procedures for submitting requests to use school space. The district may have a Community Use Policy that lays out some requirements for use of school space. Even if a district has such a policy, it is important to have a discussion with a school official about how your specific community use plan might work in a particular school building.
- **Contact the school principal's office.** To start a discussion with a specific school over use of its facilities, it is best to reach out to the school principal, who has day-to-day control of the space. He or she (or someone from the principal's office staff) will be able to answer questions about what activities the school is already hosting, whether they have an established procedure or policy for community use requests, and whether they would be willing to participate in discussions about sharing their grounds or buildings afterhours.
- **Figure out who controls the space you want to use.** Keep in mind that in some cities and towns in Massachusetts, the school district and administrators control the school buildings while the town or city's Department of Parks and Recreation maintain and administer the surrounding fields. If your community use concept includes sharing use of outdoor school grounds, both school administrators *and* officials from the Parks and Recreation Department may need to be included in initial discussions.
- **Include custodial staff in the conversation.** Afterhour use of school space might require custodial staff to take on extra responsibilities, and union requirements may set a floor on the level of additional compensation staff must receive in order to open the space, or a limit on additional tasks they can be required to take on. Paying custodial staff to open and maintain the space afterhours is often the biggest cost associated with community use. Including custodial staff in early conversations will help community partners formulate a plan and a realistic budget that incorporates the cost of keeping the space open and clean.

Key Players in Community Use of Municipal Buildings, Grounds, and Recreation Facilities

Cities and towns across Massachusetts own spaces that can serve dual purposes, such as resource centers, town halls, and libraries. Your community may also operate a recreational facility such as a field house or indoor pool that could host a physical activity program during hours that it is not currently in use.

- **Review the city or town website.** As with schools districts, city or town websites are good sources of contact information for building or facility administrators. They also contain schedules of town meetings and other community events and programs.

Mass in Motion Coordinators:

65 communities in Massachusetts are part of the Mass in Motion initiative, which promotes healthy eating and active living across the state. **If your community is a part of Mass in Motion, the Coordinator assigned to your area is an excellent contact for beginning discussions about community use.** The Coordinators are familiar with the idea of community use and have established relationships with town and city officials and local school district personnel.

- **Begin by contacting the administrator of the building or facility.** For each building or facility, start by reaching out to the space's direct administrator. To propose use of the library's reading room for a fitness class, for example, communicate with the head librarian first. He or she will also possess helpful information about facility security, daily operation procedures, and specific steps that need to be taken to open the space during offline hours.
- **Contact city or town departments that might be interested in participating in community use initiatives.** In many communities, officials from the Department of Parks and Recreation run activities and other programming at municipal parks and other centers. Staff from these departments might also be able to run a program and/or supervise an open gym at a local school. They are also necessary partners in crafting a Community Use Agreement that hosts activities in an outdoor space owned by the city or town and maintained by the Department.

The Wider Community

Building support in the broader community for a community use proposal is extremely important. Community use initiatives are more likely to be successful if the intended users of the space are knowledgeable and enthusiastic about the effort. Communicating with the broader community also helps to hone the concept and identify potential opposition or obstacles that must be overcome as you move forward.



Step 4: Creating a Budget and Identifying Sources of Funding

In **Step 4**, you will receive information on how to **calculate the costs** of your community use plan. You will also learn about **ways to fund community use**. A **sample community use budget** is included in this section.

Costs Associated with Community Use

Although it is frequently possible to share space without extra expenses, expanding the hours that buildings and grounds are in use can require additional funds. Discussion with community use stakeholders should include planning for any added costs. Potential costs include:

- **Increased expense for maintaining equipment and grounds:** With additional users, equipment may need to be replaced or serviced more often. To estimate cost increases due to maintenance, review the budget the space already has for maintaining the site and seek input from the space administrators.
- **Cost of extra hours and responsibilities for custodial staff:** Union requirements may dictate expenses for custodial and other staff. . These requirements can limit the amount of additional tasks employees are allowed to take on or set a floor on the number of hours for which a custodian must be paid if he or she is called into work on an extra day. This is often the biggest cost associated with sharing space.
- **Cost of staff to supervise activities during the shared use hours and/or staff to run programming:** Again, union requirements may dictate staffing expenses. Requirements may dictate that staff be engaged for a minimum number of hours. This should be taken into account in your community use budget.
- **Cost of security improvements or extra equipment:** Occasionally, equipping a space for additional users might require extra security measures. New locks, gates, or extra lighting may be necessary for extra people to enjoy the space afterhours.

Community use is about maximizing use of existing facilities at the lowest possible cost. While schools or municipal buildings have the capacity to rent or lease space, the space administrators can also choose to share space without charging a fee for use. If there are costs associated with opening the space, like maintenance, equipment, repairs, staffing and supervision expenses, or improvements to the space, schools or municipal buildings can collect money to reimburse these expenses (although these should not be referred to as fees). Keep in mind that charging a fee to rent the space may remove certain liability protections for the owner of the community use site (see **Step 5: Managing Risk** for additional information).

SAMPLE COMMUNITY USE BUDGET: EVERETT COMMUNITY USE PILOT PROJECT

A community use team from the city of Everett decided to pilot a community use initiative at one of the school district's junior high schools. The chosen school had a gymnasium with a separate, street-level entrance. This meant that community users would not have to walk through the rest of the school to get to the gym, alleviating some of the school's concerns about security. Staff from the Department of Parks and Recreation agreed to provide a staff member to supervise open gym hours one night per week. Everyone in the community would be able to access the space during those hours, with sports equipment like basketballs provided by the Department. The six-month pilot was planned to begin in the late fall when the weather would become too cold for families to exercise outside. A school custodian would also be present to open the space and secure it at the end of the evening. The community use team submitted a municipal budget request to the Mayor's Office for the amount necessary to complete the six-month pilot. Below is the preliminary draft budget for Everett's community use pilot project:

PROJECT EXPENSE	AMOUNT
Use of the elementary school gymnasium	Provided by the school free of charge
Staff from the Department of Recreation at \$35/hr for 2 hours once per week for 24 weeks	\$1,680.00
2 hours of the school custodian's time at \$45/hr once per week for 24 weeks	\$2,160.00
Sports and field equipment	Provided by the Department of Recreation
Flyers and publicity for the initiative	Provided by the Energize Everett Initiative and the Department of Parks and Recreation
TOTAL	\$3,840.00

Funding Community Use

In an era of budget cuts and economizing, finding extra funds for new initiatives can seem like an impossible task. Investing in community use of existing facilities is a cost-effective choice that makes sense in the current economic climate. At once, it spares communities the expense of building new recreational facilities, capitalizes on resources that are well-established and for which maintenance expenses are already built into the municipal budget, keeps residents healthy, and provides community members with more opportunities to engage in safe, productive activities. Every community wants healthier residents, and community use is one of the cheapest health promotion options for any municipality.

Funds for community use might come from municipal budget requests, municipal revolving funds, voluntary contributions from intended users, private donors or foundations, formal grants, or a combination of multiple sources. Including all of the key players in your budget and funding discussions is extremely important because each will possess different information about the cost and availability of funds for various elements of the community use initiative.

A printable version can be found in the library section of CHLPI's website at www.chlpi.org.

- **Voluntary contributions from users:** In many cases, community use initiatives are set up in particular locations because they are intended to serve as recreational opportunities for residents who don't have the means to access other spaces. As community use is usually a relatively low-cost endeavor, small voluntary contributions from potential users can go a long way toward reimbursing the host site for extra maintenance or equipment replacement.
- **Municipal budget requests:** Each year, cities and towns make up their annual operating budgets for the next fiscal year. One option for funding community use is to embed the cost of sharing space in city or town department requests for the annual budget. For example, the Parks and Recreation Department or the Health Department might include community use funding as part of their overall operating budget request. This means that prior to opening the space for intended users, community partners will need to be aware of the budget timeline and wait for the budget to be approved and for the funds to be allocated.
- **Municipal revolving funds:** Cities or towns can set up revolving funds, which allow them to raise revenues from a specific service and use those revenues without appropriation to support the service, including paying wages and benefits of full or part-time employees in some cases.¹² School committees in particular may authorize the creation of a revolving fund for athletic programs or other student activities.¹³ Funds



schools collect for such programs are held in separate accounts for expenses that result from making school property available for such use.¹⁴ The same is true for funds set up by towns.¹⁵ The type of revolving fund and the rules related to it will depend on the entity establishing the fund. To find out if your city or town uses revolving funds, you can call the town or city hall. Additional information on revolving funds can be found in **Appendix D**.

Some communities in Massachusetts have already incorporated revolving funds into their “Use of Facilities” policies. For example, as per its community use policy, Gateway Regional School District in Huntington deposits any funds collected in connection with the use of school facilities into “a separate revolving account.”¹⁶ The policy explains that the funds in the

revolving account “will be used to pay associated costs of the activity (e.g. custodial fees) and/or make building repairs, replace worn equipment, or offset the costs of energy and custodial supplies.”¹⁷

- **Using fees from private groups to subsidize community community use:** Many communities include fee schedules in their community use policies. In some policies, private, for-profit groups are charged a fee for any use of the facility, while community groups and recreational groups in the community are given a discounted rate.¹⁸ In the context of community use, communities can charge private groups a fee for using their facility, deposit these fees into a revolving fund specifically created for the purpose of paying for community use, and use this money to subsidize community use of the facilities. There are some consequences to charging any fees (as opposed to collecting reimbursement) for use of the space. In order to be protected from liability for property damage and personal injury to community users, the space may only collect reimbursements for costs directly related to the expanded use of the facility (i.e. maintenance, custodial fees, etc.). For a complete discussion of this provision of the Massachusetts Recreational Use Statute, see **Step 5: Managing Risk**.

- **Grant funding:** The news is full of stories about the importance of leading healthier lifestyles and increasing levels of physical activity. The government and major foundations, such as the Robert Wood Johnson Foundation, have invested heavily in efforts to combat obesity, especially for children and teens. It may be possible to support your community use initiative with grant funding, either through federal or state government grants or with grants from foundations and philanthropic organizations. For example, the nonprofit KaBoom!, which is dedicated to preserving playspaces for children, offers Let's Play Joint Use Grants.¹⁹ These grants (\$15,000 or \$30,000) will be allocated to support the creation of community use agreements that open school playgrounds during nonschool hours.

The work you did in **Step 1: Developing a Concept** to investigate the unique resources and needs of your community will help you frame your funding request in a grant application. Begin to search for a funding match by reviewing the websites of foundations and philanthropic organizations with an anti-obesity or child advocacy focus. You should also look to local or state foundations that would be interested in funding initiatives in your geographic area.

- **Individual donor support:** Individuals within your own community may be able to provide financial resources for community use. Make a list of residents that provide support to various local institutions and causes or who feel strongly about healthy living and maximizing community resources. They might choose to support all or part of a community use initiative and should be included in planning conversations.

The nonprofit **KaBoom!** offers **Let's Play Joint Use Grants**. These grants (\$15,000-\$30,000) will be allocated to support the creation of Community Use Agreements that open school playgrounds during nonschool hours.*

**What is Joint Use?, KABOOM!, http://kaboom.org/joint_use.*

Finally, when cost is an issue and funding hard to come by, consider starting with a small community use endeavor on a shoestring budget. Demonstrating that intended users will take advantage of the new program or open access hours is a great way to garner support for maintaining and expanding community use and build momentum for future funding requests.

Step 5: Managing Risk

In **Step 5**, you will learn how the **Recreational Use Statute** in Massachusetts **protects community use site owners from increased liability** in many cases. You will also learn about **methods of managing risk** in community use, including **insurance, indemnification clauses, and liability waivers**. You can assess your efforts to manage risk by reviewing the **Risk Management Checklist** provided in this section.

In order for school and municipal officials in Massachusetts to feel confident opening school and municipal grounds afterhours, they must have an accurate picture of the legal landscape with respect to liability. Fear of costly and time-consuming litigation prevents many publicly-owned buildings and spaces from opening their doors or gates afterhours.²⁰ School and municipal buildings worry about claims for damage to property and personal injury of the people using the space. This section will discuss the Massachusetts Recreational Use Statute, which limits liability exposure when schools and other spaces open up to the public free of charge. In addition, it will provide a brief overview of tort liability, liability exposure for schools, and steps communities can take to manage risks associated with community use.

What is liability?

Liability means legal responsibility for something, such as someone else's injury or damage to property. For example, if a school was found to be liable for an injury suffered by someone on its grounds, the school would be financially responsible for any *damages*, meaning that it would have to pay certain expenses associated with the injury. Generally, liability exists when four things are true:²¹

- **First**, one person or entity was legally obligated to protect another person from harm. This is known as having a *duty of care*. For example, a school has a duty of care to maintain its grounds in a state of reasonable safety and owes that duty to everyone who comes onto its property during the hours it is open.
- **Second**, the person or entity that had the duty of care failed to meet it. This is known as a *breach* in the duty of care. If school personnel left sharp power tools or other dangerous equipment on the playground, the school would not be fulfilling its obligation to keep school grounds safe and would have breached its duty.
- **Third**, the failure to meet the duty of care *caused* harm to the person to whom the duty was owed. For example, imagine that a parent who entered school grounds to pick up her child after school was injured by the power tools. The school failed in meeting its duty to keep the grounds reasonably safe for the parent, and that parent was directly harmed by the school's breach in the duty of care.
- **Fourth**, there are expenses associated with the harm, known as *damages*. Damages are usually compensatory, meaning that they reimburse the injured person for medical bills or lost wages. For example, if the parent who tripped on the power tools had to visit a doctor and stay out of work for two days to recover, the damages owed by the school might include the cost of the visit and her salary for the days she was forced to miss work. In rare, extreme cases where the conduct is particularly egregious, damages can also be *punitive*, or intended to punish the person or entity that breached the duty of care. In Massachusetts, schools are not liable for punitive damages.²²

When all four elements listed above are present (when all four things are true), then the person or entity (in this case, the school) is considered *negligent*, and the person or entity is liable (or legally responsible) for the harm and any damages associated with it.²³ However, it's important to remember that if one or more elements are not present, there is no liability.

Liability Exposure for Schools

Fortunately, schools already have much of the infrastructure in place for managing liability for afterhours recreational use of indoor and outdoor facilities. They also have the ability to manage the risk of shared facility use through insurance policies, assigning risk through Community Use Agreements, and the use of liability waivers.

With respect to school liability for community users, the most important thing to understand is the extent of the duty of care to those on school grounds. By statute and through other measures, the extent of the school's duty of care may be limited in time (during school hours vs. afterhours and weekends), and in scope (for example, a different duty of care exists for students than for non-students). The duty of care owed to non-student recreational users of school grounds is much lower than the duty a school owes to students during school hours.²⁴

School districts, like private landowners, have a duty of care to people legally on their land.²⁵ Taking "due care" means taking reasonable steps to prevent harm to others. What is reasonable is determined by existing social values and generally accepted practices in the management of recreational facilities.²⁶ A less rigorous duty of care is owed to people who are illegally on school land, i.e. trespassers.²⁷ For trespassers, schools have the duty to *refrain from willful, wanton, and reckless conduct*, also known as *gross negligence*.²⁸ For a school district to breach this duty, grave danger to others must have been apparent, with the school failing to alter its conduct to avoid the risk.²⁹

Courts in Massachusetts have carved out some public policy-based exceptions to the duties that schools owe their students. They have recognized that special circumstances exist, for example, during athletic competitions for student participants. Therefore, coaches, organizers, and sponsors of athletic games must only refrain from willful, wanton, and reckless conduct.³⁰ Courts have reasoned that exposing schools to increased liability by insisting they have a higher duty of care based on the special relationship with students engaged in sport activities could result in lower overall support for athletics programs because schools would be afraid to take on potential additional costs.³¹

Finally, Massachusetts law limits damages due to liability from school negligence to \$100,000 per plaintiff.³² This liability cap is meant to balance meaningful recovery for the injured person with the school's exposure to excessive liability.³³ Schools may also not be held liable for punitive damages.³⁴

Recreational Use Statute

The Massachusetts Recreational Use Statute (Chapter 21, Section 17C of Massachusetts General Laws) states that any person or organization who "lawfully permits the public use" of their land or facility for "recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee . . . shall not be liable for personal injuries or property damage sustained by such members of the public."³⁵ In other words, opening a well-maintained space to the general public afterhours without charging a fee will not increase liability exposure.³⁶ Community use sites are allowed to accept donations or request reimbursement only for the extra expenses associated with opening the space for a particular use. They are not allowed to charge a fee and take advantage of the liability protection of the statute. This statute applies to both indoor and outdoor facilities.³⁷ For the full text of the Recreational Use Statute, see **Appendix D**.

The Recreational Use Statute protects land owners from increased exposure to liability if they allow the public to come onto their property for the purposes of recreation without charging a fee.

Although they cannot charge users a fee, site owners can be reimbursed for costs that are directly related to specific instances of opening the space for public use.

With respect to schools, because the school has a special relationship with its students and owes them a high duty of care, the Recreational Use Statute would not protect a school from liability for injury to students while school is in session or while they are waiting to enter or leave the buildings and grounds.³⁸

Fees vs. Reimbursement: It is important to note that charging fees, including rental fees, for use of the space disqualifies the space's owner from protection under the Recreational Use Statute.³⁹ However, the community use site can still request reimbursement for costs associated with a specific instance of opening the space to the public. **The amount of funds collected must only reimburse the community use site for costs directly attributable to that specific expanded use of the property.** For example, if the school calculates salaries of security and maintenance personnel for the additional hours required to keep the school open to the community for a basketball league on Tuesdays, it may collect this amount for reimbursement.

Reimbursements can be collected from another entity supporting community use. For example, to operate its community use pilot program, the Parlin Junior High School will be reimbursed by the City of Everett for the cost associated with extra custodial responsibilities.⁴⁰ Requests for contributions and voluntary payments are not considered fees.⁴¹

If some users are charged a fee but others are not, the statute will only protect the site owners from claims brought by those not charged a fee.⁴² For example, if the owner of a shared space charges a private group a fee but permits the community to use the space free of charge, the Recreational Use Statute will only serve as a defense to liability claims from the community users. The community use site owner must justify any money collected for opening the space by showing that the amount charged covers only the extra expenses the owner incurred in inviting the public to use the space on one or more discrete occasions. It is not enough simply to offer a blanket discount in fees for community groups. For the Recreational Use Statute to protect the owner from liability for injuries to users, the owner must go through the process of calculating the cost of utilities, custodial fees, and so forth, and be careful not to collect any money beyond that itemized amount.⁴³

Other Ways To Manage Risk

- **Private Insurance:** Most schools and municipal buildings have liability insurance that protects them from financial loss due to property damage or injury that is covered by the policy. The extent of insurance coverage varies depending on the facility. Some school policies also protect schools during after-school hours.⁴⁴ In addition, some school policies allow community users to be added as additional insured parties on an insurance policy.⁴⁵

Many schools require community users to have a certain amount of liability insurance. The cost of this type of insurance will vary, depending on, for example, the frequency of use and number of users. In Massachusetts in 2015, an estimated cost for a yearly policy for \$1,000,000 of coverage is \$500-\$700. Some insurance companies offer short-term or single-day insurance policies.

Insurance held by an organization using the space (for example, a nonprofit or other community program) may also cover damage to the school or municipal building and/or injuries to users. However, many potential community users for community use sites will not have their own insurance policies or carry only small insurance policies. Requiring the third-party user to carry a certain amount of insurance can be a barrier to community use. When community use sites already have coverage for issues that concern them, like property damage and injury, they can waive insurance requirements for community users. Remember that where the Recreational Use Statute applies to the use of the space, the community use site owners will not be financially responsible for either personal injury to property users or damage to their property, barring

any willful, wanton, or reckless actions on the part of the owner.

- **Indemnification/ “Hold Harmless” Clauses:** An alternative to a school or municipal facility holding its own insurance policy for afterhour activities is the addition of an indemnification or “hold harmless” clause to the community use agreement. These clauses assign responsibility for injury or damage to a certain party, or specify that the parties will share responsibility. An organization that runs a wellness fair at a school, for example, can indemnify the school from claims that arise while it was controlling the property, thus freeing the school from costs associated with litigation or liability related to the community use activity.
- **Liability Waivers:** Liability waivers are frequently used by businesses and organizations where there is an enhanced risk of personal injury, such as exercise facilities and sports arenas. In Massachusetts, a waiver signed by a parent will protect an organization or entity from claims for injury to a child.⁴⁶ This means that a program can require its participants to sign a waiver that absolves it of liability for any potential injuries to the participant before the person joins the program. Community use sites that expect children to use the space can require parents to sign liability waivers before the child is allowed to enter the space. If the child is injured, the school will not be held liable. Liability waivers, however, do not protect a school or municipality from liability for gross negligence, which is also referred to as “willful, wanton, and reckless conduct.”⁴⁷ This means that if the school or municipality did something that any reasonable person would find dangerous, like leaving sharp tools out in the open or failing to warn people about a piece of playground equipment that was known to be broken, a liability waiver would not protect it from claims by the community use program participants.



COMMUNITY USE OF SCHOOLS AND MUNICIPAL PROPERTY: A RISK-MANAGEMENT CHECKLIST

- ☐ Take reasonable steps to ensure that the community use site is safe for others to use. Keep areas well-maintained, equipment in working order, and grounds free from danger. Taking these steps will protect schools and municipal buildings from liability during normal operational hours as well as when school is not in session or the municipal buildings are not in use.
- ☐ Educate employees about keeping the school and municipal property a safe place for children and recreational users.
- ☐ Evaluate the costs that will be incurred from specific episodes of community use of the school or municipal property.
 - ☐ Remember that for the Recreational Use Statute to apply, users cannot be charged a fee to enter the space, meaning the site owner cannot collect an amount of money that exceeds the costs directly linked to opening the space on that occasion. However, if there are demonstrable costs associated with opening up the space to the community, community use site owners can be reimbursed for those specific costs. Calculate costs directly attributable to the users' recreational use of the property (janitorial and other staff overtime, supervising staff cost, and security services needed for the additional hours) and collect only this amount to reimburse the school for these costs. Document these expenses.
 - ☐ Refer to these monies in all related documentation, such as tickets, licenses, etc., as "reimbursements."⁴⁸
- ☐ Assess the extent of coverage in the school or town's insurance policy, including: when the school is covered (during and/or after school), the coverage of first party (policy-holder) injury or damage, and whether community users are or can be covered. Assess costs of additional needed coverage, if any.
 - ☐ Assess the extent of coverage of the community user's insurance policy, if any, including whether the policy will cover damage to school or municipal grounds and injuries to persons using the school or municipal facilities.
 - ☐ Negotiate with community users regarding which party will pay for any additional insurance that is required and whether the community user will indemnify the school or town.
- ☐ Evaluate the possible use of liability waivers that require community use program participants to waive the right to bring claims against the community use site owner for participants' personal injuries.



A printable version can be found in the library section of CHLPI's website at www.chlpi.org.

Step 6: Writing the Community Use Agreement

*In **Step 6**, you will learn about the content of a **comprehensive community use agreement**. You can ensure that your community use agreement includes all of the key provisions you need by reviewing the **Community Use Agreement Checklist** provided in this section.*

By this point, you have a concrete plan to share a specific community space afterhours. You have consulted all the key players, including site administrators, public officials and agencies, and community members who will be involved in making the community use initiative a success. You have created a budget and identified a source of funding, if necessary. You are now ready to begin writing the community use agreement.

A community use agreement is a written contract that lays out the responsibilities of all the parties involved in the initiative. It should describe, in simple language, the obligations and expectations of each entity or person who signs it.

The process of writing the community use agreement is an opportunity to discuss each part, or “term,” of the contract. To ensure the agreement is comprehensive and reflects the wants and needs of everyone involved, you should build into your project timeline an initial meeting to come up with a first draft, a period of a week or more to circulate it for review among your identified group of key players, and a second meeting to discuss edits and finalize the document.

Although the contents of the community use agreement will reflect your unique location and the specific community use plan you have developed, you can look to the Model Community Use Agreement (“Model CUA”) (see **Appendix A**) for guidance. Keep in mind that while the Model CUA includes some formal language, a community use agreement does not need to be written in “legalese.” If everyone understands the responsibilities assigned to them by the agreement and feels comfortable performing their obligations as written, the community use agreement will be a success. Use the checklist below to guide your discussions as you write a community use agreement.



Community Use Agreement Checklist

To draft a comprehensive community use agreement, you must think through the issues listed below. To help you list the responsibilities involved in opening the space to the community, use the notes you took when you visited the community use site. If the issue comes up during your conversations about sharing space, be sure that your community use agreement contains describes the decisions you make about it during your negotiations.

<input type="checkbox"/> Statement of purpose	Describes the reason(s) for entering into the Community Use Agreement.
<input type="checkbox"/> Identify who will sign the Agreement	Find out who has the authority to make decisions on behalf of the community use site and the city, town, or other organization that wants to share the space.
<input type="checkbox"/> Define the abbreviated terms	If you are going to use abbreviations in your Agreement, define all the terms at the beginning of the document so readers can easily refer to it as they continue to read.
<input type="checkbox"/> Define the term of the Agreement	Set a beginning and end date for the Agreement, or specify that the Agreement will renew automatically.
<input type="checkbox"/> Describe the facility or space that will be shared	Include the facility's address and list the equipment in the space that will be used. Include a description of the specific rooms or areas within a larger building, if applicable. Specify that the parties can add additional spaces or exclude them if both agree.
<input type="checkbox"/> Describe the public access hours	Set out the times that the space will be used for the expanded purpose, and specify that it is controlled by the primary user at all other times.
<input type="checkbox"/> Describe the parties' obligations	This section will lay out the responsibilities and expectations of everyone involved in detail. It may include many of the topics that appear below. All the parties involved in the community use initiative should walk through the community use site together before the space is opened to the community. Each party should confirm that the space is ready for use by the public.
<input type="checkbox"/> Designate a representative	Identify the person that can make decisions about how to carry out the Agreement and can confer with others if there is an issue to address. Describe how the representatives will communicate with one another
<input type="checkbox"/> Specify how users will gain access	Describe how the community users will obtain access to the space (i.e. keys or access cards).
<input type="checkbox"/> Describe security procedures	This includes locking the area after use as well as the necessary steps to prepare it for additional users.
<input type="checkbox"/> Designate someone to inspect the space	To avoid disagreements and keep the space safe, the parties will designate someone who inspects the space after each use and is responsible for notifying others of any damage and/or needed repairs.
<input type="checkbox"/> Supervision	Identify the person or entity who will be responsible for providing supervision for the activities that take place in the community use space.
<input type="checkbox"/> Equipment and storage	Specify which equipment at the community use site can be utilized by the community users. Require the community user to supply and remove all additional necessary equipment for use of the site, or designate a secure place at the site where equipment can be stored.
<input type="checkbox"/> Cleaning and maintenance	Describe how the space will be kept clean and safe for all users. This section can specify that additional custodial staff should be engaged to perform new tasks associated with expanded use of the space.

<input type="checkbox"/> Bathrooms, drinking water, etc.	Identify whether the community users will have access to restroom facilities and drinking water. Assign someone to be responsible for maintaining restrooms.
<input type="checkbox"/> Repairs	Describe how the parties will be made aware of needed repairs and assign responsibility for the cost of repairs. Explain how the parties will review the potential costs of repairs and agree to pay or share expenses.
<input type="checkbox"/> Disagreements and conflict resolution	Describe how conflicts will be handled, including how everyone will be notified of issues or problems.
<input type="checkbox"/> Operational costs	Set out the costs associated with putting the Agreement into action. These can include staff costs, equipment, and expenses to improve the space for additional users. Specify whether users will be charged a fee or will be asked for voluntary contributions. If one party will collect reimbursement for expenditures associated with community use, describe the process for collecting these funds.
<input type="checkbox"/> Manage risk	Choose a way to manage risk. Options include assigning risk by having one party “indemnify” or hold the other harmless from liability claims for personal injury or property damage. Alternatively, have the parties assume mutual responsibility or manage risk through liability waivers or increased insurance coverage. If there is no fee for community use, specify that under the terms of the Agreement, the community use site is opening to the general public free of charge and expects to be protected from liability by the Massachusetts Recreational Use Statute.
<input type="checkbox"/> Termination	Describe the terms under which the Agreement can be terminated and what kind of prior notice of termination the parties must give one another.
<input type="checkbox"/> Amendments	Specify that amendments to the Agreement must be written and approved by everyone who signs the Agreement.
<input type="checkbox"/> Include attachments	Be sure to include all documents the Agreement refers to, such as other policies, insurance certificates, photos of the space, and inventory lists.

A printable version can be found in the library section of CHLPI’s website at www.chlpi.org.

Step 7: Planning for Disagreement

*Step 7 will offer some tips on how to **resolve conflict** that might come up over the course of the community use initiative.*

Even though detailed community use agreements make every effort to resolve potential conflicts before they arise, there may be disagreements about space administration, maintenance, or scheduling over the course of sharing space. The community use agreement should lay out a clear conflict resolution process. The process should include:

- **Regular check-ins.** Keep everyone in the loop and quickly address issues that need to be solved.
- **Key people that can resolve the conflict.** Choose people that are authorized to sign off on compromises and any necessary amendments to the original community use agreement.
- **The steps that must be taken to resolve the issue.** If problems do arise, both sides should be committed to finding a solution that allows community use to continue. For example, a community use agreement could require both sides to have an initial conversation by phone and to meet twice in-person to resolve disputes before resorting to other measures.



Step 8: Publicizing Your Initiative

*Step 8 will describe how to **publicize your initiative** using **social media** and other **publicity resources**.*

To make the community use initiative a success, community residents need to know about the facilities that have been opened for shared use. There are many ways to get the word out about community use, including:

- **Websites.** Put information about your community use initiative on relevant websites. Cities, towns, schools, and organizations usually have websites with event schedules that can include your new initiative.
- **Social media.** Advertising use of social networking sites and applications like Facebook and Twitter can help connect with community residents, especially when working with youth, and quickly spread the word about your community use initiative.
- **Press releases.** Draft a press release that includes details of your community use initiative and distribute it to local media. Highlight the goals of the initiative and include the location and times so that residents can take full advantage of the newly open space.
- **Announcements and launch events.** Post flyers in local businesses and schools. Ask schools in your area to include your announcement as part of a bulletin to parents and family members. Consider holding an inaugural launch event with food or small prizes that gets residents into the space so they can become familiar with its new open hours.
- **Word of mouth.** One of the most effective ways to publicize community use is simply telling residents about it in-person. Speak to residents at community events like town meetings or festivals and let them know what you've accomplished. Talk about the community use agreement and explain what it means for the community. If elected officials or government agency staff have been involved, encourage local government officials to own the community use initiative as one of their accomplishments and mention it in speeches or during public appearances.

The more people use the newly opened space, the more the community will benefit and the more likely similar initiatives will be able to win support and be successful. Highlighting the community use initiative can and build momentum for gaining access to other community space.

Step 9: Developing a Community Use Timeline and Tracking Progress

*In **Step 9**, you will learn about how to develop a **community use timeline** that works for your community use team. This section will also offer tips about how to **track progress** in your initiative.*

When community members come together to work on community use initiatives, they often intend to complete the agreement and open the space as quickly as possible. However, community use can often require negotiating a range of logistical details, identifying funding, and navigating schedules of busy school and municipal officials. It can be difficult to keep everyone focused on the task at hand. To keep your community use process moving forward:

- **Choose a project leader.** The project leader can take charge of scheduling meetings, taking minutes, sending reminder emails, cross-checking meeting times with budget process calendars and other events relevant to community use, confirming that key players have completed their assigned tasks, and conducting progress check-ins. The project leader should be organized, persistent, and confident that he or she can keep the community use discussions moving.
- **Share contact information of key players.** Everyone involved in meetings about community use should be able to easily reach one another to discuss the initiative and work together to complete assigned tasks between meetings.
- **Establish a timeline.** Include all relevant calendar events in your timeline. If you are working with a school, make sure you have a copy of the academic calendar. Be sure to include important dates in the municipal budget cycle. Establish one goal for each week or month and discuss how you will meet your goals at each meeting of the key players.
- **Keep records of your meetings.** Meeting minutes should be circulated to everyone involved in the discussions after each meeting of the key players. Each meeting should assess progress that has been made on the previous meeting's goals. Note priority tasks in the meeting minutes so that key players know where to focus their energy if they have limited time to work on community use.
- **Build in time to review and edit the community use agreement.** The community use agreement cannot be completed in one meeting. An initial draft should be circulated among the key players, with time for comments and suggested edits to be incorporated into a final draft. A comprehensive community use agreement will save time later because it will provide answers or guidance for questions or issues that come up as the agreement is implemented.

Follow Up

Once the community use initiative is underway, there are several key pieces of information the community will want to know to measure its success, including:

- How many people use the space? What age group tends to use it most?
- When during the shared use hours do most people arrive?

- Do they use the space for its intended purpose?
- Do they enjoy using the space?
- Do some people attend regularly?
- What would they change about the community use initiative, if anything?
- How much of the budget is actually spent on the initiative?

Keeping track of the number of people who use the space during the shared hours is important for a few reasons. First, demonstrated use of the space proves the value of the initiative to skeptics or future supporters. Second, if numbers of attendees are lower than expected, it will serve as motivation for the community use team to strategize about how to make it more popular or take extra steps to publicize it. Third, it helps the key players hone the community use concept to be more responsive to community needs. For example, if a school gym is open on Tuesday and Thursday evenings but nearly everyone attends only on Thursday, the community use team could drop the Tuesday time and choose a different weekday to open, or reinvest the resources expended on Tuesday into Thursday programming.

The community use team should also know how people are actually using the space when they attend.

Ways to collect information that the team can use in evaluating the initiative include:

- **Polls/Surveys.** You can interview attendees about their experience, ask them to rate the effectiveness of the facility being open for additional hours, encourage them to complete a simple survey, or make comment cards available on-site. To maximize responses from community use participants, remember to keep surveys short!
- **Records.** Keep track of how many residents are using the facility during the additional hours, and when they arrive. Try to estimate the age group of the attendees. Numbers are always helpful to include in future funding requests, and can also help adjust the community use initiative schedule or improve the activities offered in the space.
- **Finances.** Reconcile your pre-initiative budget with how much money is actually spent over the course of the agreement. This will help you adjust your budget going forward and help garner support for future funding expansion requests.



Sample Community Use Timeline: 8 Weeks

Week	Tasks
Week 1	<ul style="list-style-type: none"> ✓ List potential community spaces. ✓ Gauge community interest through informal survey. ✓ Develop a concept and choose a location.
Week 2	<ul style="list-style-type: none"> ✓ Contact key players. ✓ Distribute information about the benefits of community use to key players. ✓ Find out about upcoming community meetings where you can promote your idea for community use.
Week 3	<ul style="list-style-type: none"> ✓ Schedule a meeting with key players. ✓ Ask meeting participants to bring relevant information to the meeting, such as insurance information. ✓ Conduct a site visit. ✓ Make a list of everything that will need to be included in your community use agreement based on your site visit.
Week 4	<ul style="list-style-type: none"> ✓ Meet with key players. ✓ Bring the Model Community Use Agreement to your meeting and discuss what your individual community use agreement will cover. ✓ Draft a preliminary budget. ✓ Discuss potential sources of funding. ✓ Develop a community use agreement implementation timeline. ✓ Assign tasks to key players. ✓ Schedule follow-up meeting.
Week 5	<ul style="list-style-type: none"> ✓ Key players perform their assigned tasks. ✓ Draft a community use agreement based on the concept and preliminary budget. ✓ Circulate the draft community use agreement to key players. ✓ Ask the school, city, or town attorneys to review the draft community use agreement, if relevant.
Week 6	<ul style="list-style-type: none"> ✓ Incorporate edits into the community use agreement. ✓ Circulate the agreement for final approval. ✓ Sign and date the community use agreement. ✓ Plan how to publicize the community use initiative.
Week 7	<ul style="list-style-type: none"> ✓ Prepare the community use space. ✓ Draft press releases. ✓ Post information about your community use project on social media and town/school calendars. ✓ Distribute information about the project at community events. ✓ <u>Open the doors or gates of your site for community use!</u>
Week 8	<ul style="list-style-type: none"> ✓ Meet with key players to get feedback on the first community use session. ✓ Make a plan for ongoing monitoring of the community use project. ✓ Continue to publicize your community use initiative.

A printable version can be found in the library section of CHLPI's website at www.chlpi.org.

APPENDIX A

Model Community Use Agreement

This Model Community Use Agreement draws from the exceptional Model tool published by the National Policy & Legal Analysis Network (NPLAN). For more NPLAN resources and information, see www.changelabsolutions.org.⁴⁹

This template agreement can help form the body of your own community use agreement. Each section can be expanded, eliminated, or tailored as your unique community use initiative requires. A printable version can be found in the library section of CHLPI's website at www.chlpi.org. As you'll see, some sections require you to review and include information from important documents, such as insurance policies. If you are meeting with your community use team to discuss the agreement, you'll want to be sure you have the information and documentation you need. These could include:

- ☐ Insurance policy
- ☐ Community use or shared use policy
- ☐ Hourly wage-rate for staff that clean or supervise the space
- ☐ Union requirements that relate to custodial or supervising staff
- ☐ A copy of any local ordinances or regulations with which your project must comply

Note that although the model agreement below addresses opening school facilities, it can be adapted to community use initiatives that take place in other types of spaces, such as town halls, private colleges, or libraries. The text boxes that are shaded gray contain notes about the significance of the different clauses and user options for making the agreement fit a specific initiative.

Opening Indoor and/or Outdoor School Facilities For Use During Non-School Hours

AGREEMENT BETWEEN THE _____ SCHOOL DISTRICT ("DISTRICT") AND _____ CITY/TOWN/COUNTY/
NONPROFIT FOR USE OF SCHOOL RECREATION FACILITIES

PURPOSE

In order to increase opportunities for physical recreation in the [CITY/TOWN] of [CITY/TOWN NAME], the parties agree as follows:

1. Definitions

For the purposes of this Agreement:

Public Access Hours refers to _____ hours on _____ [WEEKDAYS\WEEKENDS].

Designated Representatives refers to the individuals authorized to make decisions about how to carry out this agreement, as selected by the parties and identified in Section(s) _____.

In the Definitions section, explain any abbreviations you use in the rest of the document. This will help readers easily grasp the meaning of agreement, especially when the agreement is long and/or the community use concept is complex.

2. Term and Effective Date

This Agreement will be effective on _____, after inspection of the space by both parties, and will continue for a period of _____. The agreement will be automatically renewed every _____ unless sooner

terminated as provided for in Section _____.

The term is the duration of the agreement. The agreement should include a specific start and end date. Although the parties can agree that the agreement should automatically be renewed on a regular basis, it is still helpful to have regular check-ins at the renewal time to be sure that any needed amendments are added to the agreement. The effective date is the date the agreement becomes operational (the date that each party begins to be obligated to perform their assigned tasks).

3. Facilities Covered

[INDOOR OR OUTDOOR FACILITY TO BE SHARED]: This agreement covers use of the following space located at _____ [ADDRESS] as described below and as pictured in Attachment A, with the inventory of equipment listed in Attachment B:

[DESCRIPTION]

The District and the [CITY/TOWN/NONPROFIT] may add or exclude additional facilities during the term of this Agreement, provided that any such change be in writing and approved by both parties.

Describe the space as completely as possible, including any parking or bathroom facilities that will be able to be used during the community use hours. Someone who has never been to the site before should be able to recognize the area where community use will take place by reading the description. When other documents, such as lists of equipment, photos, certificates, or related legal documents, will help anyone reading the agreement fully understand it, you can include the document as an Attachment.

4. Permitted Use of [FACILITIES DESCRIBED IN SECTION 3]

The District shall be entitled to the exclusive use of [FACILITY] for public school and school-related educational and recreational activities, including summer school, and at all other times except for the agreed-upon Public Access Hours, as described below.

The [CITY/TOWN/NONPROFIT] shall have access to the [FACILITY] for the purpose of [RECREATION OR OTHER PROGRAM] during the hours of _____ on _____ day(s) each week. These are known as the Public Access Hours.

The space could be open for several days each week after school or simply for a few hours on a weekday evening or weekend. The permitted community use could be as structured as a youth basketball league or as simple as open gym or playground hours with no set programming. The needs of the community and capacity of the community use site will dictate the permitted use and public access hours. If the space will be used only for a specific program and population, such as a youth basketball program, you can reflect this in the community use agreement by substituting Basketball Program for Public Access Hours (or using any short descriptive phrase that makes sense).

5. Compliance With Law

All use of District and [CITY/TOWN/NONPROFIT] property shall be in accordance with state and local law. In the case of a conflict between the terms of this Agreement and the requirements of Massachusetts law, Massachusetts law shall govern.

6. Obligations of [CITY/TOWN/NONPROFIT]

In this section, the responsibilities of the city, town, or nonprofit will be fully described. This includes identifying the person who is authorized to make decisions about how to carry out the agreement and describing access and security procedures, staffing requirements, inspection processes, and maintenance issues.

a. Designation of Employee

The [CITY/TOWN/NONPROFIT] designates the following employee with whom the District, or any authorized agent of the District, may confer regarding the terms of this Agreement:
[Name, Title, Organization, Address, Phone Number, Email]

The [CITY/TOWN/NONPROFIT] may select a new employee as their Designated Representative, and must provide the District with the name and contact information of the newly selected individual within 5 business days.

b. Access and Security

The [CITY/TOWN/NONPROFIT] will designate someone to open and close the [FACILITY] during Public Access Hours.

This section will include information about how the person or people opening the space will obtain keys or other mechanisms of accessing and securing the space. It will also describe steps that need to be taken to make the space safe for the intended users. For example, if the space is going to be used in the winter evening hours, the people who open the space may need to turn on extra lights or put another layer of salt on the walkways surrounding the buildings.

c. Inspection and Notification

The [CITY/TOWN/NONPROFIT] personnel shall inspect the [FACILITY] to ensure these sites are returned in the condition they were received. The personnel will notify the District within _____ hours/days in the event that the [FACILITY] suffers damage during Public Access Hours.

d. Supervision

The city or town may wish to provide supervision during Public Access Hours or simply open the doors or gates to Public Access without supervision. This model clause provides for supervision.

The [CITY/TOWN/NONPROFIT] shall provide personnel necessary for the direction or supervision of activities during the Public Access Hours. The supervisors shall enforce all District rules, regulations, and policies provided by the District while supervising community recreational activities.

If there are specific instructions that supervisors or the people who use the community use site need to follow, the community use agreement should describe how they will become aware of these rules and procedures. It might specify a one-time training of site supervisors by District personnel, or mandate that special rules be posted during the Public Access Hours.

e. Equipment and Storage

The [CITY/TOWN/NONPROFIT] shall provide all expendable materials necessary for carrying out its programs, and

i. shall remove the materials from the [FACILITY] at the end of Public Access Hours.

OR

ii. shall store these materials in the [DESIGNATED STORAGE AREA] as approved by the District.

f. Custodial

The [CITY/TOWN/NONPROFIT] will encourage community users to dispose of trash in the trash receptacles.

7. Obligations of District

a. Designation of Employee

The District designates the following employee with whom the [CITY/TOWN/NONPROFIT], or any authorized agent of the [CITY/TOWN/NONPROFIT], may confer regarding the terms of this Agreement:

[Name, Title, Organization, Address, Phone Number, Email]

The District may select a new employee as their Designated Representative, and must provide the [CITY/TOWN/NONPROFIT] with the name and contact information of the newly selected individual within 5 business days.

b. Access and Security

The District shall provide access to the [FACILITY]. The District will provide keys, security cards, and training as needed to the [CITY/TOWN/NONPROFIT] employee(s) responsible for opening and locking the [FACILITY] for Public Access Hours.

c. Inspection and Notification

The District shall inspect the [FACILITY] after Public Access Hours and report any damage to the City within _____ days after inspection. They will notify the city by letter, facsimile, or email to the [CITY/TOWN/NONPROFIT]'s designated employee identifying the facility, date of detection, name of inspector, description of damage, and estimated or fixed costs of repair or property placement.

d. Equipment and Storage

The District shall provide a locked equipment storage facility at a location specified by the District for use by the [CITY/TOWN/NONPROFIT].

e. Custodial

The District shall make its trash receptacles available during Public Access Hours.

Many school and municipal custodians belong to a union, and employers must therefore comply with minimum work requirements and overtime policies when assigning tasks associated with increased use of community space. Community use discussions should include input from custodial staff on the costs associated with expanded hours or tasks.

f. Toilet Facilities

The District will make restroom facilities available during Indoor Public Access Hours. The District shall maintain these restroom facilities.

The parties should determine whether to permit community access to District restroom facilities. In a school that has multiple restrooms, the parties can decide that only one restroom will be made available and others will be locked or blocked off during Public Access Hours. Another alternative is to have the city or town place temporary, portable restrooms facilities onsite for use during the Public Access Hours.

8. Maintenance

The District will perform normal maintenance of the [FACILITY] at basic level of service subject to normal wear and tear. The District will notify the [CITY/TOWN/NONPROFIT] of any known change in condition of the [FACILITY].

In some locations in Massachusetts, school districts are responsible for maintenance of the buildings while the municipality's Department of Parks or Public Works is in charge of maintaining the surrounding fields and grounds. The party who already maintains the space should be assigned maintenance responsibilities under the agreement.

9. Restitution and Repair

[Option One: Model clause requiring the city or town to repair damage.]

The [CITY/TOWN/NONPROFIT] shall be wholly responsible to repair, remediate, or fund the replacement or remediation of any and all damage or vandalism to the [FACILITY] that occurs during Public Access Hours.

[Option Two: Model clause requiring the city or town to notify the District of damage and reimburse the costs to the District of repairing damage.]

The City shall be responsible for making restitution for the repair of damage to the [FACILITY] during Public Access Hours.

- a. Inspection and Notification** The District shall, through its designated employee, inspect and notify the City of any damage, as described above in Section _____ of this Agreement.
- b. Repairs** Except as mutually agreed, the [CITY/TOWN/NONPROFIT] shall not cause repairs to be made for any building, facility, property, or item of equipment for which the District is responsible. The District agrees to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of conflict-resolution under Section _____ of this Agreement that the [CITY/TOWN/NONPROFIT] is responsible for the damage, then the [CITY/TOWN/NONPROFIT] agrees to reimburse the District at the estimated and/or fixed costs agreed upon.
- c. Reimbursement Procedure** The District shall send an invoice to the [CITY/TOWN/NONPROFIT]'s designated employee within _____ days of completion of repairs or replacement of damaged property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached. Actual costs shall be reimbursed if less than estimated and/or fixed costs. The [CITY/TOWN/NONPROFIT] shall reimburse the District within _____ days from receipt of such invoice.
- d. Disagreements** The [CITY/TOWN/NONPROFIT] shall retain the right to disagree with any and all items of damage to buildings, facilities, property, or equipment as identified by the District, provided this disagreement is made within _____ days after a first notification.
- i. The [CITY/TOWN/NONPROFIT] shall notify the District of any disagreements in writing by letter, facsimile, or email to the District's designated employee. The [CITY/TOWN/NONPROFIT] shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the [CITY/TOWN/NONPROFIT].
 - ii. After proper notification, designated representatives of the [CITY/TOWN/NONPROFIT] and District, shall make an on-site investigation and attempt a settlement of the disagreement.
 - iii. In the event an agreement cannot be reached, the matter shall be referred to _____ [City official] and _____ [District official], or their designees, for resolution.
 - iv. The District shall have the right to make immediate emergency repairs or replacements of property without voiding the [CITY/TOWN/NONPROFIT]'s right to disagree.

After discussion, the parties will tailor this provision to best suit their needs. The District may want the city or town to make any repairs or may want to make the repairs using its own personnel or contractors and be reimbursed for the costs.

Parties should address: (1) Which party will be responsible for making the repairs; (2) The timeline for making repairs; (3) The method and timeline for making reimbursements; and (4) The method for resolving disputes over repairs/reimbursements.

10. Operational Costs

a. Documentation of Costs

The [CITY/TOWN/NONPROFIT] and the District shall maintain records of costs associated with the Agreement.

b. Payment of Overtime

Each party shall bear the cost of any overtime incurred by their employees in carrying out this Agreement.

In this section, the parties can allocate any costs associated with the Agreement.

The parties may wish to absorb the costs each incur while implementing the Agreement or require one or the other to be responsible for the costs.

The District may want the city or town to pay rent to the District for use of the facility. However, in Massachusetts, the Recreational Use Statute offers liability protection to the school if it makes the space available to the public without charging a fee. The District may wish to manage its liability risks in other ways (such as using liability waivers or increasing its insurance coverage), and therefore decide to charge rent anyway.

The parties can also lay out the costs of opening the space and charge only that amount to the city or town to reimburse the District for extra expenses associated with community use. In this scenario, the District would retain the ability to use the Recreational Use Statute as a defense to a liability claim. In this case, the community use agreement should include a sentence that states:

Any funds collected by the parties for use of this space shall be used to reimburse the District and/or the [CITY/TOWN/NONPROFIT] for costs directly attributable to use of the facility by the [CITY/TOWN/NONPROFIT], in accordance with M.G.L. c. 21 §17C. These costs include: X, Y, and Z.

11. Liability and Indemnification

In a scenario where the District does not charge a fee to the city or town for its use of the community use space, the Massachusetts Recreational Use Statute offers the District protection from liability for personal injury or property damage. However, the District or the city or town may still want to include an indemnification or “hold harmless” clause to protect against any liability that they might incur. If appropriate, use the preamble below in your liability section, and decide whether you want to include Option One or Option Two.

In accordance with M.G.L. ch. 21 s. 17(c), the District makes the [FACILITY] available to members of the public for recreational purposes. The District has collected funds/will collect in the amount sufficient to reimburse the District for costs directly attributable to this expanded use of the [FACILITY] by [CITY/TOWN/NONPROFIT], as laid out below. The District is charging no fee for use of the space.

[Option One: The model clause below places responsibility on the city or town to indemnify the District for any liability as a result of personal injury or property damage or damage to District property, unless the damage is caused by the negligence or willful misconduct of District employees.]

The [CITY/TOWN/NONPROFIT] shall indemnify and hold harmless the District, its Board, officers, employees and agents (collectively, the “School Parties” and individually, a “School Party”) from, and if requested, shall defend them against all liabilities, obligations, losses, damages, judgments, costs or expenses (including reasonable legal fees and costs of investigation) (collectively “Losses”) as a result of (a) personal injury or property damage caused by any act or omission during the Public Access Hours; or (b) any damage to any District property as a result of access granted pursuant to this Agreement; provided, however, the [CITY/TOWN/NONPROFIT] shall not be obligated to indemnify the School Parties to the extent any Loss arises out of the negligence or willful misconduct of the School Parties. In any action or proceeding brought against a School Party indemnified by the [CITY/TOWN/NONPROFIT] hereunder, the [CITY/TOWN/NONPROFIT] shall have the right to select the attorneys to defend the claim, to control

the defense, and to determine the settlement or compromise of any action or proceeding, provided the applicable School Party shall have the right, but not the obligation, to participate in the defense of any such claim at its sole cost. With respect to damage to District facilities, remediation will be provided at the full cost of replacement or repair to the facility, as applicable.

[Option Two: The model mutual indemnity clause below provides for each party to pay for their share of liability.]

- a. The [CITY/TOWN/NONPROFIT] shall defend, indemnify, and hold the District, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the [CITY/TOWN/NONPROFIT], its officers, agents, or employees.
- b. The District shall defend, indemnify, and hold the [CITY/TOWN/NONPROFIT], its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents or employees.

An Indemnification Clause or "hold harmless" clause is a contractual provision in which one party agrees to be responsible for any specified or unspecified liability or harm that the other party might incur. The District and city or town have three options: (1) the city or town can take responsibility for the potential liability; (2) the District can take responsibility; or (3) they can share responsibility with a mutual indemnity clause.

12. Insurance

The [CITY/TOWN/NONPROFIT] and the District agree to provide the following insurance in connection with this Agreement.

- a. Documentation of Insurance. The [CITY/TOWN/NONPROFIT] and District shall provide to each other a certificate of insurance each year this Agreement is in effect showing proof of the above coverage. In the event the [CITY/TOWN/NONPROFIT] or District is self-insured for the above coverage, such agency shall provide a letter stating its agreement to provide coverage for any claims resulting from its negligence in connection with community use facilities in the above amounts.

or
- b. The District waives documentation of insurance by the [CITY/TOWN/NONPROFIT].

Insurance is a contract where one party (the *insurer*) promises to pay the insured's cost of loss, damage, or liability arising from the occurrence of a specific covered event. Personnel from the District and the city or town must confirm the nature and extent of insurance coverage maintained by each party so that the Agreement accurately reflects the amount of insurance coverage of each party.

13. Evaluation/Conflict Resolution

- a. The [CITY/TOWN/NONPROFIT] and the District shall monitor the community use project and Agreement for its duration through their Designated Representatives. The Designated Representatives will hold conference calls or meetings _____ *[add frequency of meetings here]* to review the performance of the project and to discuss interim problems during the term of the Agreement. If the Designated Representatives are unable to reach a solution on a particular matter, it will be referred to _____ *[City official]* and _____ *[District official]*, or their designees, for resolution.

- b. The parties shall review the Agreement by _____ each year to evaluate the project and to propose amendments to this Agreement.
- c. The parties recognize the primary purpose of [FACILITY] is [state purpose]. If disagreement continues after a good faith attempt to resolve a conflict over use of the space in accordance with the procedure stated above, the needs of the District will ultimately take precedence over the needs of the [CITY/TOWN/NONPROFIT].

The parties need to have a process by which to address and resolve any concerns or problems that arise during the Agreement and to evaluate the Agreement. The conflict process could involve a commitment to a certain number of in-person meetings where the parties work toward compromise and resolution. The parties should agree to use their best efforts, also known as “good faith,” to resolve problems.

14. Termination

This Agreement may be terminated at any time prior to its expiration, for _____ [add basis here] upon _____ days/months/years written notice.

The termination clause sets forth the conditions upon which either party can end the Agreement before its term expires. The parties will tailor this clause to reflect what conditions or actions will be sufficient to terminate the Agreement and how much notice each party must give the other before terminating it.

15. Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and supersedes any prior negotiations, representations, agreements, and understandings.

This clause makes the written terms of the community use agreement the only guiding terms for the community use initiative. If the parties agreed to something verbally during negotiations but did not put it into the community use agreement, neither the District nor the city or town can enforce that verbal agreement. This protects both parties.

16. Amendments

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

Signatures and Dates

You will need to know who has the authority to sign the community use agreement on behalf of the District and the city or town. Although a municipal employee and school principal may do most of the negotiating about the details of the agreement, the District Superintendent and the city or town’s Mayor may be required to approve and sign the document. Be sure to build time into the agreement process for any necessary review by attorneys from the district, the municipality, and/or the nonprofit.

Attachments

Remember to include all of the documents you refer to in the agreement as Attachments. Make a list of all Attachments following the signatures. When updating the agreement or drafting amendments, be sure to make sure the Attachments are current as well.

APPENDIX B

MASC Reference Manual Community Use Policies

The Massachusetts Association of School Committees includes these model policies as part of the compendium of model policies available to school districts to guide their individual district policy-making. Many of the individual district community use policies in Massachusetts are based on these models. While these policies are helpful in guiding school officials and community users about what types of afterhour activities are permitted in a school building or on school grounds, a specific community use initiative at a school will require more discussion and development of a community use agreement. Note that the requirement in KF-R no. 9 that all people and groups who use the school have insurance can be a barrier to the type of community use that we encourage in this toolkit. We encourage schools to consider waiving insurance from the community use partner if it already has adequate insurance protection.

COMMUNITY USE OF SCHOOL FACILITIES (Section KF)

It is the School Committee's desire that maximum use of school property be enjoyed by the townspeople. It is the Committee's intent that such use will maintain safe conditions and preserve the property for school program use.

Use of school buildings and other facilities by organizations will be permitted only when a worthy educational, civic, or charitable purpose will be served; or a substantial group of citizens from the community will be benefited.

School facilities will be used according to the regulations and rental fee schedules recommended by the Superintendent and approved by the School Committee.

Permission for the use of facilities must be obtained through the office of the Superintendent of Schools, where applications are available for this purpose.

Eligibility

School facilities will be available for the following:

1. Public school activities
2. Parent-teacher activities
3. Official town public hearings and political activities
4. Meetings and activities sponsored by the School Committee and school personnel
5. Parks and playgrounds activities
6. Local nonprofit and noncommercial organization activities
7. Metropolitan civic, educational, social, and religious organization activities if a substantial portion of the members are residents of the town
8. The activities of other organizations when approved by the School Committee

School and Town Preference

The priority given requests for use of school facilities will be as follows:

1. School activities
2. Town meetings and elections over other community activities
3. Parks and playgrounds

COMMUNITY USE OF SCHOOL FACILITIES (Section KF-R)

The use of school buildings, grounds, equipment, and facilities will be authorized by the Superintendent in conformity with the following regulations, which have been approved by the School Committee.

1. Requests for the use of school facilities will be made at the office of the Superintendent at least 14 days prior to the date of use.
2. School facilities may not be used for individual, private, or commercial purposes.

3. Requests for school facilities must be cleared with the building Principal or the Superintendent or both, should the nature of the request so justify.
4. School-related groups will be permitted reasonable use of school facilities without charge.
5. All activities must be under competent adult supervision approved by the Superintendent and the Principal of the building involved. In all cases, an assigned school employee will be present. The group using the facilities will be responsible for any damage to the building or equipment.
6. Groups receiving permission are restricted to the dates and hours approved and to the building area and facilities specified, unless requested changes are approved by the Superintendent.
7. Groups receiving permission are responsible at all times for the observance of fire and safety requirements.
8. Smoking within the building is not permitted. Permission for the possession and sale of alcoholic beverages may be granted to a nonprofit organization, which is properly licensed, only by the School Committee.
9. Proper liability insurance will be required of all groups given permission to use school facilities.
10. The Committee will approve and periodically review a fee schedule for the use of school facilities.
11. In situations where there is no cost factor to the school system, or in situations where a mutual exchange of facilities is possible between the school system and the organization, rates may be modified or eliminated by the Superintendent. In situations where extended usage for a long period of time is required, rates may be set at a contract price.
12. The School Committee reserves the right to cancel any permission granted.

APPENDIX C

Revolving Funds⁵⁰

The Massachusetts Department of Revenue's explanation of different Revolving Funds that schools and municipalities can use to fund community use initiatives is provided below.

DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

TECHNICAL ASSISTANCE SECTION

Two Recreation Revolving Funds Options

A revolving fund allows a community to raise revenues from a specific service and use those revenues without appropriation to support the service. They are often used when expenses tend to vary and are difficult to budget each year. The revenue is usually in the form of fees which must reasonably reflect the cost to provide the service or a program. Residents' participation in the program must be voluntary. Revolving funds can only be established as permitted by state law. In the instance of a recreation program, a community has two options.

Cities and towns can choose to set up a general departmental revolving fund under M.G.L. Chapter 44, §53E½, or they can operate under Chapter 44, §53D which is specific to parks and recreation programs. In each case, the revolving fund would be a repository for money collected from fees residents pay to participate in programs sponsored by the city or town recreation department. Those fees, as well as food concession and facility rental income, would then be immediately available to cover some or all of the program costs without further appropriation, including capital expenditures. In both cases, additional funds can be appropriated in the annual budget to support the recreation programs. All spending, whether for payroll or operating expenses and regardless of accounts to be charged, must still pass through the accountant or auditor review process and must comply with state procurement rules.

There are similarities and distinctions between the two revolving fund sections. A revolving fund under §53E½ must be reauthorized annually, but one created under §53D only requires an initial local acceptance vote. Communities are permitted to pay the salaries of full-time employees under §53E½, but if they do, benefits must also be paid from the revolving fund. Wages and benefits of part-time employees can be paid from the fund if so stated in the annual authorization. Under §53D, only the wages of part-time, seasonal or temporary employees may be paid from the recreation revolving fund.

There is a spending ceiling under §53E½ which is set in an annual fund authorization and can be no greater than one percent of the municipality's prior year levy. However, once authorized, a board of selectmen or city council can increase the spending limit of a §53E½ revolving fund during the year as long as it reflects an expectation of new, previously unaccounted for, revenue. There is no limit on how much can be collected and spent from the §53D revolving fund.

Interest income generated in a §53E½ revolving fund must be deposited to the general fund, but it remains with a revolving fund created under §53D. And, with a §53E½ revolving fund year-end balances carry forward, unless the fund is not reauthorized, while under §53D only balances under \$10,000 carry forward. Amounts of \$10,000 and over go to the general fund.

A decision to establish a revolving fund under one or the other statute turns on various considerations. Important is the size of the program and how much in fees and revenue are likely to be collected. Will staff be part-time or full-time? Is it possible the overall program will expand in ways not yet planned? Also, what is the management capability of staff? The season for recreation programs typically cross fiscal years. Where a §53E½ revolving fund operates with a spending ceiling, effective money management is critical. A §53D revolving fund offers more flexibility.

The chart below shows a comparison of the two revolving fund options for recreation programs.

	General Departmental Revolving Fund c. 44 §53E½	Parks and Recreation Revolving Fund c. 44 §53D
Local acceptance required	No	No
Annual Town Mtg/CC approval	No	No
Eligible activities	Any departmental program	Parks/Recreation programs
Pay municipal salaries from	Yes	P-T, seasonal, temporary only
Pay capital items/debt service	Yes	Yes
Spending ceiling for fund	1% of prior year levy	None
Revenue source	Departmental receipts from fees	Departmental receipts from fees
Interest income	Goes to General Fund	Stays with revolving fund
Fund balance goes to	Carries forward to next FY	<\$10k carries forward; balance over to General Fund
Other accounting procedures	If salaries, then benefits from fund	
Reports	Annual report	Annual report/copy to BOA

DEPARTMENT OF REVENUE

DIVISION OF LOCAL SERVICES

TECHNICAL ASSISTANCE SECTION

Revolving Funds/Non-School Purposes

A departmental revolving fund is a place to set aside revenue received, through fees and charges, for providing a specific service or program. The revenue pool is, in turn, a source of funds available to use by a department without further appropriation to support the particular service or program.

Most frequently, cities and towns create general departmental revolving funds under M.G.L. Ch. 44 Sec. 53E½. The fund is created with an initial city council or town meeting authorization that identifies which department's receipts are to be credited to the revolving fund and specifies the program or purposes for which money may be spent. It designates the department, board or official with authority to expend the funds and places a limit on the total amount of the annual expenditure. To continue the revolving fund in subsequent years, annual approval of a similar article is necessary. Managers are also required, each year, to report on the fund and program activities.

Under Sec. 53E½, any expenditure from a revolving fund is restricted to the then current fund balance or to the authorized spending limit, which cannot exceed one percent of the most recent tax levy. The combined authorized expenditures for all revolving funds cannot exceed ten percent of the levy.

If a revolving fund balance remains after total spending has reached the authorized limit, the balance carries over to the next fiscal year. Interest that accrues on a revolving fund balance under Sec. 53E½ reverts to the general fund. However, if the revolving fund is not reauthorized, any remaining balance closes to free cash, unless it is transferred by the legislative body to another revolving fund.

Including Ch. 53E½, Massachusetts General Laws allow revolving funds for about a dozen specific, non-school related

purposes. Another 13 apply to schools, but are not discussed here. The rules that govern these non-school funds vary.

When considering the establishment of other, specific purpose revolving funds, communities should always refer to the statutes to determine whether requirements exist for local acceptance or other city council or town meeting action in initial or subsequent years; what sort of activities may be financed through the revolving fund; and, to what extent salaries or capital items can be covered by the fund revenue. Each statute will specify if a spending ceiling applies and whether or not accrued interest remains with the revolving fund or belongs to the general fund.

Other non-school related funds include the following:

Parks and Recreation - [Ch. 44 Sec. 53d](#)

FOR MORE INFORMATION EMAIL: tacontact@dor.state.ma.us

APPENDIX D

Relevant Statutes

The full text of the Massachusetts Recreational Use Statute and the Massachusetts Revolving Fund Statute appear below.

The Massachusetts Recreational Use Statute

Massachusetts General Laws Chapter 21, § 17C. Public use of land for recreational, conservation, scientific educational and other purposes; landowner's liability limited; exception

(a) Any person having an interest in land including the structures, buildings, and equipment attached to the land, including without limitation, railroad and utility corridors, easements and rights of way, wetlands, rivers, streams, ponds, lakes, and other bodies of water, who lawfully permits the public to use such land for recreational, conservation, scientific, educational, environmental, ecological, research, religious, or charitable purposes without imposing a charge or fee therefor, or who leases such land for said purposes to the commonwealth or any political subdivision thereof or to any nonprofit corporation, trust or association, shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of wilful, wanton, or reckless conduct by such person. Such permission shall not confer upon any member of the public using said land, including without limitation a minor, the status of an invitee or licensee to whom any duty would be owed by said person.

(b) The liability of any person who imposes a charge or fee for the use of his land by the public for the purposes described in subsection (a) shall not be limited by any provision of this section. For the purposes of this section, "person" shall include the person having any interest in the land, his agent, manager or licensee and shall include, without limitation, any governmental body, agency or instrumentality, a nonprofit corporation, trust, association, corporation, company or other business organization and any director, officer, trustee, member, employee, authorized volunteer or agent thereof. For the purposes of this section, "structures, buildings and equipment" shall include any structure, building or equipment used by an electric company, transmission company, distribution company, gas company or railroad in the operation of its business. A contribution or other voluntary payment not required to be made to use such land shall not be considered a charge or fee within the meaning of this section.

Massachusetts Revolving Fund Statute

Massachusetts General Laws Chapter 71, § 71E: Appropriations for and expenditure of receipts from adult education and continuing education programs

Section 71E. In any city or town which accepts this section, all moneys received by the school committee in connection with the conduct of adult education and continuing education programs, including, but not limited to adult physical fitness programs conducted under section seventy-one B, summer school programs and programs designated by prior vote of said committee as community school programs, and in connection with the use of school property under section seventy-one, shall be deposited with the treasurer of the town or city and held as separate accounts.

The receipts held in such a separate account may be expended by said school committee without further appropriation for the purposes of the program or programs from which the receipts held in such account were derived or, in the case of the use of school property account, for expenses incurred in making school property available for such use, notwithstanding the provisions of section fifty-three of chapter forty-four of the General Laws. A city or town may appropriate funds for the conduct of any such program or for expenses incurred in making school property available for such use, which funds shall be expended by the school committee in addition to funds provided from other sources. Three years from the date a city or town accepts the provisions of this paragraph, and every third year thereafter, said city or town may act to rescind its original acceptance.

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Partners, Contributors, and Supporters

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Harvard School of Public Health

Angie L. Cradock
Rachel Adler

Massachusetts Department of Public Health

Jaime Corliss
Kim Etingoff
Halley Reeves
Maria Evora-Rosa
Donna Salloom
Lea Susan Ojamaa
Melissa Lucien

Mass in Motion

Valerie Sullivan
Valerie Spain
Matthew Lustig
Jana Linhart
Zachary Dyer
Stephen Winslow
Nicole Bourdon
Kiah McAndrew-Davis
Rachel Stoler
Jessica McMillin
Julie Kelly
Sarah Bankert

Others

Glenn Koocher
Asasia Carter
Paula Beaulieu
Eric Andrade
Marcia Picard
Dave Weed



Endnotes

- ¹ Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C(B) (West 2012).
- ² /The CONNECTIONS After School Program/, HOLYOKE PUB. SCHS., <http://www.hps.holyoke.ma.us/after-school.htm>
- ³ Site visit to Weymouth Teen Ctr. in Weymouth, MA. (Mar. 2013)
- ⁴ WACHUSETT REG'L SCH. DIST., NON-DISTRICT USE OF FACILITIES (MAR. 24, 2008), *available at* <http://www.wrsd.net/schoolcommittee/policies/7112.pdf>; AMESBURY PUB. SCHS., AMESBURY – ONLINE POLICY MANUAL, § KF (adopted 1988), *available at* <http://z2policy.ctspublish.com/masc/Z2Browser2.html?showset=mascall>; CAMBRIDGE PUB. SCHS., CAMBRIDGE – ONLINE POLICY MANUAL, § KF (adopted June 5, 2001), *available at* <http://z2policy.ctspublish.com/masc/Z2Browser2.html?showset=mascall>; CONCORD-CARLISLE SCH. DIST., COMMUNITY USE OF SCHOOL FACILITIES, *available at* <http://z2policy.ctspublish.com/masc/Z2Browser2.html?showset=mascall>; DANVERS SCH. DIST., COMMUNITY USE OF SCHOOL FACILITIES, *available at* <http://z2policy.ctspublish.com/masc/Z2Browser2.html?showset=mascall>.
- ⁵ HOLLISTON PUB. SCHS., USE OF SCHOOL FACILITIES MANUAL, *available at* <http://www.holliston.k12.ma.us/forms/BuildingUseManual.pdf>.
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ Interview with Glenn Koocher, Mass. Assoc. of Sch. Comms., in April 2013.
- ⁹ Interview with Bob Marra, Everett Community Health Partnership Director in January 2013.
- ¹⁰ MASS. GEN. LAWS ANN. ch. 41, § 1 (West 2013).
- ¹¹ MASS. GEN. LAWS ANN. ch. 40, § 6 (West 2013).
- ¹² MASS. DEP'T OF REVENUE, TWO RECREATION REVOLVING FUNDS OPTIONS (Apr. 2012), <http://www.mass.gov/dor/docs/dls/mdmstuf/technical-assistance/best-practices/recreationrevolvingfund.pdf>.
- ¹³ MASS. GEN. LAWS ANN. ch. 71, § 47 (West 2013).
- ¹⁴ MASS. GEN. LAWS ANN. ch. 71, § 71E (West 2013).
- ¹⁵ MASS. GEN. LAWS ANN. ch. 40, § 6 (West 2013).
- ¹⁶ GATEWAY REG. SCH. DIST., COMMUNITY USE OF SCHOOL BUILDINGS, http://www.grsd.org/UserFiles/Servers/Server_2448/File/Gateway%20Policies/Section%20K/POLK.pdf.
- ¹⁷ *Id.*
- ¹⁸ GATEWAY REG. SCH. DIST., CLASSIFICATION OF RENTAL ORGANIZATIONS, http://www.grsd.org/UserFiles/Servers/Server_2448/File/Gateway%20Policies/Section%20K/POLK.pdf.
- ¹⁹ *What Is Joint Use?*, KABOOM!, http://kaboom.org/joint_use.
- ²⁰ See Press Release, Am. Tort Reform Ass'n, School Principal Survey Reveals Fear of Tort Liability Limits Educational Opportunities for America's Children (Sept. 1, 1999), <http://www.atra.org/newsroom/school-principal-survey-reveals-fear-liability-limits-educational-opportunities-americas>.
- ²¹ Sullivan v. Rich, 878 N.E.2d 937, 939 (Mass. App. Ct. 2007).
- ²² Tort Claims Act, MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2012).
- ²³ Marengo v. Roy, 63 N.E.2d 893, 895 (Mass. 1945).
- ²⁴ Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C(B) (West 2012).
- ²⁵ See, e.g., Alter v. City of Newton, 617 N.E.2d 656, 658 (Mass. App. Ct. 1993).
- ²⁶ Remy v. MacDonald, 801 N.E.2d 260, 263 (Mass. 2004).
- ²⁷ Commonwealth v. Welansky, 55 N.E.2d 902 (Mass. 1944).
- ²⁸ *Id.*
- ²⁹ *Id.*
- ³⁰ See Capua v. Town of N. Reading, No. 04-00759 (Mass. Super. Ct. Nov. 10, 2004).
- ³¹ *Id.*
- ³² Tort Claims Act, MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2012).
- ³³ Stuart v. Town of Brookline, 587 N.E.2d 1384, 1388 (Mass. 1992).
- ³⁴ Tort Claims Act, § 2.
- ³⁵ Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C(B) (West 2012).
- ³⁶ The Recreational Use Statute does not apply if the joint use site-owner engaged in "willful, wanton, or reckless

conduct.” If the site-owner was extremely negligent and, for example, left a dangerous power tool out in the middle of the playground, the Recreational Use Statute would not serve as a defense to legal responsibility for possible injuries. Recreational Use Statute, § 17C(B). It is not certain whether this statute covers wrongful death claims. *McCarthy v. Town of Hamilton*, No. 9705507, 2000 WL 282929, at *4 (Mass. Super. Ct. Jan. 7, 2000). For the Recreational Use Statute to apply, the site must be open to the “general public,” not to a subset of the public. *Wilkins v. City of Haverhill*, 8 N.E. 3d 753 (Mass. 2014).

37 The term “land” is defined by the statute to include structures, buildings, and equipment attached to land, so it includes indoor and outdoor spaces. Recreational Use Statute, § 17C; *Seich v. Town of Canton*, 686 N.E.2d 981 (Mass. 1997).

38 See *Alter v. City of Newton*, 617 N.E.2d 656, 660–61 (Mass. App. Ct. 1993).

39 See *Marcus v. City of Newton*, 967 N.E.2d 140 (Mass. 2012).

40 Interview with the Everett Joint Use Team, in Everett, Mass. (May 2013).

41 Recreational Use Statute, § 17C(B).

42 See *Whooley v. Commonwealth*, 783 N.E.2d 461, 462 (Mass. App. Ct. 2003).

43 See *Marcus*, 967 N.E.2d 140.

44 James M. Whitton & Elaine S. Morris, *Liability Insurance: School Districts Have It, But Are They Covered?*, STATE BAR OF TEXAS SCH. L. SECTION, <http://www.schoollawsection.org/Liabilityinsurance.html>.

45 *Id.*

46 *Sharon v. City of Newton*, 769 N.E.2d 738, 748 (Mass. 2002).

47 *Id.*

48 See John J. Davis, *Tort Liability of Schools and School Employees*, in *SCHOOL LAW IN MASSACHUSETTS* (2nd ed. 2012).

49 This Model Joint Use Agreement draws from the exceptional model tool published by the National Policy & Legal Analysis Network (NPLAN). NPLAN’s Model Joint Use Agreement 2 is available at: <http://changelabsolutions.org/publications/model-JUAs-national>. The terms and explanations of NPLAN’s Model Joint Use Agreement has been edited to be relevant to the legal landscape in Massachusetts.

50 Dep’t of Rev., Div. of Local Servs., Technical Assist. Section, *Two Recreation Revolving Fund Options*, MASS.GOV, <http://www.mass.gov/dor/docs/dls/mdmstuf/technical-assistance/best-practices/recreationrevolvingfund.pdf>.

NOTES:

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