

THE MASSACHUSETTS JOINT 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 *joint use*, also known as shared use or community 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 Joint 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 joint use initiative in your community. From brainstorming ideas about where to find space in your town to drafting a comprehensive joint 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 is designed to provide assistance regardless of where you are in the process of creating a joint use initiative. For example, if you've already chosen a site for joint use and are ready to move forward with drafting the agreement, you can skip the preliminary steps and begin with **Step 6: Drafting the Joint Use Agreement**. If a particular issue has stumped your joint use team, like concerns about liability, you can turn right to **Step 5: Managing Risk** for the information that will be most helpful to your team discussions. Even if you are at an advanced stage in the process, you may want to flip back to review earlier steps in order to be sure you've thought through all the issues and possibilities.

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 joint use. However, the information in the toolkit applies to any municipal space, and can also be used to develop joint use arrangements with private entities, such as colleges. Although schools and other public buildings can open their doors afterhours for a variety of reasons, the goal of the Massachusetts Joint Use Toolkit is to promote community wellness by increasing opportunities for physical activity through joint use.

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The Massachusetts Joint Use Toolkit: Helping Kids and Communities Be Healthy and Active

Joint use, also known as *shared use* or *community 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. Joint use maximizes the use of existing community resources and gives community members access to safe, familiar spaces to be active on evenings and weekends.

In a joint use initiative, two entities sharing space, such as a school and a town, decide how the arrangement is going to work by drafting a joint use agreement. A joint use agreement is a simple 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. By clearly defining the terms of use for sharing space, joint use agreements alleviate concerns that often prevent schools and other municipal facilities from agreeing to greater community access after normal business or school hours.¹

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 JOINT USE

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

Joint 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*

¹ John O. Spengler et al., *Scale Development: Perceived Barriers to Public Use of Recreational Facilities*, 3 AM. J. HEALTH BEHAV. 36 (2012), available at <http://www.ncbi.nlm.nih.gov/pubmed/22370433>.

Each community in Massachusetts is unique, with distinct strengths, resources, and challenges. Effective joint use agreements reflect the specific needs of the community, and one agreement may therefore look quite different from the next. The development of a successful joint use agreement depends on the cooperation of community partners in communicating, planning, and negotiating different issues. Drafting joint use agreements that open recreational space afterhours is an important step toward improving the collective health of communities across the state.

Overview of the Joint Use Toolkit

Toolkit Contents

Whether the idea of joint use is completely new to you or your community has already begun to share space, this toolkit contains information that will prove useful in thinking through shared space issues and writing comprehensive, effective joint use agreements. In this toolkit you will find:

➤ **A Description of the Various Types of Joint Use Agreements**

There are a range of possibilities for joint use, from schools sharing gymnasiums in the evenings to office buildings making meeting rooms available for community yoga classes. This section will describe options and outline the specific issues and concerns that arise in different situations.

➤ **An Overview of Joint Use Agreements in Massachusetts**

Many communities in Massachusetts are already sharing school or municipal space, or have policies that allow for joint use. This section will give examples of joint use initiatives already in progress and discuss policies that guide school districts in administering their facilities.

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

From brainstorming possibilities to evaluating the success of a complete agreement, this toolkit offers guidance on every step in the joint use process. Some communities already have a concept and a location, but do not know who to contact or how to begin a productive conversation. Some have a successful program already in operation that would benefit from being formalized in a written agreement. Some communities will start from scratch and begin by cataloguing buildings and parks that might be good sites for sharing space. Regardless of how far along your community may be in maximizing its resources for joint use, the format of this toolkit will allow you to easily find information relevant to your unique plans and projects.

Step 1: Developing a Concept: How to construct the joint use plan that will be best for your community.

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

Step 3: Identifying and Approaching the Key Players: How to construct your community's Joint Use Team.

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

Step 6: *Drafting the Joint Use Agreement*: How to write the agreement, or contract, that describes the responsibilities and expectations of the parties involved in making joint 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 joint use initiative.

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

➤ **Frequently Asked Questions (FAQs)**

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

➤ **Additional Resources**

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

Types of Joint Use Agreements

Communities often have a range of underutilized spaces that could be shared and thus increase opportunities for exercise and recreation. Joint use agreements describe how recreational facilities can be used during off-hours. They address the concerns of different parties about sharing space, such as security, liability, facility maintenance, scheduling, and cost.

The type of facility to be shared will dictate the contents of the joint use agreement. Each agreement will be unique to the site where joint use occurs as different sites will require users to perform specific tasks to prepare it for being shared by the community. The information in this toolkit is primarily applicable to two types of joint use endeavors: (1) joint use of indoor and/or outdoor school facilities during nonschool hours and (2) joint use of municipal buildings and recreational facilities.



(1) Joint Use of Indoor and/or Outdoor School Facilities During Non-School Hours

School facilities are natural sites for shared use because they are familiar to community members, especially youth. As safety and accessibility are paramount in school design, schools already have certain features that make them ideal for use by mixed-age groups, such as fences separating fields from busy streets and handicap-accessible ramps. For communities with public transportation, schools are sure to be incorporated into established routes, making these sites accessible to residents without cars.

Furthermore, Massachusetts state law explicitly supports the use of public school property for educational and recreational activities. The School Committee of any town may “allow the use thereof by individuals and associations for such educational, recreational, social, civic, philanthropic and like purposes as it deems for the interest of the community.”² With more than 1,800 public schools in operation throughout the state, every city and town in Massachusetts has the ability to share school space for the benefit of the broader community.³

For schools to safely open their doors, playgrounds, or fields to the community afterhours, it is vital that the security of buildings and resources as well as maintenance of facilities be addressed. Shared use should never interfere with a school’s primary goal of educating and nurturing the community’s children. However, opening the recreation spaces in schools afterhours also serves the public school mission by creating a healthier, active student body that is well-exercised and therefore ready to learn.

(2) Joint Use of Municipal Buildings and Recreation Facilities

Joint use agreements can also enable maximum use of municipal buildings and recreation facilities. City and town office buildings and resource centers often contain space that can be easily converted into makeshift yoga studios and group aerobic exercise rooms. Gyms and other recreational facilities such as pools and indoor field houses that are generally dedicated to specific uses can host open swim, youth sports leagues, or other active extracurriculars during off-line

Publicly-owned spaces that might be shared include:

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

² MASS. GEN. LAWS ANN. ch. 71, § 71 (West 2013).

³ *Operating Schools: 2012-13 School Year*, MASS. DEP’T OF ELEMENTARY AND SECONDARY EDUC., <http://profiles.doe.mass.edu/profiles/general.aspx?topNavId=1&orgcode=00000000&orgtypecode=0&>.

hours. Again, regardless of the proposed use of any space, questions about security, liability, scheduling, capacity, maintenance, supervision, and cost must be answered.

One of the great features of joint use agreements is their flexibility, which allows them to be used for a variety of purposes. Because they can adapt to the needs of local communities, joint use agreements are an effective health-promotion tool in towns and cities across the state.

Joint Use Agreements in Massachusetts

For many communities across Massachusetts, the idea of sharing space is far from new. Many public schools permit third-party organizations to run on-site programs on weekends, before school, or from the school day's end through the early evening. These programs mostly serve students enrolled in the school and include educational enrichment as well as some active programming, like the hip-hop dance or lacrosse offered by the CONNECTIONS After School Program in Holyoke Public Schools.⁴ Other schools, such as Somerville High School, run evening classes for adults in school classrooms.⁵ Some of these initiatives and programs operate according to a written joint use agreement, and some are the result of informal arrangements between building administrators and the community.

*In Springfield, some public schools open their gymnasiums in the evenings to community youth for a basketball program.**

Wherever community partners are working together to increase safe play and exercise opportunities, their efforts should be applauded. However, written joint use agreements that are signed by all parties after deliberation between the key decision-makers have several advantages over informal agreements. First, they provide everyone involved with a concrete reference for what is permitted in the space and clearly lay out what the parties can expect from each other. This makes misunderstandings that might jeopardize a productive relationship between a space administrator and community users less likely. Written agreements also make joint use initiatives more fair and sustainable because they avoid reliance on the goodwill of one individual who is willing to perform extra tasks to allow a building or field to be open for broader use. Written agreements ensure that extra responsibilities that come with sharing space are distributed fairly between the parties, or are allocated to the correct person or entity. They also allow joint use arrangements to continue even if one of the decision-makers leaves or changes position within the community because they contain procedures for handling personnel transition and demonstrate a detailed history of successful shared use in a particular space to those who are new to the community.



*Opening the Doors of Springfield Gyms for Safe Areas to be Active, MASS IN MOTION, <http://www.mass.gov/eohhs/docs/dph/mass-in-motion/ss-mim-springfield-gyms.pdf>.

⁴ The CONNECTIONS After School Program, HOLYOKE PUB. SCHS., http://www.hps.holyoke.ma.us/after_school.htm.

⁵ Welcome to the Somerville Center for Adult Learning Experience (SCALE), SOMERVILLE PUB. SCHS., <http://www.somerville.k12.ma.us/education/components/scrapbook/default.php?sectionid=441>.

Many communities throughout Massachusetts have policies in place that lay out conditions for allowing shared use of certain facilities.⁶ A community or school district policy for joint use is different from a joint use agreement that describes a specific use of a specific site. 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.”⁷ Other conditions in the policy require the user to seek permission from the building administrator and comply with the rental fee schedule approved by the School Committee.⁸ If a community group wanted to run an

Joint use gets kids moving!

In one community where children were provided access to a schoolyard during afterschool hours, rates of physical activity were 84% higher than in a similar community that did not have access

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.⁹ School policies like this one can help dictate the content of the joint 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 negotiated.

Some of the Massachusetts district policies are based on model policies made available by the Massachusetts Association of School Committees (MASC).¹⁰ In Massachusetts, School Committees hold a great deal of decision-making power over school operation in the state. The model policies from MASC

address what a shared use policy should cover, namely the types of activities that are permitted for joint use, how these activities can be carried out, and who must be involved in approving the use of designated facilities. For instance, the model policies require any potential joint use to conform with regulations that have been approved by the School Committee, and make the Superintendent responsible for authorizing the use of school buildings, grounds, and equipment.¹¹ These model policies appear in **Appendix B**.



*Thomas A. Farley, *Safe Play Spaces to Promote Physical Activity in Inner-City Children: Results from a Pilot Study of an Environmental Intervention*, 9 Am.J.Public Health 97, (2007).

⁶ 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>.

⁷ HOLLISTON PUB. SCHS., USE OF SCHOOL FACILITIES MANUAL, available at <http://www.holliston.k12.ma.us/forms/BuildingUseManual.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Interview with Glenn Koocher, Mass. Assoc. of Sch. Comms., in April 2013.

¹¹ MASS. ASS’N OF SCH. COMMS. MASC REFERENCE MANUAL, §§ KF & KF-R (2011), available at <http://z2policy.ctspublish.com/masc/Z2Browser2.html?showset=mascall> (follow “MASC Reference Manual” hyperlink) (last visited Sept. 12, 2013).

Formal community use policies can serve as a starting point for a productive dialogue about sharing space, but community partners should always draft a separate joint use 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 comprehensive, specific joint use agreement is valuable for two reasons: first, it requires the involvement of all interested stakeholders, and second, it makes sure that the discussion covers small details that might be overlooked by simply adopting a template agreement, reducing the likelihood of experiencing conflict or difficulties later on.



Getting Started

Putting together a joint use agreement takes time and requires cooperation, but the benefits of sharing space are well worth the effort. This section of the toolkit outlines each step in the process of creating a comprehensive joint use agreement that will meet the needs of everyone who shares a particular space. Each step is described in detail, and includes suggestions for streamlining the development of a successful agreement and avoiding potential pitfalls.

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 joint use initiative, brainstorm **spaces** in the community that might be shared, and map resources in order to identify **under-resourced areas** in the community where joint use would have the greatest impact. It also helps you think about how to **choose what will happen** in the joint use space, including how to identify **popular activities** in your areas and **gauge community interest** in your proposed initiative.*

Assess Your Community

A concrete plan is essential to sharing space, whether the joint use site is located in school buildings and grounds or other city- or town-owned spaces. 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 be looking for ways that families can be active together in the same space. To develop a plan that works for your community, community partners need to identify:

- **The target population for a joint use initiative:** Think about the people in your community who have the greatest need for extra recreational opportunities. It may be age-based need (young children, teens, working parents, or seniors) or geographic need (a particular neighborhood that lacks recreational opportunities and resources compared with other areas in town). In Springfield, Massachusetts, for example, the lack of safe after-school and evening spaces for kids led the city to cooperate in opening gyms in two community schools for what became an immediately popular evening basketball program.¹² The space you choose for a joint 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; city- or town-owned resource centers for certain populations such as seniors or teens; and municipal buildings such as town halls, office buildings, and libraries. Be creative in your brainstorming! Although this toolkit focuses on joint use of publicly-owned building and grounds, your community may be able to partner with a private entity such as a local college with an outdoor track or a company that has installed a walking trail on its grounds for the use of its employees.

¹² *Opening the Doors of Springfield Gyms for Safe Areas to be Active*, MASS IN MOTION, <http://www.mass.gov/eohhs/docs/dph/mass-in-motion/ss-mim-springfield-gyms.pdf>.

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 joint use. Would families be able to take public transportation to the space or would they have to drive? Is the space close to a Y or other organization that already provides low-cost recreational options? Perhaps one elementary school has a climbing wall in the gymnasium while another has well-maintained outdoor basketball courts. A well-organized list with thorough descriptions of potential community resources will help you decide which space is most appropriate for your target population and where to focus your efforts.

➤ **Under-resourced areas in the community:**

Joint use will yield the biggest community 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.

Choose What Will Happen in the Space

Joint 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. For working parents and seniors, ensuring that a desirable space is accessible during key hours may be enough to meet their needs. Children and their families, on the other hand, may be more drawn to using shared space when programming is offered, such as sports instruction, family zumba, or other field games.

Financial and personnel resources may dictate how much programming your community is able to provide in a particular location. Custodial services and appropriate youth supervision are expenses that must be taken into account in the budget for the joint use agreement. 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. You can choose any activity that you believe will engage the intended users and have broad community support.



- **Gauging community interest in potential initiatives:** To maximize the benefit of a joint use agreement, it is important that the concept for sharing the space be responsive to the wants and needs of the intended users. Formal or informal surveys of the people you hope will use the space can help shape the concept and yield valuable information about obstacles that may need to be overcome to make the initiative a success. For example, although families may be enthusiastic about

using an open gym in a local school, they may not be able to attend during busy evenings and would instead prefer to have it open during weekend hours, or vice versa.

The concept that you choose for sharing space will determine the contents of your joint use agreement. For example, a joint use agreement with a school may open facilities such as basketball courts, playgrounds, and gyms to the public or third party organizations during non-school hours. Opening these areas to the public raises questions about security, liability, supervision, and janitorial responsibilities that must be addressed in the agreement. A joint use agreement could also allow a community nonprofit to use an open field in a city park for regular soccer practice sessions. Instead of security and custodial services, this agreement would primarily need to address scheduling and maintenance, among other issues. Once you have chosen the activity or list of activities in which your intended users will engage, think about what type of space those activities will require and review your list of community resources. Narrow your list of possible sites to those that can accommodate the concept.

Once you know who you are trying to reach with your joint 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.



Step 2: Choosing a Location

In *Step 1*, you learned about the importance of **assessing the community resources** before **choosing an activity** that will take place in the joint use space. In *Step 2*, you will learn about **factors that make a space ideal** for joint use. You can use the **Site Visit: Preparing for Joint 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 locations in the community that might be good sites for joint 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 take advantage of joint use in 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 resource 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 joint use pilot program site because users could directly enter the gym from the ground floor.¹³ 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. Weymouth's Teen Center was chosen as an ideal site for a town employee workplace wellness program because it contained an exercise room entered by turning left shortly

In choosing your joint 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.

¹³ Interview with Bob Marra, Everett Community Health Partnership Director in January 2013.

after entering the building and passing the reception desk.¹⁴ Once inside the Teen Center's gym, the town employees could not access other parts of the building and had to pass the reception desk again when they exited. This made it easy for Teen Center administrators to keep track of who was in the building and where they were at any given moment.

- **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. Joint use of any space may require some additional security measures. A procedure must be developed for opening and closing the space afterhours. 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 joint use site that plans to host children should have accessible restrooms and drinking water. If possible, arrangements should be made to open restroom facilities afterhours along with the main active use space.
- **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. Your chosen site should not already be in use during the hours you intend to open it for your initiative. Remember that the school or town is the space's priority user, and that you will need to plan programming or open access hours around their scheduled events.

Joint use agreements can be tailored to any space, from a school playground to a town's senior center, and can accommodate a variety of arrangements for sharing space. In choosing a location, you may wish to survey intended users as you did in **Step 1: *Developing a Concept*** to see which locations best suit their needs and which they would be most likely to use.

Whenever possible, you should visit each potential location and walk through the space as if you were one of the intended users. Be aware that site visits to a school or other municipal building may require you to obtain permission to access the premises from the space administrators. Be as specific as possible as you take notes about each site. How many doors need to be unlocked? Where are the bathrooms? Is there equipment on hand that can be used or does someone need to provide it at the start of the program? Is there a way to block off the active use space from the rest of the building? During what hours is the space already in use? Be sure to save all of your notes about other sites in case your top choice site is not a viable option.

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 joint use agreement. A list of potential questions that should be answered during site visits is provided on page 16.

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***.

¹⁴ Site visit to Weymouth Teen Center, in Weymouth, Mass. (March 2013).

SITE VISIT: PREPARING FOR JOINT USE

Below is a list of questions that you should keep in mind as you think about implementing joint use in your community. Answering these questions now will help you finalize the appropriate site for joint use and prepare for drafting the joint 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)



Step 3: Identifying and Approaching the Key Players

In *Step 2*, you learned **how to choose a space for joint use** based on factors like safety and accessibility. You also learned **how to conduct a joint use site visit** to evaluate a particular space's potential for joint use. In *Step 3*, you will learn **how to construct your joint 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 joint use agreement. You know what 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 joint 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 joint use stakeholders or "joint use team") and involve them in the joint use agreement process. Potential stakeholders that should be involved in putting together a successful joint 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 joint use is planned, residents in the joint 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 joint 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.
- ✓ Joint use strengthens the relationship between the community and the joint use site, and helps to build support for capital improvements and greater municipal investment

Key Players in Schools

Public schools in Massachusetts are divided into 352 separate districts, each of which is controlled by a School Committee that selects the district's superintendent, among other duties.¹⁵ 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.¹⁶ Instead of formally renting or leasing space for a fee, School Committees can also empower superintendents and principals to enter into joint 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 joint use policy that lays out some requirements for use of school space. Even if a district has a joint use policy, it is important to have a discussion with a school official about how your specific joint 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 joint 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 joint 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 joint use 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 will need to receive 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 joint 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 Joint 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.

¹⁵ MASS. GEN. LAWS ANN. ch. 41, § 1 (West 2013).

¹⁶ MASS. GEN. LAWS ANN. ch. 40, § 6 (West 2013).

- **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.
- **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. You may ultimately need to gain support and permission from other community officials for joint use, but the support of the space’s direct administrator must be obtained prior to moving the project forward. 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.

Mass in Motion Coordinators:

52 communities in Massachusetts are part of the Mass in Motion initiative, which promotes healthy eating and active living across the state (see **Appendix F** for a list of Mass in Motion communities).

If your community is a part of Mass in Motion, the Coordinator assigned to your area is an excellent contact for beginning discussions about joint use.

The Coordinators are familiar with the idea of joint use and have established relationships with town and city officials and

- **Contact city or town departments that might be interested in participating in joint 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 joint use agreement that hosts activities in an outdoor space owned by the city or town and maintained by the Department. Staff from the Health or Public Health departments may also be allies in supporting joint use and furthering efforts at creating joint use agreements.

The Wider Community

Building support in the broader community for a joint use proposal is extremely important. Joint 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.

Be prepared for stakeholders to have different concerns. For instance, schools may be concerned about the supervision of community users and facilities, while community organizations may be more concerned about things such as excessive insurance requirements for use of school facilities or the potential difficulty of navigating and coordinating with school district personnel. Some stakeholders may not be enthusiastic about sharing space at first. Take note of all objections, brainstorm possible solutions, and try again to win their support. The early inclusion of all the key players in the conversation means that everyone’s concerns can be heard and ultimately addressed by the provisions in the joint use agreement.

Step 4: Creating a Budget and Identifying Sources of Funding

In *Step 3*, you learned how to assemble a **joint use team** and involve the **key decision-makers** in the joint use process. In *Step 4*, you will receive information on how to **calculate the costs** of your joint use plan. You will also learn about **ways to fund joint use**. A **sample joint use budget** is included in this section.

Costs Associated with Joint 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 joint 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:** Expenses for custodial and other staff may be dictated by union requirements. 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, staffing expenses may be dictated by union requirements. Requirements may dictate that staff be engaged for a minimum number of hours. This should be taken into account in your joint 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.



Joint 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 in order 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 joint use site (see **Step 5: Managing Risk** for additional information).

If cost is an issue, careful planning can help to contain additional expenses. Whenever possible, consider using volunteers to perform necessary tasks. The site administrators and the users can also choose to share costs. When joint use discussions include all of the key players, community partners often find creative ways to conserve resources. Making small changes to the joint use concept, like opening the space for a longer span of time on one day per week instead of short time slots on two days, can also help to minimize the cost.

SAMPLE JOINT USE BUDGET:
Everett Joint Use Pilot Project

A joint use team from the city of Everett decided to pilot a joint 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 joint 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 joint use pilot project:

PROJECT EXPENSE	AMOUNT
Use of the elementary school gymnasium	<i>Provided by the school free of charge</i>
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	<i>Provided by the Department of Recreation</i>
Flyers and publicity for the initiative	<i>Provided by the Energize Everett Initiative and the Department of Parks and Recreation</i>

TOTAL **\$3,840.00**



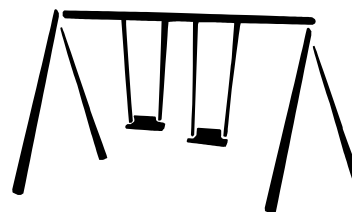
Funding Joint Use

In an era of budget cuts and economizing, finding extra funds for new initiatives can seem like an impossible task. Investing in joint 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 joint use is one of the cheapest health promotion options for any municipality.

Funds for joint 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 joint use initiative.

- **Voluntary contributions from users:** In many cases, joint 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 joint 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 joint 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 joint 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.¹⁷ School committees in particular may authorize the creation of a revolving fund for athletic programs or other student activities.¹⁸ Funds collected by schools for such programs are held in separate accounts for expenses that result from making school property available for such use.¹⁹ The same is true for funds set up by towns.²⁰ 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.”²¹ The policy explains that the funds in the revolving account “will be

¹⁷ 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>.

¹⁸ MASS. GEN. LAWS ANN. ch. 71, § 47 (West 2013).

¹⁹ MASS. GEN. LAWS ANN. ch. 71, § 71E (West 2013).

²⁰ MASS. GEN. LAWS ANN. ch. 40, § 6 (West 2013).

²¹ GATEWAY REG. SCH. DIST., COMMUNITY USE OF SCHOOL BUILDINGS, http://www.grsd.org/UserFiles/Servers/Server_2448/File/Gateway%20Policies/Section%20K/POLK.pdf.

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.”²²

- **Using fees from private groups to subsidize community joint 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.²³ In the context of joint 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 joint use, and use this money to subsidize community use of the facilities. There are some possible pitfalls 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 joint 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 joint 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, recently began to offer Let’s Play Joint Use Grants.²⁴ These generous grants (\$15,000 or \$30,000) will be allocated to support the creation of joint use agreements that open school playgrounds during nonschool hours.

The nonprofit **KaBoom!** recently began to offer **Let’s Play Joint Use Grants**. These generous grants (\$15,000-\$30,000) will be allocated to support the creation of joint use agreements that open school playgrounds during

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.



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

²² *Id.*

²³ GATEWAY REG. SCH. DIST., CLASSIFICATION OF RENTAL ORGANIZATIONS, http://www.grsd.org/UserFiles/Servers/Server_2448/File/Gateway%20Policies/Section%20K/POLK.pdf.

²⁴ What Is Joint Use?, KABOOM!, http://kaboom.org/joint_use.

- **Individual donor support:** Individuals within your own community may be able to provide financial resources for joint 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 joint use initiative and should be included in planning conversations.

Finally, when cost is an issue and funding hard to come by, consider starting with a small joint 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 joint use and build momentum for future funding requests.



Step 5: Managing Risk

In *Step 4*, you learned how to **calculate the costs of joint use** and how to **identify sources of funding** for joint use initiatives. In *Step 5*, you will learn how the **Recreational Use Statute** in Massachusetts **protects joint use site owners from increased liability** in many cases. You will also learn about **methods of managing risk** in joint 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 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.²⁵ 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 prevents or limits liability 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, governmental immunity, and steps communities can take to manage risks associated with joint 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:²⁶

- **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

²⁵ 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>.

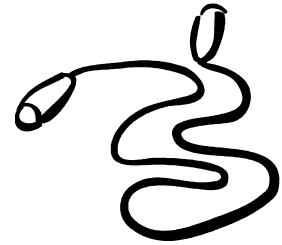
²⁶ *Sullivan v. Rich*, 878 N.E.2d 937, 939 (Mass. App. Ct. 2007).

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.²⁷

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 is liable (or legally responsible) for the harm and any damages associated with it.²⁸

However, it's important to remember that if one or more elements are not present, there is no liability. Using the example above, consider a scenario in which the parent enters the school grounds to pick up her child. The dangerous power tools are still out in the open, but the parent doesn't walk past them.

Instead, she slips on grass that is wet after a recent rain shower and is injured. To tend to her injury, she visits the doctor and misses two days of work. Should the school have to pay for the expenses associated with her injury?



- **First**, we know that the school has a duty of care to the parent to keep its premises reasonably safe. The first element is present.
- **Second**, the school did breach, or fail to meet, its duty by allowing power tools to be left out in the open where children and their families could easily be injured by them. The second element is present.
- **Third**, although the parent was injured, she was not injured by the power tools. Therefore, the breach of the school's duty was not the cause of harm to the parent. The third element is not present.
- **Fourth**, the parent still has to visit the doctor and refrain from work for two days to recover from her injury, meaning that there are expenses associated with the harm. The fourth element is present. However, because the injury was not caused by the breach in the school's duty, the school is not legally responsible for the costs associated with her medical bills and lost work days.

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 joint use agreements, and the use of liability waivers.

With respect to school liability for joint 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.²⁹

²⁷ Tort Claims Act, MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2012).

²⁸ *Marengo v. Roy*, 63 N.E.2d 893, 895 (Mass.1945).

²⁹ Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C(B) (West 2012).

School districts, like private landowners, have a duty of care to people legally on their land.³⁰ 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.³¹ A less rigorous duty of care is owed to people who are illegally on school land, i.e. trespassers.³² For trespassers, schools have the duty to *refrain from willful, wanton, and reckless conduct*, also known as *gross negligence*.³³ 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.³⁴



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.³⁵ 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.³⁶

Finally, Massachusetts law limits damages due to liability from school negligence to \$100,000 per plaintiff.³⁷ This liability cap is meant to balance meaningful recovery for the injured person with the school’s exposure to excessive liability.³⁸ Schools may also not be held liable for punitive damages.³⁹

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.”⁴⁰ In other words, opening a well-maintained space to the public afterhours without charging a fee will not increase liability exposure.⁴¹ Although joint use sites are allowed to accept donations or request reimbursement only for the extra expenses associated with opening the space, they are not allowed to charge a fee and keep the liability protection of the statute. This statute

³⁰ See, e.g., *Alter v. City of Newton*, 617 N.E.2d 656, 658 (Mass. App. Ct. 1993).

³¹ *Remy v. MacDonald*, 801 N.E.2d 260, 263 (Mass. 2004).

³² *Commonwealth v. Welansky*, 55 N.E.2d 902 (Mass. 1944).

³³ *Id.*

³⁴ *Id.*

³⁵ See *Capua v. Town of N. Reading*, No. 04-00759 (Mass. Super. Ct. Nov. 10, 2004).

³⁶ *Id.*

³⁷ Tort Claims Act, MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2012).

³⁸ *Stuart v. Town of Brookline*, 587 N.E.2d 1384, 1388 (Mass. 1992).

³⁹ Tort Claims Act, § 2.

⁴⁰ Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C(B) (West 2012).

⁴¹ 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).

applies to both indoor and outdoor facilities.⁴² For the full text of the Recreational Use Statute, see **Appendix E**.

With respect to schools, because the school owes a duty of care to its students during the time they are required to be in school, the Recreational Use Statute does not apply to students while school is in session.⁴³

Fees vs. Reimbursement: It is important to note that charging fees for use of the space disqualifies the space's owner from protection under the Recreational Use Statute.⁴⁴ However, the joint use site can still request reimbursement for costs associated with opening the space to the public. The amount of funds collected must only reimburse the joint use site for costs directly attributable to 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, it may charge this amount for reimbursement.

Reimbursements can be collected from another entity supporting joint use. For example, to operate its joint use pilot program, the Parlin Junior High School will be reimbursed by the City of Everett for the cost associated with extra custodial responsibilities.⁴⁵ Reimbursements can also be collected from users of the space. For example, if it costs \$50 to engage a custodian to open and maintain the space for a 10-person community yoga class at the town hall, the town could collect \$5 from each of the participants. Joint use site owners who want to take advantage of the protections of the Recreational Use Statute must be careful to demonstrate that any money they collect is directly attributable to the cost of opening the space. If the town had charged \$10 per person instead of \$5 for the yoga class, the fact that it earned a profit on use of the space would eliminate the Recreational Use Statute's protection from liability. Requests for contributions and voluntary payments are not considered fees.⁴⁶

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.⁴⁷ 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. With respect to fees and the Recreational Use Statute, the primary issue is whether the amount of the fee will yield a profit to the school beyond the costs of opening the space. The joint use site owner must justify any money collected from users by showing that they cover only the extra expenses the owner incurred by inviting the public to use the space. 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 increased liability, the owner must go through the process of calculating the cost of

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

⁴² 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).

⁴³ See *Alter v. City of Newton*, 617 N.E.2d 656, 660–61 (Mass. App. Ct. 1993).

⁴⁴ See *Marcus v. City of Newton*, 967 N.E.2d 140 (Mass. 2012).

⁴⁵ Interview with the Everett Joint Use Team, in Everett, Mass. (May 2013).

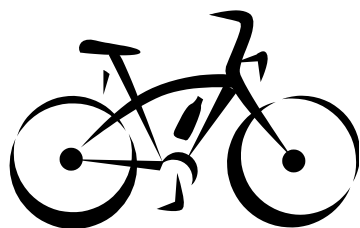
⁴⁶ Recreational Use Statute, § 17C(B).

⁴⁷ See *Whooley v. Commonwealth*, 783 N.E.2d 461, 462 (Mass. App. Ct. 2003).

utilities, security improvements, and so forth, and be careful not to collect any money from users beyond that itemized amount.⁴⁸

Governmental Immunity

With respect to joint use in schools or municipal building, governmental immunity may provide protection to the site owners if public employees who are involved in the joint use program engage in behavior that harms the participants. Generally, public employers are liable for injury or property damage caused by negligence of their employees in the same way that an individual person would be legally responsible for harm that he or she caused to another person.⁴⁹ The Massachusetts Tort Claims Act outlines the governmental immunity doctrine, which protects public employers from being legally responsible for some of the torts, or harms, their employees may commit.⁵⁰ This doctrine decreases anticipated litigation expenses because governmental immunity is immunity from suit, not just a defense to liability.⁵¹ Therefore, when governmental immunity applies, it relieves schools of burdensome litigation costs as well as any ultimate financial liability. Government immunity may also provide a defense to liability claims where Massachusetts law is not clear on whether the Recreational Use Statute applies.



In Massachusetts, governmental immunity provisions are narrowly construed, which means that they only apply to employers and school districts in very limited circumstances.⁵² This type of immunity protects a school or municipality from suit when their employee harms someone by performing an action that was not “within the scope of his office or employment.”⁵³ For example, if a school employee strikes a student, the school typically cannot be held liable for the employee’s action because this intentional harm, or tort, was not an example of the employee acting within the scope of his or her employment. The usual test for scope of employment is “whether the act was in furtherance of the employer’s work.”⁵⁴ Factors used to determine whether it meets the test include the work the employee was hired to perform, when and where the conduct occurred, and whether it was partly motivated by a desire to serve the employer.⁵⁵ For example, a worker who is mending a broken fence on school grounds as instructed to do so by the school is acting within the scope of his employment, but employees who are dangerously misusing school equipment in the break room when the employer is unaware of the activity are not.

Because the Tort Claims Act is limited in the scope of protection it provides to public employers, joint use site owners should manage risks associated with opening their space to the community either by: (1) structuring their program so that they are protected by the Recreational Use Statute; or (2) by using other risk management tools described below, such as seeking protection through insurance, putting indemnification clauses into the joint use agreement, or requiring program participants to sign liability waivers.

⁴⁸ See *Marcus*, 967 N.E.2d 140.

⁴⁹ Tort Claims Act, MASS. GEN. LAWS ANN. ch. 258, § 2 (West 2012).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Doe v. Fournier*, No. 11-cv-30155-MAP, 2012 WL 591669, at *12 (D. Mass. Feb. 22, 2012).

Other Ways To Manage Risk

- **Private Insurance:** Most schools and municipal buildings have liability insurance that protects them from claims relating to bodily injury and property damage. The extent of insurance coverage varies depending on the facility. Insurance protects the school or municipality from financial loss if the property damage or injury is covered by the policy. Some school policies also protect schools during after-school hours.⁵⁶ In addition, some school policies allow community users to be added as additional insured parties on an insurance policy.⁵⁷ Insurance policies can also protect employees from liability.

An insurance policy may or may not cover injury to the policy holder (known as the “first party”). For example, injury to the policy holder could include property damage to the school facilities or injury of an employee.⁵⁸ Because insurance policies offer varied levels of protection, it is important to know the extent of existing insurance coverage prior to drafting joint use agreements. If additional insurance is needed, its cost can be negotiated as part of the joint use agreement or be included as part of the reimbursement fees for use of the facility.

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 joint 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 joint use. When joint 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 joint use site owners will not be held financially responsible for either personal injury to property users or damage to their property, barring any grossly negligent 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 joint use agreement. These clauses dictate that one party will be responsible for the cost of other party’s liability when the liability is incurred in the course of fulfilling the joint use agreement or engaging in joint activities. An organization that runs an after-school program at a local school might, for example, 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 joint 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 parent’s pre-injury release of a minor child’s claims for personal injury, given as a condition for the child’s participation in an athletic or extracurricular program, is enforceable

⁵⁶ 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>.

⁵⁷ *Id.*

⁵⁸ *Id.*

against the child.⁵⁹ 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. If the person is injured, he or she will not be able to sue the program for injury compensation. Joint use sites that expect children to use the space can require parents to sign liability waivers before their child is allowed to enter the space. If the child is injured, his or her parents will not be able to sue the joint use site on the child's behalf. Liability waivers, however, do not protect a school or municipality from liability for gross negligence, which is sometimes referred to as "willful, wanton, and reckless conduct."⁶⁰ 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 joint use program participants.



⁵⁹ Sharon v. City of Newton, 769 N.E.2d 738, 748 (Mass. 2002).

⁶⁰ *Id.*

COMMUNITY USE OF SCHOOLS AND MUNICIPAL PROPERTY:

A Risk-Management Checklist

- Take reasonable steps to ensure that the joint 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 directly from community use of the school or municipal property.
 - Remember that for the Recreational Use Statute to apply, users cannot be charged a fee, meaning the site owner cannot collect an amount of money that exceeds the costs directly linked to opening the space. However, if there are demonstrable costs associated with opening up the space to the community, joint use site owners can collect funds that reimburse them for those specific costs. Calculate costs directly attributable to the users' recreational use of the property (janitorial and other staff overtime, heat and lighting, custodial services, and security services needed for the additional hours) and charge the users only this amount to reimburse the school for these costs.
 - Refer to these monies in all related documentation, such as tickets, licenses, etc., as "reimbursements."⁶¹
- 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 joint users are or can be covered. Assess costs of additional needed coverage, if any.
 - Assess the extent of coverage of the joint user's insurance policy, if any, including whether the policy will cover damage to school or municipal grounds, injury to joint user employees, and injuries to persons using the school or municipal facilities.
 - Negotiate with joint users regarding which party will pay for any additional insurance that is required and whether the joint user will indemnify the school or town.
- Evaluate the possible use of liability waivers that require joint use program participants to waive the right to bring claims against the joint use site owner for participants' personal injuries.

⁶¹ See John J. Davis, *Tort Liability of Schools and School Employees*, in *SCHOOL LAW IN MASSACHUSETTS* (2nd ed. 2012).

Step 6: Drafting the Joint Use Agreement

In *Step 5*, you learned about tools you can use to **manage risk** and **decrease exposure to liability**. In *Step 6*, you will learn about the content of a **comprehensive joint use agreement**. You can ensure that your joint use agreement includes all of the key provisions you need by reviewing the **Joint 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 joint use initiative a success. You have created a budget and identified a source of funding, if necessary. You are now ready to begin drafting the joint use agreement.

A joint 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 drafting the joint use agreement is an opportunity to thoroughly discuss and negotiate each substantive part, or “term,” of the contract. To ensure the agreement is comprehensive and reflects the wants and needs of all parties, 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 joint use agreement will be dictated by your unique location and the specific joint use plan you have developed, you can look to the Model Joint Use Agreement (“Model JUA”) (see **Appendix A**) for guidance. Keep in mind that while the Model JUA includes some formal language, a joint use agreement does not need to be written in “legalese” to be effective. If everyone understands the responsibilities assigned to them by the agreement and feels comfortable performing their obligations as written, the joint use agreement will be a success.

ELEMENTS OF A JOINT USE AGREEMENT (JUA)

Title, Purpose, and Definitions/Descriptions

The title of the JUA should name the parties (the entities or people signing the agreement) and briefly describe the agreement’s main purpose. For example, the title of an agreement with a school to open the gates of its playground to the public on weekends might be: **Agreement Between Anytown School District and Anytown Regarding Weekend Playground Use at HappyKids Elementary.**

The agreement can begin by laying out the purpose of the joint use initiative and describing the motivation for sharing space. In the example above, the agreement might state: “One of Anytown’s primary goals is to create increased opportunities for children and their families to be physically active together.” Explicitly stating the purpose reminds anyone who reads the agreement why it exists and what community needs it aims to meet.

The agreement should include a description of the space to be used, such as certain rooms and hallways within a large building, along with its address and any installed or free-standing equipment that will be available during the shared use hours. It should also define any terms that are going to be abbreviated throughout the agreement. If one of the parties is a nonprofit, the organization's purpose and location should also be included as part of the defined terms.

Laying Out the Scope of the Agreement

After stating the purpose of the agreement and describing the specific layout of the joint use site, draft a paragraph that summarizes how the space will be open for use. For example, under the joint use agreement in Anytown, referred to above, a staff person from Anytown's Department of Parks and Recreation will open the gate of the HappyKids Elementary School Playground to the public from 2-5 PM on Saturdays.

Assigning Responsibilities

One of the primary reasons for having a written joint use agreement is to clearly lay out responsibility for each task involved in opening a space for additional users. The notes you took when you visited the joint use site will help you discuss each aspect of sharing space. In order for the initiative to be successful, someone must assume the following responsibilities:

*To help you list the responsibilities involved in opening the space to the community, use the notes you took when you **visited the***

- **Granting access to the space.** The joint use agreement will identify the person, entity, or organization that will unlock gates, doors, supply closets, equipment lockers, restrooms, and other secured areas. If someone other than the joint use site administrator will open the space, the agreement will specify how and when that person will obtain keys and how he or she will secure the keys between episodes of shared use.
- **Preparing the space.** Because the rooms, equipment, or fields may serve another use prior to afterhour use, the space may need to be prepared in some way. The joint use agreement should identify the person or group charged with making the space ready for new users and delineate each preparatory step. For example, the chairs and desks of a classroom may need to be pushed to one side, or extra sports equipment may need to be retrieved from the closet in the gym. Signs explaining ground rules of using the space afterhours may need to be posted.
- **Supervision during shared use hours.** To protect both the community members who use the space during shared hours and the joint use site, the joint use agreement will name a particular person or a group to be responsible for supervising the space. Supervision might be provided by a custodian, a staff member from the Department of Parks and Recreation, one of the site's administrators, a community volunteer, or a representative from a third party group running programming in the space. The agreement should describe how the supervisor will become acquainted with the space's rules for afterhour use.
- **Cleaning and maintenance.** After each use, the joint use site must be prepared again for its primary purpose. Equipment must be put away and secured. Tables and chairs that were moved aside must be returned to their original formation. The joint use agreement should assign the responsibility for maintaining the space. Further, if something needs to be serviced or repaired, the

agreement should lay out who is responsible for performing the task, how that person or entity should be notified of the need for service, and who will pay any associated costs.

- **Inspection.** The joint use agreement will assign responsibility for inspecting the facility after each use for damage or other issues. The person inspecting the site will review trash removal, assess placement of equipment, and confirm that the facilities are secure. If any equipment has been damaged or altered, the joint use agreement will describe how all parties will be notified and what steps will be taken to repair or mitigate the damage or misuse. Regular inspection after each use ensures the space will be kept safe for its primary purpose as well as in good working condition for the site's afterhour users. It will also ensure that everyone is on the same page with respect to when the damage occurred and who is responsible so there isn't needless finger-pointing. Reporting and solving problems early on helps foster a good working relationship between the host site's administrators and the people using the space.
- **Communication.** A joint use initiative will be more successful if the parties have established a clear communication plan. A communication plan will identify the specific people who are authorized to represent the needs of the joint use site and its intended users. It will describe how the people identified should expect to communicate with each other (i.e. through email or by phone), and how often they should check in to discuss issues or simply confirm that things are going well in the space. A comprehensive communication plan will establish a good foundation for problem-solving if there is a conflict. For more information about how to plan for conflict and disagreement, see **Step 7: Planning for Disagreement**.
- **Costs.** The joint use agreement will describe the source of funding for any costs associated with the initiative. Keep in mind that costs can be shared between entities or split between different funding streams to make joint use more affordable. The agreement will specify how much money is required and how it should be allocated, as well as how the funds will be received and by whom.
- **Risk management.** Administrators of the joint use site are often concerned about increased liability exposure as a result of opening the space afterhours. Fortunately, in Massachusetts, the Recreational Use Statute already provides significant liability protection to sites that open to the public without charging a fee.⁶² Requiring users to sign liability waivers is also an option. For example, a school can request that parents of children participating in an afterschool basketball program sign waivers before the children are allowed to participate. The joint use agreement should include risk management provisions. For a more comprehensive discussion about liability, waivers, and insurance, see **Step 5: Managing Risk**.
- **Evaluation.** Although you may have to start small with a pilot joint use initiative, you can build support for joint use by documenting how many people use the space, how much is spent on maintenance and publicity, and what types of benefits community members receive from having the

*All the parties involved in the joint use initiative should **walk through the joint use site together before the space is opened to the community.** Each party should confirm that the space is **ready for use by the***

⁶² Recreational Use Statute, MASS. GEN. LAWS ANN. ch. 21, § 17C (West 2012).

space open afterhours. The joint use agreement should identify what aspects of joint use the parties should document and who is responsible for record-keeping. For more information about how and why to document the joint use initiative, see **Step 9: Developing a Joint Use Timeline and Tracking Progress**.

The Term/Time Period of the Agreement

Once a joint use site begins to operate, you will inevitably find that something written in the joint use agreement doesn't match the reality of the experience. Perhaps your agreement assigned responsibility for opening the space to the director of the afterschool basketball program, but one of the custodians is performing the task instead. Maybe new security improvements mean that the space can be open later than originally planned on weekday evenings. Establishing a recurring meeting of the joint use team to review the terms of the joint use agreement will ensure that the agreement can be amended to match the current circumstances. You may want to meet more frequently before and just after your initiative starts, and reduce meeting frequency once the initiative is proceeding smoothly. If your initiative depends on annually allocated municipal funds, you will want to schedule meetings of the key players so that your discussions will coincide with important dates in the municipal budget development process. The joint use agreement should also include an end date, or renewal date, and require a meeting between key players for renewing the agreement and proposing any necessary amendments.



JOINT USE AGREEMENT CHECKLIST

To draft a comprehensive joint use agreement, you must think through the issues listed below. If the issue is relevant to your concept for sharing space, be sure that your joint use agreement contains a clause describing the decisions you make about it during your negotiations.

<input type="checkbox"/> Statement of purpose	<i>Describes the reason(s) for entering into the Joint Use Agreement.</i>
<input type="checkbox"/> Identify who will sign the Agreement	<i>Find out who has the authority to make decisions on behalf of the joint use site and the city, town, or other organization that wants to share the space.</i>
<input type="checkbox"/> Define the abbreviated terms	<i>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.</i>
<input type="checkbox"/> Define the term of the Agreement	<i>Set a beginning and end date for the Agreement, or specify that the Agreement will renew automatically.</i>
<input type="checkbox"/> Describe the facility or space that will be shared	<i>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.</i>
<input type="checkbox"/> Describe the public access hours	<i>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.</i>
<input type="checkbox"/> Compliance with the law	<i>Note in the agreement that compliance with state and local law supercedes the requirements of the agreement.</i>
<input type="checkbox"/> Describe the parties' obligations	<i>This section will lay out the responsibilities and expectations of both parties in detail. It may include many of the topics that appear below.</i>

<input type="checkbox"/> Designate a representative	<i>Identify the person that can make decisions about how to carry out the Agreement and can confer with the other party if there is an issue to address. Describe how the representatives will communicate with one another</i>
<input type="checkbox"/> Specify access procedures	<i>Describe how the joint users will obtain access to the space (i.e. keys or access cards).</i>
<input type="checkbox"/> Describe security procedures	<i>This includes locking the area after use as well as the necessary steps to prepare it for additional users.</i>
<input type="checkbox"/> Designate someone to inspect the space	<i>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 the other party of any damage and/or needed repairs.</i>
<input type="checkbox"/> Supervision	<i>Identify the person or entity who will be responsible for providing supervision for the activities that take place in the joint use space.</i>
<input type="checkbox"/> Equipment and storage	<i>Specify which equipment at the joint use site can be utilized by the community users. Require the joint 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.</i>
<input type="checkbox"/> Cleaning and Maintenance	<i>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.</i>
<input type="checkbox"/> Bathrooms, drinking water, etc.	<i>Identify whether the joint users will have access to restroom facilities and drinking water. Assign one party to be responsible for maintaining restrooms.</i>
<input type="checkbox"/> Repairs	<i>Describe how the parties will be made aware of needed repairs and assign responsibility for the cost of repairs. Set</i>

	<i>forth a process through which the parties can review potential costs of repairs and agree to share expenses or reimburse the party who arranges for the repairs to be made.</i>
<input type="checkbox"/> Disagreements and Conflict Resolution	<i>Describe how conflicts will be handled, including how the parties will be notified of issues or problems.</i>
<input type="checkbox"/> Operational costs	<i>Set out the costs associated with implementing the Agreement. 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 joint use, describe the process for collecting these funds.</i>
<input type="checkbox"/> Manage Risks	<i>Assign 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 joint use, specify that the terms of the Agreement comply with the Massachusetts Recreational Use Statute and that therefore, the joint use site expects to be protected from increased liability exposure.</i>
<input type="checkbox"/> Termination	<i>Describe the terms under which the Agreement can be terminated and what kind of prior notice of termination the parties must give one another.</i>
<input type="checkbox"/> Amendments	<i>Specify that amendments to the Agreement must be written and approved by both parties.</i>
<input type="checkbox"/> Include Attachments	<i>Be sure to include all documents the Agreement refers to, such as other policies, insurance certificates, photos of the space, and inventory lists.</i>

Step 7: Planning for Disagreement

In *Step 6*, you learned what your joint use agreement might need to include, and reviewed the completeness of your joint use agreement by reviewing the **Joint Use Checklist**. *Step 7* will offer some tips on how to **resolve conflict** that might come up over the course of the joint use initiative.

Even though detailed joint 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 joint use agreement should lay out a clear conflict resolution procedure. The procedure should include:

- **When to evaluate the agreement.** Communication is a big part of a successful joint use initiative. Decide how often you'd like to check in to discuss how the project is going and work through any issues you've encountered. This should help keep everyone in the loop and make them aware of any problems that need solving. Checking in every now and then also allows for joint use agreements to be updated if circumstances change.
- **Who will be involved in resolving conflict.** The agreement should identify the person who will be authorized to represent each entity's point of view in a disagreement. Choose people that are authorized to sign off on compromises and any necessary amendments to the original joint 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 joint use to continue. The joint use agreement should dictate the number of times the parties must meet to talk through disagreements. For example, a joint use agreement could obligate both sides to have an initial conversation by phone and to meet twice in-person to resolve disputes before resorting to other measures.
- **How the issue will ultimately be resolved if a compromise can't be reached.** If the conflict persists, the joint use agreement should describe how it will ultimately be resolved. For example, if a scheduling conflict arises between a school and a third-party organization that wants to run an after-school sports program, the joint use agreement might stipulate that the needs of the school will take precedence if the conflict persists after the required number of meetings have taken place. The joint use agreement might also refer the conflict to a neutral third party for decision-making, or to a committee comprised of members of the original joint use team.



Step 8: Publicizing Your Initiative

In *Step 7*, you learned about ways you can **resolve disagreements** that come up in the course of a joint use initiative. *Step 8* will describe how to **publicize your initiative** by using **social media** and other **publicity resources**.

To make the joint 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 joint use, including:

- **Websites.** Many people get their information online, so putting information about your joint use initiative on the internet can make it easier for residents to find. Cities, towns, schools, and organizations usually have websites with event schedules that can include your new initiative. Request to add joint use initiative information to websites by contacting the site administrators.
- **Social media.** Especially when working with youth, making use of social networking sites and applications like Facebook and Twitter can help connect with community residents and quickly spread the word about your joint use initiative. Consider inviting residents to web-based groups related to the joint use initiative or simply share links to websites with more information on the project.
- **Press releases.** Draft a press release that includes details of your joint 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.** Reach out to print and electronic newsletters in your community and ask them to include an announcement in their next edition about your joint use initiative. 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, small prizes, or some other draw 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 joint 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 joint 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 joint 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 joint use initiative can serve as inspiration for drafting other joint use agreements and build momentum for gaining access to other community space.

Step 9: Developing a Joint Use Timeline and Tracking Progress

In Step 8, you learned about ways to get the word out about joint use. In Step 9, you will learn about how to develop a joint use timeline that works for your joint use team. This section will also offer tips about how to track progress in your initiative.

When community members come together to work on joint use initiatives, they often intend to complete the agreement and open the space as quickly as possible. However, drafting a complete and effective agreement requires negotiating a range of logistical details, budgeting and 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 joint use process moving forward, you may want to utilize the following tactics:

- **Choose a project leader.** Perhaps one person among the key players has the capacity to make joint use a primary focus. 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 joint 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 joint use discussions moving.
- **Disseminate contact information of key players.** Everyone involved in meetings about joint 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 joint use.
- **Build in time to review and edit the joint use agreement.** The joint 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. Sometimes it may be necessary to have several drafts as the plan becomes more specific. A comprehensive joint use agreement that takes several meetings to complete 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 joint use initiative is underway, there are several key pieces of information the community will want to know in order 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 joint 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 joint 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 joint 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 joint 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 joint use team should also know how people are actually using the space when they attend. If the joint use concept included a basketball program, but most of the youth who come to the gym end up sitting on the sidelines, a different activity that appealed to more of the crowd could be selected.

Finally, joint use initiatives will be successful when the intended users enjoy their experience in the space and attend more than once. Ways to collect information that the team can use in evaluating the initiative include:

- **Polls/Surveys.** Conduct some research by asking residents about the joint use initiative. 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. The site supervisor or a volunteer can administer surveys or conduct interviews with willing joint use participants during the shared use hours. To maximize responses from joint 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 joint 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.

While it takes time to document, record, and evaluate the joint use initiative, there is great value in being able to truly assess the impact of joint use in your community.

SAMPLE JOINT 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. ✓ Choose a location.
Week 2	<ul style="list-style-type: none"> ✓ Contact key players. ✓ Distribute information about the benefits of joint use to key players. ✓ Find out about upcoming community meetings where you can promote your idea for joint 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 joint use agreement based on your site visit.
Week 4	<ul style="list-style-type: none"> ✓ Meet with key players. ✓ Bring the Model Joint Use Agreement to your meeting and discuss what your individual joint use agreement will cover. ✓ Draft a preliminary budget. ✓ Discuss potential sources of funding. ✓ Develop a joint 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 joint use agreement based on the concept and preliminary budget. ✓ Circulate the draft joint use agreement to key players. ✓ Ask the school, city, or town attorneys to review the draft joint use agreement, if relevant.
Week 6	<ul style="list-style-type: none"> ✓ Incorporate edits into the joint use agreement. ✓ Circulate the agreement for final approval. ✓ Sign and date the joint use agreement. ✓ Plan how to publicize the joint use initiative.
Week 7	<ul style="list-style-type: none"> ✓ Prepare the joint use space. ✓ Draft press releases. ✓ Post information about your joint use project on social media and town/school calendars. ✓ Distribute information about the project at community events. ✓ Open the doors or gates of your site for joint use!
Week 8	<ul style="list-style-type: none"> ✓ Meet with key players to get feedback on the first joint use session. ✓ Make a plan for ongoing monitoring of the joint use project. ✓ Continue to publicize your joint use initiative.

Frequently Asked Questions (FAQs)

1. What is joint use?

Joint use, also known as shared use or community 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 joint 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. Because sharing space is often complicated, setting out the responsibilities and expectations of everyone involved in a simple contract, called a joint use agreement, is important to making joint use a success.

2. What is a joint use agreement?

A joint use agreement is a contract that lays out the responsibilities and expectations of the people or entities sharing a particular space. Joint 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 after hours and maintain it. They contain provisions to manage risks associated with sharing space. Drafting a joint use agreement involves discussing and negotiating key points with a team of people who are invested in helping to increase recreational opportunities in their community. Each agreement can be tailored to meet the unique needs of the parties who sign the agreement as well as the larger community.

3. Why would joint use be good for my community?

Joint 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 safe, accessible spaces to engage in positive activities during their leisure time. Schools, town halls, 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 joint use?

A space for joint 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.

5. How much does joint use cost?

The cost of a joint use initiative will vary depending on the location and type of activity or program that happens in the space. With help from volunteers and a simple concept such as opening a playground gate on weekends, joint use can be very low-cost. It is important to remember that a more complex plan for joint use, such as operating an evening basketball program in the school gym, may require some funding, but it will be a fraction of the cost of building new facilities or accessing private for-profit recreational spaces. Joint 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. Involving the key players in discussions about joint use will help keep costs low, as these individuals can often be creative about finding funding or sharing costs. Schools and other municipal facilities may generally charge rental fees for use of their spaces. However, because joint use benefits the whole community, you can ask that the fees be waived or that the joint use site collect a much smaller amount of money that reimburses it for costs directly attributable to the expanded use of the space.

6. Who should be involved in drafting a joint use agreement?

The people who assist in negotiating, drafting, and reviewing the joint use agreement make up the “joint use team.” This team should include the administrators who control the joint 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 joint 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.

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

The process can be completed in only a few weeks or can progress more slowly over the course of a few months to a year. A successful joint use initiative takes time to properly develop and implement, but careful planning and organization will help the project move forward. The joint use process involves developing a concept of what will take place in the space, assembling the key decision-makers to discuss the possibilities, finding any necessary funding, and negotiating, drafting, and reviewing the joint use agreement.

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

Every joint use agreement will be different. The contents depend on the activities that will happen in the joint use space and the specific layout of the chosen site. However, in general, a comprehensive joint 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: *Drafting a Joint Use Agreement*** for more about what to include in your joint 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 joint use 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. They obligate the site administrators to make the space safe for afterhour use. They also protect the joint use site hosts by describing how their space will be taken care of during the shared use hours and assigning liability, if necessary. Written agreements also make joint use more sustainable and fair because they do not depend on an individual staff member’s willingness to assume extra tasks. However, the goal of joint use is to get kids and families playing actively and exercising safely on a regular basis. When a formal joint use agreement is not an option, an informal arrangement to share space may be the next best thing.

10. Does joint 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.⁶³ The joint 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 cannot exceed the costs directly attributable to the expanded use of the space. When joint use sites wish to charge fees for use of the space, they can manage risk of liability exposure in other ways, such as

⁶³ *Id.*

assigning risk in the joint use agreement through an indemnification or hold-harmless clause, or requiring users to sign liability waivers. For more information on joint 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 increased liability exposure 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 joint 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.⁶⁴ 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.⁶⁵ In Springfield, some public school gymnasiums are open in the evenings for a basketball program. Other communities are working to complete joint use agreements and open space.⁶⁶ These include, among many others, the city of Everett, which plans to open a school gymnasium to the community for weekly recreation hours in the fall of 2013.⁶⁷



⁶⁴ *The CONNECTIONS After School Program*, HOLYOKE PUB. SCHS., http://www.hps.holyoke.ma.us/after_school.htm..

⁶⁵ Site visit to Weymouth Teen Center, in Weymouth, Mass. (March 2013).

⁶⁶ *Opening the Doors of Springfield Gyms for Safe Areas to be Active*, MASS IN MOTION, <http://www.mass.gov/eohhs/docs/dph/mass-in-motion/ss-mim-springfield-gyms.pdf>.

⁶⁷ Site visit to Weymouth Teen Center, in Weymouth, Mass. (March 2013).

APPENDIX A

MODEL JOINT USE AGREEMENT

This Model Joint 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.⁶⁸

This template agreement can help form the body of your own joint use agreement. Each section can be expanded, eliminated, or tailored as your unique joint use initiative requires. 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 joint use team to negotiate the terms of 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 may clean or supervise the space
- Union requirements
- A copy of any local ordinances or regulations with which your project must comply

Note that although this agreement addresses opening school facilities, it can be adapted to joint use initiatives that take place in other types of spaces, such as town halls 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

WHEREAS, Massachusetts General Laws Chapter 71 § 71 authorizes school districts to allow the use of school property by individuals and associations for such educational, recreational, social, civic, philanthropic, and like purposes that they deem to be in the interest of the community; and

WHEREAS, the District is the owner of property that is capable of being used by the [CITY/TOWN/NONPROFIT] for community recreational purposes; and

WHEREAS, under appropriate circumstances, these publicly held lands and facilities should be used most efficiently to maximize use and increase recreational opportunities for the community.

NOW, THEREFORE, the parties agree as follows:

⁶⁸ 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.

1. Definitions

For the purposes of this Agreement:

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

Designated Representatives shall refer 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 joint use concept is complex.

2. Term and Effective Date

This Agreement will be effective on _____, upon 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 joint use hours. Someone who has never been to the site before should be able to recognize the area where joint 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 joint 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 joint 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 joint 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. Any actions taken by the District or the [CITY/TOWN/NONPROFIT] that are required by state law, but are inconsistent with the terms of this Agreement shall not be construed to be a breach or default of this Agreement.

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. To be sure this section of the joint use agreement is complete and covers all the necessary tasks and information, you should refer to your Joint Use Agreement Checklist (see **Step 6: Drafting a Joint Use Agreement**) and include a subsection for each item on the checklist that needs to be covered in your agreement.

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] shall provide the personnel necessary 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 shall ensure the District is notified 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 joint use site need to follow, the joint 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 furnish 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] shall encourage community users to dispose of trash in the trash receptacles. If there is a significant increase in trash volume, the [CITY/TOWN/NONPROFIT] shall provide custodial services necessary to keep Active Use Areas in a neat, orderly, and sanitary condition at all times during the Public Access Hours.

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. Such notification shall consist of sending written notification 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. Joint use discussions should include input from custodial staff on the costs associated with expanded hours or tasks.

f. Toilet Facilities

The District shall 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 shall perform normal maintenance of the [FACILITY] at basic level of service subject to normal wear and tear. The District shall 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 joint 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 joint 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.

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 joint use space, the Massachusetts Recreational Use Statute offers the District protection from additional liability exposure. 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 joint 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. If one party has no insurance and the other party agrees to proceed without it, use the language in 12b above.

13. Evaluation/Conflict Resolution

- a. The [CITY/TOWN/NONPROFIT] and the District shall monitor the joint 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. However, the joint use agreement might give the needs and concerns of the space's primary user (in this case, the school) ultimate precedence over the city or town's needs in certain circumstances, such as scheduling conflicts.

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 joint use agreement the only guiding terms for the joint use initiative. If the parties agreed to something verbally during negotiations but did not put it into the joint 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 joint 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

Healthy, Active Kids and Communities: How Joint Use Helps

The Joint Use Projects aims to help kids and their families be more physically active as a method of responding to the childhood obesity crisis. Massachusetts has the highest childhood obesity rate in New England for young children. This section describes the problem and makes the case for how joint use can help.

Over the past thirty years, the rate of childhood obesity across the nation has more than tripled, and Massachusetts has been no exception to the nation-wide epidemic. According to the Centers for Disease Control and Prevention (CDC), 23% of MA adults are obese and another 59.3% are overweight.⁶⁹ Among adolescents, 10.9% are obese and 14.3% are overweight.⁷⁰ Among children between the ages of 2 and 5, 16.1% are obese, and an additional 16.3% are considered overweight.⁷¹ Compared with other New England states, Massachusetts has the highest obesity rate among children aged 2 to 5 years.⁷²

This epidemic raises concern because of the serious consequences associated with obesity. Obesity increases the risk for a broad range of health conditions, and obesity at a young age makes children vulnerable to a variety of severe health issues as an adult. It is estimated that obese children are twice as likely to develop diabetes than children who are not obese,⁷³ and they are also at increased risk for cardiovascular disease, hypertension, high cholesterol levels, and various types of cancer.⁷⁴ Furthermore, obese children are often bullied because of their weight, and have higher rates of depression and low self-esteem than their peers who are not obese.⁷⁵

Both caloric intake and sedentary behavior have increased over time. The United States Department of Agriculture (USDA) estimates that daily caloric intake increased by over 20% between 1970 and 2000. In addition to increased consumption of calories, children are becoming more sedentary, and are spending significantly more time engaged with technology and far less leisure time actively playing and exercising. Between 1970 and 1999, the average amount of time spent watching television increased by 1.5 hours per day,⁷⁶ and since 2003 the amount of children who report spending at least three hours a day on the computer has increased from 22.1% to 31.1%.⁷⁷ Although the Physical Activity Guidelines for Americans

⁶⁹ CTRS. DISEASE CONTROL & PREVENTION, *Mass. State Nutrition, Physical Activity and Obesity Profile*, available at <http://www.cdc.gov/obesity/stateprograms/fundedstates/pdf/Massachusetts-State-Profile.pdf>

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *F as in Fat: How Obesity Threatens America's Future 2013*, www.healthyamericans.org, available at <http://healthyamericans.org/reports/obesity2013/>.

⁷³ Joyce M. Lee et al., *An Epidemiologic Profile of Children With Diabetes in the U.S.*, 29 *DIABETES CARE* 421 (2006), available at <http://care.diabetesjournals.org/content/29/2/420.full.pdf+html>.

⁷⁴ Ctrs. for Disease Control & Prevention, *Trends in Obesity Among U.S. Preschool-Aged Children Living in Low-Income Families, 1998-2010*, 308 *JAMA HIGHLIGHTS* 24 (Dec. 2012), available at

http://www.cdc.gov/obesity/downloads/JAMA_Highlights_FINAL_data_source_added_011013.pdf; Stephen R. Daniels et al., *Overweight in Children and Adolescents, Pathophysiology, Consequences, Prevention, and Treatment*, AHA NAT'L CENTER,

<http://circ.ahajournals.org/content/111/15/1999>.

⁷⁵ Daniels, *supra* note 74.

⁷⁶ Patricia M. Anderson & Kristin F. Butcher, *Childhood Obesity: Trends and Potential Causes*, 1 *FUTURE OF CHILD*. 16 (2006), available at <http://www.ncbi.nlm.nih.gov/pubmed/16532657>.

⁷⁷ CTRS. DISEASE CONTROL & PREVENTION, DIV. ADOLESCENT & SCH. HEALTH, *TRENDS IN THE PREVALENCE OF PHYSICAL ACTIVITY AND SEDENTARY BEHAVIORS, NATIONAL YOUTH RISK BEHAV. SURVEY 1999-2011*, available at http://www.cdc.gov/healthyyouth/yrbs/pdf/us_physical_trend_yrbs.pdf.

recommends that children and adolescents exercise for an hour or more each day,⁷⁸ only about 17% of children in Massachusetts report meeting this recommendation.⁷⁹

Although childhood obesity rates in Massachusetts are slightly lower than the national average, the disparities among communities are concerning. A 2012 study done by the Massachusetts Medical Society and the Massachusetts Department of Public Health indicated that as household income decreased, the likelihood that children were obese or overweight increased, and that the prevalence of overweight and obese children by community varied from 9.6% to 42.8%.⁸⁰

A higher rate of inactivity among low-income children is likely a major factor contributing to greater rates of overweight and obesity.⁸¹ Studies show that children of low-income households engage in less physical activity than their higher income counterparts and suffer worse health outcomes.⁸² For low-income children especially, environmental factors are a significant barrier to engaging in the recommended amount of daily physical activity. The amount of crime in a community, the neighborhood's design, and the lack of access to spaces for physical activity all play a role in preventing youth from being active.⁸³ Increasing the provision of safe, accessible spaces for engaging in physical activity in low-income neighborhoods is an important step in helping children meet the daily recommendations for exercise and, in turn, addressing the obesity epidemic.

Unfortunately, many municipalities do not have the resources to construct and operate new recreational facilities. Furthermore, individuals with limited means may not have the resources to travel to or pay for participating in programs at recreational facilities distant from their communities.

Where private recreational facilities are prohibitively expensive and public opportunities do not exist or are too remote, centrally-located schools and other public facilities can meet the need for a safe place to exercise. Joint use of school and municipal facilities by the community during non-school hours is a cost-effective solution to the problem of physical inactivity. Joint use capitalizes on existing community resources and spares strapped municipalities the expense of constructing and operating new facilities on separate sites. Furthermore, because school facilities are familiar and already incorporated into transportation routes, they are more accessible to low-income families who do not have access to vehicles.

Research has demonstrated that shared use is effective in increasing exercise levels within communities. One study found that in a community where children were provided access to a schoolyard during after-school hours, rates of childhood physical activity were 84% higher than in a similar community that did not

⁷⁸U.S. DEP'T OF HEALTH AND HUMAN SERVS., 2008 PHYSICAL ACTIVITY GUIDELINES FOR AMERICANS, <http://www.health.gov/paguidelines>.

⁷⁹ *Mass. Nutrition Profile*, *supra* note 69.

⁸⁰ T.F. Eagle et al., *Understanding Childhood Obesity in America: Linkages Between Household Income, Community Resources, and Children's Behaviors*, 5 AM. HEART J. 163, (2012) available at <http://www.ncbi.nlm.nih.gov/pubmed/22607862>.

⁸¹ Gina S. Lovasi et al., *Built Environments and Obesity in Disadvantaged Populations*, 31 EPIDEMIOLOGIC REVS. 1 (2009), available at <http://epirev.oxfordjournals.org/content/31/1/7.full.pdf+html>.

⁸² ACTIVE LIVING BY DESIGN, LOW INCOME POPULATIONS AND PHYSICAL ACTIVITY (2012), available at http://www.bms.com/documents/together_on_diabetes/2012-Summit-Atlanta/Physical-Activity-for-Low-Income-Populations-The-Health-Trust.pdf.

⁸³ Committee on Env'tl Health, *The Built Environment: Designing Communities to Promote Physical Activity in Children*, 6 J. OF THE AM. ACAD. PEDIATRICS 123 (2009), available at <http://pediatrics.aappublications.org/content/123/6/1591.full>; Kristen K. Davison & Catherine T. Lawson, *Do Attributes in the Physical Environment Influence Children's Physical Activity? A Review of Literature*, 3 INT'L J. OF BEHAV. NUTRITION & PHYSICAL ACTIVITY 19 (Mar. 2006), available at <http://www.ncbi.nlm.nih.gov/pubmed/16872543>; Ding Ding et al., *Neighborhood Environment and Physical Activity Among Youth: A Review*, 4 AM. J. PREVENTIVE MED. 41 (2006), available at <http://www.ncbi.nlm.nih.gov/pubmed/21961474>.

have access to a school facility.⁸⁴ Permitting access to school or municipal facilities in neighborhoods lacking a safe space for exercise has the potential to significantly increase levels of physical activity among youth.

In addition to providing the community with an opportunity to exercise in a safe, familiar setting, there are other benefits to joint use. Taxpayers are more likely to support expenditures for capital improvements if facilities are widely used and open to the greater community. Engaging in joint use is a good way to build support for using resources for amenities such as improved safety, technology, air conditioning, or exercise equipment.

Additionally, joint use of facilities has the potential to increase community engagement with schools and municipal leadership. By providing space and time for safe, fun interactions, joint use can help build strong relationships between schools and towns, increase individual investment in the community, and enhance the closeness, social cohesion, and trust among community members, adding to the “collective efficacy” of the community.⁸⁵ Communities with higher levels of collective efficacy experience less violence, likely due to strong relationships and a feeling of a greater commitment to the neighborhood.⁸⁶ By providing residents with a way to engage in physical activity in an easily accessible, comfortable setting, joint use agreements help combat obesity and create safer, more tight-knit communities.



⁸⁴ Thomas A. Farley, *Safe Play Spaces to Promote Physical Activity in Inner-City Children: Results from a Pilot Study of an Environmental Intervention*, 9 AM. J. PUB. HEALTH 97 (2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1963283/>.

⁸⁵ Robert J. Sampson & Stephen W. Raudenbush, U.S. Dep’t Just., Nat’l Inst. Just., *Disorder In Urban Neighborhoods—Does It Lead To Crime?*, RESEARCH IN BRIEF 1 (Feb. 2001), available at <https://www.ncjrs.gov/pdffiles1/nij/186049.pdf>.

⁸⁶ *Id.*

APPENDIX C

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 joint use initiative at a school will require a much more detailed negotiation and joint use plan. 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 joint 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 D

Revolving Funds⁸⁷

The Massachusetts Department of Revenue's explanation of different Revolving Funds that schools and municipalities can use to fund joint 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

⁸⁷ 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>.

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 close 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	Yes
Annual Town Mtg/CC approval	Yes	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

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 E

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.

APPENDIX F

Mass in Motion Communities as of September 2013

ADAMS	GLOUCESTER	NORTHAMPTON
AMHERST	GREAT BARRINGTON	NORTHBOROUGH
AQUINNAH	GREENFIELD	OAK BLUFFS
BARNSTABLE	HOLYOKE	ORANGE
BELCHERTOWN	HUDSON	PITTSFIELD
BROCKTON	LEE	PLYMOUTH
CAMBRIDGE	LENOX	REVERE
CHELSEA	LOWELL	SALEM
CHILMARK	LYNN	SOMERVILLE
CLARKSBURG	MALDEN	SPRINGFIELD
DORCHESTER	MARLBOROUGH	STOCKBRIDGE
EDGARTOWN	MEDFORD	TISBURY
EVERETT	MELROSE	WAKEFIELD
FALL RIVER	MONTAGUE	WALTHAM
FITCHBURG	NANTUCKET	WEST TISBURY
FRAMINGHAM	NEW BEDFORD	WEYMOUTH
FRANKLIN	NORTH ADAMS	WILLIAMSBURG
		WORCESTER

For more information on Mass in Motion, visit:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/mass-in-motion/>.