

Community Use of Facilities

PRIMEX³ RISK MANAGEMENT BULLETIN

Primex³ members are often asked by members of the community to use “public” facilities for various activities. They can include festivals coordinated by a local club, model train shows, anniversary parties — even a frog jumping contest.

From a risk management perspective, use of your facilities by individuals or community organizations increases your exposure to accidents. The number of visitors who would not otherwise be on your property is increased, and the types of activities may include risk beyond what normally takes place on your premises. When accidents happen, there is always a risk that claims could be filed. In these contexts, sound risk management may include risk transfer.

Transfer of Risk

A Facilities and Premises Use Ordinance or Policy should, whenever constitutionally permissible, reduce or transfer risk to the group who is responsible. The policy should:

- Include a Facilities Use Agreement, establishing reasonable, viewpoint neutral non-discriminatory criteria which must be met before granting outsiders permission to use your facilities.
- Outline who is responsible for damages to your property and for any liability arising out of the event.
- Include an indemnification agreement, whereby the group defends, indemnifies, and holds you harmless against claims related to their use of the premises.
- Require proof of liability insurance, with your organization named as an additional insured party through an endorsement (if needed).

Types of Events

From a constitutional perspective, government entities must be even-handed and viewpoint neutral in their oversight and administration of public use of public premises. Use of facilities should be governed by a local ordinance, or administrative policy/procedure. It should provide for timely administrative review of permit denials, view point neutral criteria, bonding and indemnification requirements and waivers of insurance in situations where applicants cannot reasonably afford or obtain protection for the government entity. The development of a use of facilities and premises ordinance or policy is, therefore, a complex undertaking that each government entity should address with their counsel. Primex³ counsel have done significant research in this area and would be happy to provide assistance and input to your counsel.

Liability Coverage Option for Facility Users

If the outside group does not have insurance, finding commercial insurance coverage for a one day event may be inexpensive. The outside group using the facility should contact local insurance agencies and request coverage for a “one day Special Event Liability policy.” The outside group should ask that your entity be named as an additional insured.

For more information, please contact your Primex³ Risk Management Consultant at 800-698-2364 or email RiskManagement@nhprimex.org.