

# Recreation and Risk Handbook



New York Municipal  
Insurance Reciprocal

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# Regulation of Parks and Legal Liability

This chapter is from Regulation of Parks and Other Municipal Properties by the New York Conference of Mayors and other Municipal Officials - Dec 2003. We thank them for allowing us to use their material in our Handbook.

## MUNICIPAL PARKS AND THE PUBLIC TRUST DOCTRINE

Municipal lands dedicated for park purposes enjoy a preferred status in New York State law. The Public Trust Doctrine provides that a municipality holds certain types of real property in trust for the use of the public at large, and cannot use or permit its use for purposes other than those for which it was dedicated or acquired or appropriated, without first obtaining express approval from the State Legislature.<sup>1</sup>

It is a well established common law principle that municipally-owned property which has been dedicated as a public park is impressed with a public trust for the benefit of the general public and may not be diverted to other uses either for a period of years or permanently,<sup>2</sup> or alienated without a special act<sup>3</sup> of the State Legislature.<sup>4</sup> This rule applies even if the land has never been used as a park<sup>5</sup>

## LAND ACQUIRED FOR PUBLIC PURPOSES

Municipalities may acquire land for general, municipal purposes without any restriction on use.<sup>6</sup> The Courts have determined that land acquired in fee for general purposes without any restriction even though used for a park, may be used for other municipal purposes. To hold otherwise would cause public officials to bar the use as a park of land acquired for future needs. This would not be in the public interest. Further, municipal officials are given the power to hold and manage municipal property. This includes determining what use shall be made of it. Therefore, the restriction on transfer or conveyance of park land does not apply to land held by a municipality for public purposes.<sup>7</sup>

## LAND DEDICATED FOR PARK PURPOSES

A park has been defined as a detached tract of ground generally of quite sizeable portions devoted to purposes of ornamentation and recreation, bounded or approached by streets or highways of which it is not part, and not devoted to purposes of travel.<sup>8</sup> A park is a pleasure ground set apart for the recreation of the public, to promote its health and enjoyment.<sup>9</sup>

1 The public trust doctrine is rooted in much earlier history (see, *Brooklyn Park Commissioners v. Armstrong*, 45 N.Y. 234, 243; see also, 11 Powell, Real Property § 79.02 [3], at 79-10--79-11; David C. Slade et al., Putting the Public Trust Doctrine to Work, at 3-4 [1990]); and *In re Union Turnpike From Grand Central Parkway to City Line*, 140 Misc.2d 727, 251 N.Y.S.2d 557 (N.Y. Sup. 1931).

2 *Friends of Van Cortlandt Park v. City of New York*, 727 N.Y.S.2d 2, (2001)

3 If a conveyance is authorized by special act of the State Legislature, then the municipality may convey the parcel for its fair market value. 1980 Op. St. Compt. 775, p. 212.

4 *Matter of Ackerman v. Steisel*, 104 A.D.2d 940, 480 N.Y.S.2d 556 (2d Dept. 1984), affd on memorandum below, 66 N.Y.2d 833 (1985); *Brooklyn Park Comros v. Armstrong*, 45 N.Y. 234 (1871); *Gerwitz v. City of Long Beach*, 69 Misc. 2d 763, 330 N.Y.S.2d 495, affd 45 A.D.2d 841, 358 N.Y.S.2d 957 (1974); see also Parks, Recreation and Historic Preservation Law §§15.09 and 17.09 providing that lands acquired with the aid of funds made available pursuant to articles 15 and 17 of that law may not be disposed or, with certain exceptions, used as other than a park without legislative authority.

5 1979 Op. Atty Gen. p. 184.

6 *Pearlman v. Anderson*, 62 Misc.2d 24, 307 N.Y.S.2d 1014 (1970).

7 *Id.*

8 *Kupelian v. Andrews*, 233 N.Y. 278, 135 N.E. 502 (1922).

9 *Perrin v. N. Y. Cent. R. R. Co.*, 36 N.Y. 120 (1867).

Municipal lands dedicated for park purposes enjoy a preferred status in New York State law. Areas of land dedicated as public parks are impressed with a public trust and their use for other than park purposes requires the direct and specific approval of the State Legislature plainly conferred.<sup>10</sup>

A village can accept a conveyance of real property by gift, grant, bequest or devise and hold real estate absolutely or in trust for any purpose of the village or for any public use upon such terms or conditions as may be prescribed by the grantor or donor and accepted by said village and to provide for the proper administration of the same.<sup>11</sup>

A city may take by gift, grant, bequest or devise and to hold and administer real and personal property within and without the limits of the city, absolutely or in trust for any public or municipal purpose, upon such terms and conditions as may be prescribed by the grantor or donor and accepted by the city.<sup>12</sup>

Both cities<sup>13</sup> and villages<sup>14</sup> can dedicate parkland by local action.

Other methods by which parkland is created include:

- Specific condition in deed, trust or other instrument transferring the land to the municipality;<sup>15</sup>
- Continued use of land as a park for a period of time can constitute a dedication and acceptance by implication.<sup>16</sup>

## PERMITTED AND UNPERMITTED USES OF PARK LAND

Dedicated park areas in New York are impressed with a public trust and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the State Legislature.<sup>17</sup> Any use which would tend to exclude the public from using the park would be a prohibited alienation.<sup>18</sup>

Generally, permitted uses -- embellishments and conveniences-- are those that contribute to the use and enjoyment of the park and serve the public good. Permitted uses are those that facilitate free public means of pleasure, recreation, and amusement, and provide for the welfare of the community. Although art may aid or supplement nature in completing the attractions offered in a park, the park must be kept free from intrusion of every kind which would interfere in any degree with its complete use for this end.<sup>19</sup>

Unpermitted uses are those which have no connection with park purposes, and would encroach upon the public's use.<sup>20</sup>

For example, permitted uses include:

- Incidental opportunities for recreation and innocent amusement, including concessions to private persons who furnish food or refreshments or means of innocent entertainment and amuse-

<sup>10</sup> *Matter of Ackerman v. Steisel*, *supra*.

<sup>11</sup> N.Y. Village Law §1-102(2).

<sup>12</sup> N.Y. General City Law §20(3).

<sup>13</sup> N.Y. General City Law §§19, 20(2), (7), (8), and (23); N.Y. General Municipal Law §140; *Gerwitz v. City of Long Beach*, *supra*.

<sup>14</sup> N.Y. Village Law §6-624 allows a board of trustees to adopt a resolution authorizing the purchase of land within a village for park purposes. Upon the acquisition of such land, the board may establish and maintain a public park; see also, 1996 Op. Atty Gen. 96-37, p. 1094. A village may utilize its authority to enact local laws relating to its property; the protection and enhancement of its physical and visual environment; or the health and well-being of persons or property in the municipality pursuant to NY Municipal Home Rule Law §10(1)(ii)(a)(1), (11) and (13). See also, 1996 Op. Atty Gen. 96-37, p. 1094.

<sup>15</sup> *Pearlman v. Anderson*, *supra*.

<sup>16</sup> *Village of Croton-on-Hudson v. Westchester County*, 38 A.D.2d 979 (2d Dept.), *aff'd*, 30 N.Y.2d 959 (1972).

<sup>17</sup> *Williams v. Gallatin*, 229 N.Y. 248, 128 N.E. 121 (1920); *Gewirtz v. City of Long Beach*, *supra*; *Stephenson v. County of Monroe*, 43 A.D.2d 897, 351 N.Y.S.2d 232 (1974); *Aldrich v. City of New York*, 208 Misc. 930, 145 N.Y.S.2d 732, *aff'd* 2 A.D.2d 760, 154 N.Y.S.2d 427 (1955); *Tobin v. Hennessy*, 220 A.D. 695, 222 N.Y.S.2d 484 (1927).

<sup>18</sup> 1982 Op. St. Compt. 82-289, p. 364.

<sup>19</sup> *Williams v. Gallatin*, *supra*.

<sup>20</sup> *Brooklyn Park Commissioners v. Armstrong*, *supra*.

ment.<sup>21</sup> Any such arrangement with a private party would have to be in the form of a revocable license, grant or privilege or concession;<sup>22</sup>

- Restaurants, golf courses, refreshment stands, rest houses and the like have been held to be facilities which may be established and maintained incidental to a municipal park;<sup>23</sup> and
- Monuments, and buildings of architectural pretension, floral and horticultural displays, zoological gardens, and playing grounds.<sup>24</sup>

For example, Unpermitted uses include:

- Excavation for use as a solid waste disposal site;<sup>25</sup>
- Erection of courthouses and schoolhouses;<sup>26</sup>
- Storage of trucks, equipment and other materials and physical improvements, including fences and buildings, where the use could not be categorized as temporary;<sup>27</sup>
- Construction of a water filtration plant beneath a municipal golf course;<sup>28</sup>
- Harvesting of timber from the land;
- Granting of a lease to the property as a lease generally grants right to exclusive use and occupancy of a specific area, a fixed term, and a fixed rental; and
- Granting of an easement across the property.<sup>29</sup>

## IF IT WALKS LIKE A DUCK. . .

Improvements consisting of public ski trails, ski practice slopes, ski tows, toboggan slides, bob runs, bridle paths and winter sports facilities constitute public parks or playgrounds.<sup>30</sup> Bicycle paths have been considered park facilities.<sup>31</sup> An abandoned right of way used as a recreational trail constitutes a park facility.<sup>32</sup>

Authorities have taken differing views when it comes to golf courses. One court described a golf course as a place for pleasure, recreation, athletics and amusement, as well as (in some instances) a place for health, education and instruction.<sup>33</sup>

The Office of the State Comptroller has opined that the purposes served by a municipally owned golf course are so quintessentially those of a park that it is difficult to conceive of another separate and distinct purpose which could be served by the ownership of a golf course.<sup>34</sup>

However, at least one court has found that the use of a city golf course—which the city purchased, maintains, and operates with city funds for the use of city residents—may be restricted to the use of city residents only. There, the court supported the city’s representations that the facilities were insufficient to accommodate residents of the city and to permit, in addition thereto, use by others who are nonresidents and that the city found it necessary to restrict the use of the facilities to residents, to promote their health, comfort, convenience and welfare, and to avoid excessive congestion which would result in a breakdown of the facilities, and a deterioration thereof.<sup>35</sup>

21 23 Op. St. Compt. , 1967, p. 416, and cases cited therein; see also 1982 Op. St. Compt. 82-237, p. 298.

22 Miller v. City of New York, 15 N.Y.2d 34, 255 N.Y.S.2d 78 (1964).

23 Williams v. Gallatin, *supra*; Rivet v. Burdick, 255 A.D. 131, 6 N.Y.S.2d 79 (N.Y.A.D. 4 Dept.1938); Gushee v. City of New York, 42 A.D. 37, 58 N.Y.S. 967 (1899).

24 Williams v. Gallatin, *supra*.

25 Village of Croton-on-Hudson v. County of Westchester, *supra*.

26 Brooklyn Park Commissioners v. Armstrong, *supra*.

27 Matter of Ackerman v. Steisel, *supra*.

28 Friends of Van Cortlandt Park v. City of New York, 95 N.Y.2d 623, 2001 N.Y. Slip Op. 01069 (2001).

29 1995 Op. Atty Gen. (Inf.) No. 95-52.

30 Rivet v. Burdick, *supra*.

31 1987 Op. St. Compt. 87-22, p. 36.

32 1992 Op. St. Compt. 92-49, p. 120.

33 Cross v. County of Westchester, 206 N.Y.S.2d 902 (N.Y. Sup. 1960).

34 1982 Op. St. Compt. 255, p. 319.

35 Schreiber v. City of Rye, 53 Misc. 2d 259, 278 N.Y.S.2d 527 (1967).

## PARK USE REGULATIONS

Cities and villages are authorized to enact local park use regulations pursuant to their municipal home rule authority.<sup>36</sup>

Generally, local park use regulations address:

- Hours of use
- Motor vehicle operation and parking
- Use of play vehicles
- Acceptable conduct
- Noise
- Alcoholic beverages
- Litter and garbage disposal
- Preservation of property
- Animals
- Fees for use
- Reservation policy
- Use of waterways and swimming facilities
- Prohibited activities
- Open fires
- Camping
- Indemnification or insurance requirements
- Activities that require a permit or reservation
- Enforcement and penalties for offenses



While it is impossible to consider every possible request, it is important to also consider how responses for unusual uses of the park will be handled. For example, may the park be used for a pie-eating contest or chili cook-off; for weddings and/or funerals; go-kart races and treasure hunts? To provide some guidance when such unconventional requests are presented, it is advisable to include language in your local park regulations which cover numerous possibilities. A general statement that permitted uses of parks are those that contribute to the use and enjoyment of the park; serve the public good; facilitate free public means of pleasure, recreation, and amusement, and provide for the welfare of the community, is recommended.<sup>37</sup>

## USE OF ALCOHOL ON MUNICIPAL PROPERTY

If your municipality is planning on any type of party or celebration on the municipal premises (i.e. village or city hall, public park, pavilion, etc.) that is going to have alcohol, you must be careful to limit your liability by taking the following steps:

- Determine if you have the appropriate liability coverage. Many general liability insurance policies (and some umbrella policies) have what is known as “Host Liquor Liability” coverage. This covers the insured for instances where liquor is served, but not sold. Most general liability insurance policies include an exclusion from coverage for the sale of liquor.
- Determine your total liability coverage. Most municipalities carry between \$2 and \$5 million in liability insurance.
- Determine if holding such an event is in the best interest of the municipality, its employees and residents. While the municipality may have the appropriate insurance coverage to hold such

<sup>36</sup> N.Y. Municipal Home Rule Law §10(1)(ii)(a)(6), (11).

<sup>37</sup> *Williams v. Gallatin*, *supra*.



alcohol related events, it may not be wise to do so. Hosting a party or other similar event on municipal property when alcohol is served opens the municipality up to substantial legal risk which must be carefully considered by the municipality and its legal team.

- If a party or an event involving alcohol is a priority, the municipality can relieve itself of liability by holding the event at a restaurant or other facility where the attendees pay their own way.
- Dram Shop<sup>38</sup> and Liquor Legal Liability coverage is available to caterers, restaurants and bars that sell alcohol for profit.
- If your municipality does choose to host an alcohol related event it should also be in compliance with the New York State Alcohol Beverage Control Law. This act prevents such things as:
  - Service or sale of alcohol to those under the age of 21;<sup>39</sup> and
  - Allowing those under the age of 18 from serving alcohol to others.<sup>40</sup>

### **Fees For Use**

A municipality may not charge its residents an admission fee as a condition of entrance to a public park without specific statutory authority,<sup>41</sup> but it may charge non-residents an entrance and use fee.<sup>42</sup> However, residents may be charged for the use of special recreational facilities -- such as pools, tennis courts, golf courses -- including parking areas,<sup>43</sup> which are available to the public within the park.<sup>44</sup>

Villages are specifically authorized to establish recreational facilities and parking areas and to charge fees, tolls, rates, or admissions for their use. This is considered a "self-supporting improvement."<sup>45</sup>

### **Reservations For Use**

Special recreational facilities may be reserved by segments of the public so long as the public at large has an equal opportunity to use the facilities in question.<sup>46</sup> This would include a pavilion, gazebo, special field, etc.

### **Exclusive Use**

Exclusive use of any part of the facilities is improper. Recreational facilities are for the general use of the public, even though, from time to time, portions of the facilities are used by particular groups of the public. However, if any portion is granted exclusively for the use of a particular group, and the public use of that portion is obstructed, this would be an improper use of the property.

This can be especially troublesome with regard to little league organizations, soccer clubs, and other organized sports. A baseball or soccer field in a public park should serve both the spectator and participation aspects of the sport. Assuming no charge is made for admission to the game, organized sports teams can be given reasonable use of the park. The use must be fair and nondiscriminatory in regard to the public at large. Rules and regulations should be promulgated, which would allow the little league or soccer club and others to be scheduled to use the park at designated times to avoid conflicts.<sup>47</sup>

<sup>38</sup> N.Y. Alco. Bev. Cont. Law §§65, 82 (Consol. 1991).

<sup>39</sup> N.Y. Alco. Bev. Cont. Law §65(1).

<sup>40</sup> N.Y. Alco. Bev. Cont. Law §100(2-a).

<sup>41</sup> See NY General Municipal Law §144, which provides that trusts for parks, playgrounds and libraries created under this title by local governments shall be free and open to the public for use and enjoyment.

<sup>42</sup> See *Gerwitz, supra*, and *Lawrence v. Kraushaar*, 195 Misc. 487, 89 N.Y.S.2d 685 (1949), which dealt with a differential parking fee structure for nonresidents.

<sup>43</sup> 1983 Op. St. Compt. 83-199, p. 255.

<sup>44</sup> 1982 Op. St. Compt. 82-209, p. 265; N.Y. Statute of Local Governments §10(3); and N.Y. Municipal Home Rule Law §10(1)(ii)(a)(9-a).

<sup>45</sup> N.Y. Village Law §13-1300, et seq..

<sup>46</sup> 1982 Op. St. Compt. 82-289, p. 364.

<sup>47</sup> 25 Op. St. Compt. 69-493, p. 241 (1969).

Permanent use at particular times, even though just once or twice a month, is also improper since the permanency of such use would also destroy the public nature of the facility.<sup>48</sup>

## USE OF PARK PROPERTY BY PRIVATE GROUPS

Private groups may be granted licenses to use municipal park facilities, provided that such licenses are made available to different groups on an equal basis and do not interfere unreasonably with the use of the facilities by the general public.<sup>49</sup>

Should there be more applicants than available facilities, the first-come, first-served rule may be applied, although consideration may be given to alternate methods, such as the drawing of lots, allowing alternate use, or other fair and equitable methods.<sup>50</sup>

### Excluding Nonresidents

Consideration is given to the nature of the particular facility and the language of the enabling legislation under which the facility was established and is maintained. The extent to which the facility was originally acquired or dedicated for general public use is an important consideration, as is the subsequent conduct upon the part of the municipality which evidences an intent to hold the facility in trust for the benefit of the general public.

The Equal Protection Clauses<sup>51</sup> do permit municipalities wide discretion in the reasonable classification of persons who may benefit from public facilities maintained through taxation revenues.<sup>52</sup> Under equal protection principles, classifications are permissible so long as all persons similarly situated are included within the classification and all such persons are similarly treated. Differentiation in classification or treatment will be upheld if it has some rational basis, is not arbitrary, and bears some substantial and rational relation to the accomplishment of a legitimate governmental purpose.<sup>53</sup>

### When Authorized

- When property is dedicated as a city or village park for residents only.<sup>54</sup>
- Where municipality accepts the conveyance of real property, the deed to which contains a restriction requiring the exclusion of non-residents.<sup>55</sup>
- Villages are specifically authorized to establish recreational facilities and parking areas, to charge fees, tolls, rates, or admissions for their use, and to limit the use of such self-supporting improvements to residents of the village.<sup>56</sup>

### When Unauthorized

- When property is dedicated as a “public park” open to the public at large.<sup>57</sup>
- Where local governments acquired real property with state funds for use as a municipal park.<sup>58</sup>

48 28 Op. St. Compt. 1972, p. 110.

49 1984 Op. St. Compt. 84-31, p. 39.

50 28 Op. St. Compt. 1972, p. 110.

51 U.S. Constitution, Amendment Fourteen; NYS Constitution, Art. 1, Section 11.

52 *Schreiber v. City of Rye*, *supra*.

53 1988 Op. St. Compt. 88-22, p. 40.

54 *Campbell v. Town of Hamburg*, 156 Misc. 134, 136, 281 N.Y.S. 753, 756 (1935), which states that it is “the basic property right of any municipality to prevent the usurpation by strangers of that which the municipality has created and is maintaining for its own citizens and residents.” See also, *Schreiber v. City of Rye*, *supra*, which held that city may deny application of nonresident for a permit to use facilities of city golf course and swimming pool.

55 *Id.*, at 137.

56 N.Y. Village Law §13-1304.

57 *Gerwitz v. City of Long Beach*, *supra*.

58 N.Y. Parks and Recreation Law, Article 15. Specifically, §15.07 states that “A municipality which acquires lands with funds made available pursuant to this article may establish reasonable rules and regulations. . . provided that no rule or regulation restricting the use of such lands to the residents of the municipality shall be effective without the express approval of the commissioner.”



## Charging a Higher Fee to Nonresidents

The courts have upheld the assessment of a charge as well as a differential in user fees based upon municipal residence.<sup>59</sup> These decisions considered the intention of the governing board; the fact that local residents, through the local real property tax, had financed both the acquisition and maintenance of the municipal park; and that the facilities had a limited capacity.<sup>60</sup>

A system of user fees may be established with varying rates to be charged to different classes of users related to the varying benefits received by each class, so long as, in accordance with constitutional equal protection guarantees, there is a rational basis for distinguishing among the various classes of users.<sup>61</sup>

## USE OF PARK PROPERTY FOR COMMERCIAL PURPOSES

### *Governmental v. Proprietary*<sup>62</sup>

The governmental functions of a municipality are those conferred upon it as a local agency, to be exercised not only in the interest of its inhabitants, but also in the advancement of the public good.<sup>63</sup> These include the expenditure of money relating to public improvements, operation of water and sewer service systems, trash collection and disposal, and police and fire protection.

Typical examples of municipal governmental functions are the exercise of eminent domain, assessment and collection of taxes, police and fire protection, water treatment and sewage and garbage disposal.<sup>64</sup> Proprietary functions include exercising private rights, like that of a corporate body.<sup>65</sup> The operation of an airport<sup>66</sup> and provision of bus service<sup>67</sup> are two examples.

### *Advertising*

Except in connection with a proprietary activity<sup>68</sup> or pursuant to express statutory authority,<sup>69</sup> it is not a proper municipal purpose to raise revenues by selling advertising space on municipal property.<sup>70</sup> Advertising is a private business and municipalities have no authority to engage in such activity or to allow municipal buildings or property to be used for advertising purposes.<sup>71</sup>

With regard to municipal parks, the Office of the State Comptroller has opined that advertising of a commercial nature is prohibited as not being a park purpose. Additionally, the production of com-

<sup>59</sup> See *Gerwitz, supra*, and *Lawrence v. Kraushaar, supra*, which dealt with a differential parking fee structure for nonresidents.

<sup>60</sup> See *Campbell v. Town of Hamburg, supra* and *Schreiber v. City of Rye, supra*.

<sup>61</sup> N.Y. Const., Art 1, § 11; *Elmwood-Utica House v. Buffalo Sewer*, 65 N.Y.2d 489, 492 N.Y.S.2d 935 (1985); 1979 Op. St. Compt. 307; 1980 Op. St. Compt. 97.

<sup>62</sup> See *Matter of the County of Monroe*, 131 A.D.2d 74, 72 N.Y.2d 338 (1988), in which the NYS Court of Appeals upheld an Appellate Division ruling substituting a "balancing of public interest" analytical approach for the traditional governmental-proprietary function test when determining whether a municipality is immune from zoning regulations.

<sup>63</sup> See, *Walla Walla v. Walla Walla Water Co.*, 172 US 1, 19 S.Ct. 77, 43 L.Ed. 341 (1898).

<sup>64</sup> See, 56 Am Jur 2d, *Municipal Corporations, Counties and Other Political Subdivisions* § 200, at 258.

<sup>65</sup> See, *O'Brien v. Town of Greenburgh*, 239 A.D. 555, 558, aff'd 266 NY 582 (N.Y.A.D. 2 Dept. 1933).

<sup>66</sup> *Matter of the County of Monroe, supra*.

<sup>67</sup> 1982 Op. St. Compt. 82-133, p. 167.

<sup>68</sup> See 1982 Op. St. Compt. 82-133, p. 167, which states that a municipality, while engaging in proprietary, as opposed to governmental functions, is exercising its private rights as a corporate body and has the powers, prerogatives and capacities of a private corporation. The subject of this opinion involved the use of bus stop shelters for private advertising. The Office of the State Comptroller opined that the operation of a transit system is a proprietary activity and the selling of advertising is a business activity directly related to the legitimate public function of operating a transit system.

<sup>69</sup> See N.Y. General Municipal Law §77-d which authorizes Yates County to lease municipal baseball field fences, annually, at a nominal rent, to a not-for-profit corporation or organization, organized under the laws of the State of New York for the purpose of permitting the sale of advertising, with the revenues to be used solely to purchase or repair baseball equipment for said organization.

<sup>70</sup> 1992 Op. St. Compt. 32, p. 82.

<sup>71</sup> 1973 Op. Atty Gen. Inf. No. 51, quoting *McQuillin on Municipal Corporations*, (3rd ed.) Vol. 12, p. 502, Chapter 36, §36.02, "The object of the creation of a municipal corporation is that it may perform certain local public functions as a subordinate branch of the state government; and, while it is invested with full power to do everything necessarily incident to a proper discharge thereof, no right to do more can ever be implied. In the absence of express legislative sanction, it has no authority to engage in any independent business enterprise or occupation such as is usually pursued by private individuals."

mercial revenues is not a park purpose.<sup>72</sup>

Signs which merely identify or direct one to an authorized park concession would be allowed, since this would be in the general public interest and would constitute an incidental park purpose.<sup>73</sup>

### **Fund Raising**

A city or village could grant a revocable license to a private group for adequate consideration to use a municipal recreational facility or park for charitable or fund-raising purposes, provided that the municipality does not act as a co-sponsor of such events. The consideration must be adequate to compensate the municipality for expenses incurred in connection with the use of its facilities.<sup>74</sup>

For example, a municipality is authorized to rent its ice rink for a short period of time to a private group that would use it in a manner which benefits the public. The rink could be rented for a few hours each week to private hockey teams holding a game. If the public is allowed to be admitted as spectators, such a use is in keeping with public purposes.<sup>75</sup>

## **USE OF PARK PROPERTY AND THE FREEDOM OF SPEECH**

### **Prayer Services**

The establishment clause of the First Amendment to the federal Constitution provides that Congress shall make no law respecting an establishment of religion, or prohibit free exercise thereof.

There is a constitutional right to use streets and parks for the conveyance of religious thought, opinion and belief, by word of mouth or written matter handed out to passersby. Streets and parks immemorially have been used for these purposes. Accordingly, local legislation cannot prohibit these activities in streets or parks or make them subject to the uncontrolled discretion of any official.<sup>76</sup>

Nor may a local regulation make certain park facilities open to the public generally but deny their use for religious purposes.<sup>77</sup>

The mode and manner of religious activities including speech, meetings and sale or distribution of religious pamphlets and literature on streets and in public parks is subject to reasonable municipal regulation to protect the public welfare and good order.<sup>78</sup>

### **Hate Speech and Public Assemblies in Municipal Parks**

Concern often arises when particular groups—Ku Klux Klan, Aryan Nations, and Nazi Skinheads—seek permission to use municipal parks for assemblies. Public assemblies, peaceful protests, demonstrations, and picketing in municipal parks and on other public property, are forms of expression protected by the First Amendment.<sup>79</sup>

The First Amendment of the U.S. Constitution generally prevents governments from forbidding speech<sup>80</sup> or even expressive conduct<sup>81</sup> because of the disapproval of the ideas expressed. Content-

<sup>72</sup> 25 Op. St. Compt. 69-493, p. 242 (1969).

<sup>73</sup> *Id.*

<sup>74</sup> 1980 Op. St. Compt. 80-732, p. 200; 1984 Op. St. Compt. 84-32, p. 40.

<sup>75</sup> 1981 Op. St. Compt. 81-135, p. 138.

<sup>76</sup> *Fowler v. Rhode Island*, 345 U.S. 67, 97 L.Ed. 828, 73 S.Ct. 526 (1953); *Niemotko v. Maryland*, 340 U.S. 268, 95 L.Ed. 267, 71 S.Ct. 325 (1951); *Murdock v. Pennsylvania*, 319 U.S. 105, 87 L.Ed. 1298, 63 S.Ct. 870 (1941).

<sup>77</sup> *Losee v. City of Johnstown*, 86 A.D.2d 286, 451 N.Y.S.2d 267 (1982).

<sup>78</sup> *Murdock v. Pennsylvania*, *supra*; *Jamison v. Texas*, 318 U.S. 413, 87 L.Ed. 868, 63 S.Ct. 669 (1943); *Cox v. New Hampshire*, 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762 (1941).

<sup>79</sup> *Gregory v. Chicago*, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed.2d 134 (1969).

<sup>80</sup> See *Cantwell v. Connecticut*, 310 U.S. 296, 309-311, 60 S.Ct. 900, 905-906, 84 L.Ed. 1213 (1940).

<sup>81</sup> *Texas v. Johnson*, 491 U.S. 397, 406, 109 S.Ct. 2533, 2540, 105 L.Ed.2d 342 (1989).

based regulations are presumptively invalid under the First Amendment.<sup>82</sup>

An anticipated disruptive response to a march or parade is not a valid ground for restriction access.<sup>83</sup> This would be considered a prior restraint on speech. A prior restraint is any governmental action that would prevent a communication from reaching the public, for example, a licensing system, a prohibition against using mails, an injunction, etc. Prior restraints are not favored in our political system. The Court will uphold prior restraints if some special harm would otherwise result. Threats of violence in reaction to protected speech is a permissible ground for time, place and manner limitations.<sup>84</sup>

Restrictions on the content of speech must be narrowly tailored to achieve a compelling government interest. The Court allows restrictions only to prevent grave injury.

The following is a list of the reasons for which the Court has allowed content based restrictions on hate speech:

- It includes a physical threat of violence or property damage
- It incites imminent criminality<sup>85</sup>
- It defames a particular individual
- It solicits or actively abets criminality
- It evidences a conspiracy<sup>86</sup>

Technically another unprotected category called “fighting words”<sup>87</sup> exists, but is considered dormant because the Court has refused to invoke the category in upholding a speech restriction in at least the last five decades.

These categories are not entirely invisible to the Constitution, and governments may not regulate them based on hostility, or favoritism, towards the message they contain.<sup>88</sup> The Court has invalidated criminal laws that seek to punish otherwise legal expression because it promotes bigotry or merely offends people.

## LEGAL LIABILITY

When municipalities sponsor activities or provide recreational facilities, they create the potential for liability claims. The general rule is that municipalities must exercise reasonable care against foreseeable dangers under the circumstances that exist at the time.<sup>89</sup>

This includes the duty to regularly inspect parks, fields, courts, and replace equipment within a reasonable period of time. If the defect cannot be corrected, a barrier should be placed around the equipment or facility and it should be taken off-line.

<sup>82</sup> *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115, 112 S.Ct. 501, 508, 116 L.Ed.2d 476 (1991); *Consolidated Edison Co. of N.Y. v. Public Service Common of N.Y.*, 447 U.S. 530, 536, 100 S.Ct. 2326, 2332-2333, 65 L.Ed.2d 319 (1980); *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 2289-2290, 33 L.Ed.2d 212 (1972).

<sup>83</sup> *See, Christian Knights of the Ku Klux Klan Invisible Empire v. District of Columbia*, 919 F.2d 148 (C.A. D.C. 1990).

<sup>84</sup> *See, Beckerman supra* at 509.

<sup>85</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969); *Haig v. Agee*, 453 U.S. 280, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981); *Bond v. Floyd*, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966).

<sup>86</sup> For more information on hate speech and hate crimes, visit [www.hatemonitor.com](http://www.hatemonitor.com). The website is run by the Center for the Study of Hate & Extremism at California State University, San Bernardino.

<sup>87</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031 (1942); *Cohen v. California*, 403 U.S.15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971); *Gooding v. Wilson*, 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992).

<sup>88</sup> *See, R.A.V. v. City of St. Paul, Minnesota, supra*, where the Court declared a city ordinance facially invalid under the First Amendment. The subject ordinance imposed special prohibitions on speakers who expressed views on disfavored subjects of race, color, creed, religion or gender while at the same time permitted displays containing abusive invective if they were not addressed to those topics and, in its practical operation, went beyond mere content discrimination to actual viewpoint discrimination.

<sup>89</sup> Where recreational use provision of General Obligations Law is applicable, in order to be successful, plaintiff must prove that property owner willfully or maliciously failed to guard or warn against dangerous condition, use, structure, or activity on property; owner's negligence, if any, is immaterial. NYS General Obligations Law § 9-103. *Sena v. Town of Greenfield*, 91 NY2d 611, 673 NYS2d 984, 696 NE2d 996 (1998).



## WARNING SIGNS AND NOTICES

Municipalities have an affirmative duty to warn the public of dangerous conditions.<sup>90</sup> Signage is important. Therefore, municipalities should post all relevant information such as instructions for proper usage and rules of conduct in all recreation areas.

Signs are used in recreation areas for various reasons: to control traffic flow, communicate prohibited activities, provide instruction, and warn of inherent dangers. The value of a sign is determined by how well it is understood and if it influences the reader's behavior. If properly used, signs can help reduce the frequency and severity of accidents, and assist in the defense of lawsuits.



Signs should be placed at the entrance to parks, fields, pools, or courts, near playgrounds, on beaches, next to fitness trails, and equipment. Standardized signage, using universal pictorial symbols, lettering and design, is helpful. In many communities, more than one language is needed.

For example, children at play do not always remember the correct way to use equipment. Signs should be posted stating the intended age group for the equipment. The sign should also illustrate and explain the rules. Unacceptable types of activities such as running, equipment misuse, and horseplay should be listed on playground signs.

## THE RECREATIONAL USE STATUTE

The recreational use statute<sup>91</sup> extends broad immunity from liability to private as well as government landowners against claims for ordinary negligence brought by members of the public who come on their property to engage in certain enumerated activities where the land is suitable for those activities.<sup>92</sup>

This statute provides that landowners who gratuitously allow persons to use their property for certain enumerated recreational activities are not liable for injuries unless they were caused by willful or malicious acts or omissions of the owner.<sup>93</sup>

NYS General Obligations Law §9-103 provides that landowners are granted limited liability for the use of their property for certain recreational purposes such as hunting,<sup>94</sup> fishing, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding,<sup>95</sup> horseback or bicycle riding, motor-

<sup>90</sup> However, a city has no duty to erect barriers or warning signs in an area because of open and obvious natural geographic phenomena. *Plate v. City of Rochester*, 217 AD2d 984, 629 NYS2d 600 (4th Dep't 1995), leave to appeal denied, 87 NY2d 801, 637 NYS2d 688, 661 NE2d 160 (1995) (plaintiff's act of running along cliff's edge, of which he was familiar, in the dark, was the sole proximate cause of falling off the cliff).

<sup>91</sup> Legislature in drafting recreational use provision of General Obligations Law intended a quid pro quo, whereby property owners would be granted statutory immunity in return for permitting recreationists access to their undeveloped land. N.Y. Gen. Oblig. Law § 9-103 (Consol. 1977). *Sena v. Town of Greenfield*, *supra*.

<sup>92</sup> In general, recreational use provision of General Obligations Law is properly applied where plaintiff (1) is engaged in one of activities identified in statute, and (2) is recreating on land suitable for that activity. N.Y. Gen. Oblig. Law § 9-103. *Sena v. Town of Greenfield*, *supra*.

<sup>93</sup> *Sega v. State*, 60 N.Y.2d 183, 469 N.Y.S.2d 51, 456 N.E.2d 1174, *reargument denied* 61 N.Y.2d 670, 472 N.Y.S.2d 1028, 460 N.E.2d 232 (1983).

<sup>94</sup> Under recreational use statute, landowners owe no duty to keep their premises safe for hunters or to warn hunters of any hazardous condition or use of a structure or activity on their premises to persons entering for such purposes. *Olson v. Brunner* 261 A.D.2d 922, 689 N.Y.S.2d 833 (4th Dept. 1999), *reargument denied*, 697 N.Y.S.2d 229, *leave to appeal denied*, 94 N.Y.2d 759, 705 N.Y.S.2d 6, 726 N.E.2d 483.

<sup>95</sup> Landowners were immune from liability for their ordinary negligence for injuries plaintiff sustained while sledding on their land, which was suitable for public use for that purpose. *Hogarth v. City of Syracuse*, 238 A.D.2d 887, 660 N.Y.S.2d 779 (4th Dept. 1997), *leave to appeal dismissed*, 90 N.Y.2d 935, 664 N.Y.S.2d 272, 686 N.E.2d 1367, *leave to appeal denied*, 93 N.Y.2d 812, 695 N.Y.S.2d 540, 717 N.E.2d 699.

ized vehicle operation for recreational purposes,<sup>96</sup> and snowmobiling.<sup>97</sup>

Specifically, the statute states:<sup>98</sup>

1. Except as provided in subdivision two,
  - a. an owner, lessee or occupant of premises, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hang gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;
  - b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.
  - c. an owner, lessee or occupant of a farm, as defined in section six hundred seventy-one of the labor law, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep such farm safe for entry or use by a person who enters or remains in or upon such farm without consent or privilege, or to give warning of any hazardous condition or use of or structure or activity on such farm to persons so entering or remaining. This shall not be interpreted, or construed, as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision two of this section.
2. This section does not limit the liability which would otherwise exist
  - a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or
  - b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section 11-0925 of the environmental conservation law; or
  - c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

<sup>96</sup> Corporate owner of property used for motor bike riding was not liable to injured rider, under recreational use statute, absent allegation that owner had willfully or maliciously failed to guard or warn against dangerous condition on property. *Jacobs v. Northeastern Indus. Park, Inc.*, 181 A.D.2d 720, 581 N.Y.S.2d 366 (2d Dept. 1992).

<sup>97</sup> Electric utility was immune under recreational use statute from negligence liability to snowmobile operator who allegedly sustained injuries when he struck metal-cable gate placed across utility's electric transmission line right-of-way, where property was physically conducive to snowmobile activity and had been previously used by public for such purpose. *Scuderi v. Niagara Mohawk Power Corp.*, 243 A.D.2d 1049, 663 N.Y.S.2d 912 (3d Dept. 1997).

<sup>98</sup> Recreational use provision of General Obligations Law was promulgated to encourage property owners to permit persons to come on their property to engage in specified recreational activities, without fear of liability for injuries suffered by recreationists. NY General Obligations Law § 9-103. *Sena v. Town of Greenfield*, *supra*.

3. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

For a fuller understanding of how villages and cities are impacted by the Recreational Use Statute, see “Case Studies” located in the Appendix of this book.

## EFFECTIVENESS OF RELEASES, WAIVERS & CONSENT FORMS

Municipalities often use consent forms and permission statements or slips for recreational programs and athletic activities. Usually the slips contain written notification to participants that a trip is planned, indicate the itinerary and the method of transportation, and include a consent for emergency medical treatment. When signed by the participant, or in the case of a minor, a parent or guardian, permission slips document consent that the person can attend the activity. For routine programs like trips to museums, historical sites, or concerts, these slips are usually sufficient. However, for trips or events involving participatory athletics or sports, additional language is required on the consent form.

Just as physicians obtain informed consent prior to medial procedures and manufacturers issue warnings about their products, municipalities have duty to warn. Parents, guardians, and participants in recreational programs involving physical activities must know and understand the risks of each activity before the trip begins. Also, depending upon the ages of the participants, documented proof of warning can assist in establishing assumption of risk, a defense which can help defeat a negligence claim brought against a municipality.

Permission slips must be clear and thorough. They should include, at a minimum:

- A complete and accurate description of the activity (e.g., volleyball)
- A statement acknowledging that the activity involves physical activity, including the word “vigorous” if appropriate
- A statement that the person has no medical or physical conditions which would restrict his or her participation
- A list of the specific risks that usually accompany the activity (e.g., jumping, aerobic activity, running)
- An acknowledgment and assumption of risk for injuries that might occur
- Any other information about the activity or trip that must be communicated (e.g., equipment will not be supplied)

The use of permission slips will not protect the municipality from all liability and will not prevent an attorney from filing notice of claim or suit. However, it will assist in the defense of a claim if the plaintiff alleges he or she was not warned of the dangers of an activity, or if there is a claim to the effect that the plaintiff was not physically capable of participating.



## PERMISSION SLIP—SAMPLE LANGUAGE

\_\_\_\_\_  
Name of Trip/Program

I, \_\_\_\_\_ give my permission for \_\_\_\_\_ to participate in this program. I acknowledge that participation in this program involves the risk of injury, and I assume the risk. In consideration of this possibility, I hereby consent to emergency transportation and treatment necessary in the event of illness or injury. I hereby accept responsibility for the payment of any emergency transportation or treatment. This program involves physical activity, and I further acknowledge that I (or my child) am/is fully capable of performing the activities required. This program will take place at (Location) . The potential risks involved in participating in this trip include, but are not limited to: (Describe Any Specific Risks or Hazards). I agree to hold the (Name of Municipality) harmless from and against any and all liability, loss, damages, claims, or actions (including costs and attorney's fees) for bodily injury or property damage, to the extent provided by law.

\_\_\_\_\_  
(Signature of Participant, Parent or Guardian)

\_\_\_\_\_  
(Date)

## :: APPENDIX ::

### CASE STUDIES

#### *The Recreational Use Statute*

- City was immune, under recreational use statute, from wrongful death action brought by widow of park patron killed when he collided with snowmobile while sledding at city park; all park facilities except skating rink and restaurant were closed for winter at time of accident, city did not actively encourage sledding in park, city did not specially groom or monitor areas used for sledding, and there was no showing that city had prior notice of illegal use of snowmobiles.<sup>99</sup>
- School district could not be held liable for injuries suffered by five-year-old child while sledding on school property; character of property was conducive to sledding, and sledding was expressly included within ambit of recreational use immunity statute, despite handrail near bottom of hill.<sup>100</sup>
- Ice skater, who subsequently sued county for his injuries, assumed risk of personal injuries he suffered in county-owned skating rink when he allegedly attempted to avoid collision with five other skaters who were holding hands, even if other skaters thereby violated rink rule permitting only two people to skate together, and even if they had violated that rule at other times on that day; there was no evidence that conduct of other skaters was reckless or that they acted intentionally to harm plaintiff.<sup>101</sup>
- City which owned ice skating rink, and private company which operated rink, were not liable for injuries sustained by minor ice skater when second skater suddenly and abruptly struck minor, as second skater's conduct could not have been anticipated or avoided by any degree of supervision.<sup>102</sup>
- In action against city for injuries sustained by 16-year-old plaintiff when he dove head first, from unstable trash barrel turned upside down and placed on footbridge, into brook 8 feet wide and between 3 and 4 ½ feet deep, hitting his head on rocks, Supreme Court properly determined that plaintiff's own reckless conduct was sole proximate cause of his injuries. He had been swimming in brook on many prior occasions, he was aware of its width and fact that it was bordered by rocks, he knew that water was not over his head except in deep hole located somewhere near middle of brook, and he had asked friend who dove before him whether he had "hit bottom."<sup>103</sup>
- City had neither actual nor constructive knowledge of allegedly hazardous condition of unpaved path into city park, and thus city was not liable for injuries sustained by pedestrian who alleged that gouged-out, rocky area in path caused her to fall, where city had received no complaints concerning condition of path and no reports of injury prior to that of pedestrian.<sup>104</sup>
- Even assuming that vacant lot owned by city could be likened to a park and that city had notice that rubbish fires periodically occurred there, such condition did not constitute ultra-hazardous and criminal activity that city had a duty to prevent; thus, city could not be held liable for injuries allegedly sustained by child as the result of another child's setting fire to flammable aerosol paint found in a rubbish-strewn vacant lot.<sup>105</sup>
- Exposed tree root on unpaved dirt and rock path in city park did not create concealed or unreasonably increased risk of harm for bicyclists, and thus, bicyclist who alleged that he was injured when his mountain bike struck root had assumed risk of injury presented by root; exposed tree root is reasonably foreseeable hazard of sport of mountain biking and would be readily observable, and bicyclist admitted that he had observed and avoided other exposed tree roots just prior to fall which was allegedly caused by root.<sup>106</sup>

<sup>99</sup> NYS General Obligations Law § 9-103. *Perrott v. City of Troy*, 261 AD2d 29, 699 NYS2d 783 (3d Dep't 1999).

<sup>100</sup> *McGregor v. Middletown School Dist. No. 1*, 190 AD2d 923, 593 NYS2d 609 (3 Dept. 1993).

<sup>101</sup> *Vega v. County of Westchester*, 724 NYS2d 72 (App. Div. 2d Dep't 2001).

<sup>102</sup> *Shamelashvili v. City of New York*, 692 NYS2d 695 (App. Div. 2d Dep't 1999).

<sup>103</sup> *Culkin v. Parks & Recreation Dept.*, 168 AD2d 912, 565 NYS2d 655, app den 77 NY2d 806, 569 NYS2d 610, 572 NE2d 51 (1990, 4th Dept).

<sup>104</sup> *Piscitello v. City of Tonawanda*, 684 NYS2d 89 (App. Div. 4th Dep't 1998).

<sup>105</sup> *Serrano v. City of New York*, 681 NYS2d 528 (App. Div. 1st Dep't 1998).

<sup>106</sup> *Calise v. City of New York*, 657 NYS2d 430 (App. Div. 2d Dep't 1997).

- Private school which had fenced off its property from adjoining public park was immune, under recreational use statute, from liability to bicyclist injured while passing through hole in fence created by vandals; fact that school had actively sought to prevent general public from using its property for recreational purposes was irrelevant.<sup>107</sup>
- Provisions of this section limiting duty of premises' owners to keep premises safe for entry for use by others for hunting or hiking applied where juveniles entered and used county shed for hunting and hiking, and thus county owed juveniles only duty to warn of traps or unreasonably hazardous defects of which the county knew and which the juveniles could not discover upon reasonable inspection.<sup>108</sup>
- Landowners had no duty to keep premises safe for use by all terrain vehicles and were not liable for accident involving all terrain vehicle, absent evidence they acted willfully or maliciously in placing cable across private road on their property.<sup>109</sup>
- Snow-covered bench on third-base side of baseball field, which plaintiffs hit while riding on a snowmobile in the dark of night, was not a trap or dangerous structure so as to require school district to guard or warn against it.<sup>110</sup>
- City was immune, under recreational use statute, from liability to bicyclist injured in wholly unsupervised public park.<sup>111</sup>

### **Assumption of Risk**

- A player who voluntarily and knowingly exposes himself to the risk of the game comes under the doctrine of assumption of the risk.<sup>112</sup> The game of golf is such that all players assume the risk of being occasionally hit or endangered by a bad shot.<sup>113</sup>
- A player in a game of stickball assumed the risk of being injured when he was struck in the eye by a stick swung by a batter in the course of the game, where there was plenty of room in the area.<sup>114</sup>
- Amateur ballplayers frequently play on playgrounds and fields not ideally suited for the game, but so great is the attraction of the game that the players are willing to voluntarily risk the obvious hazards of playing on a diamond which does not in any respects comply with the official rules of the sport.<sup>115</sup>
- Golfer assumed risk of tripping on step and thus state was not liable for injuries golfer sustained on state-owned golf course; step on which golfer tripped and fell was directly used in playing game and, thus, constituted part of playing field, and since protrusions or knots on step were admittedly "fairly obvious", they did not constitute concealed or unreasonably-increased risk.<sup>116</sup>
- In action by experienced soccer player who was injured during match when he slipped on sprinkler-head drain that was eight inches in diameter and covered with grass, town was entitled to summary judgment based on evidence that (1) plaintiff had played on town fields at least 100 times and, although he had not previously played on field where accident occurred, he had observed drain covers on that field similar to drain covers on field he usually played on, and (2) drain covers were standard in industry, were located at regular intervals, and had not been cause of any complaints or prior accidents; because of his awareness of drain covers, plaintiff assumed risk of being injured by one of them.<sup>117</sup>
- Village was entitled to summary judgment in soccer player's action for personal injuries where

<sup>107</sup> *White v. City of Troy*, 290 AD2d 605, 735 NYS2d 648, leave to appeal denied 98 NY2d 602, 744 NYS2d 762, 771 NE2d 835 (3 Dept. 2002).

<sup>108</sup> *Curtiss v. Chemung County*, 78 AD2d 908, 433 NYS2d 514 (3 Dept. 1980).

<sup>109</sup> *Phillips v. Baird*, 156 AD2d 998, 551 NYS2d 706, appeal denied 75 NY2d 711, 557 NYS2d 309, 556 NE2d 1116 (4 Dept. 1989).

<sup>110</sup> *Mattison v. Hudson Falls Central School Dist.*, 91 AD2d 1133, 458 NYS2d 726 (3 Dept. 1983).

<sup>111</sup> *White v. City of Troy*, 290 AD2d 605, 735 NYS2d 648, leave to appeal denied 98 NY2d 602, 744 NYS2d 762, 771 NE2d 835 (3 Dept. 2002).

<sup>112</sup> *Kozera v. Hamburg*, 40 AD2d 934, 337 NYS2d 761 (1972, 4th Dept.) (holding that a participant accepts the dangers inherent in an athletic event in so far as they are obvious and necessary); *Scala v. New York*, 200 Misc. 475, 102 NYS2d 790 (1951).

<sup>113</sup> *Trauman v. New York*, 208 Misc. 252, 143 NYS2d 467 (1955).

<sup>114</sup> *Turano v. New York*, 17 AD2d 191, 233 NYS2d 330 (1962, 1st Dept.).

<sup>115</sup> *Scala v. New York*, 200 Misc. 475, 102 NYS2d 790 (1951).

<sup>116</sup> *Galski v. State*, 289 AD2d 195, 733 NYS2d 695 (2d Dep't 2001).

<sup>117</sup> *Shelmerdine v. Town of Guilderland*, 223 AD2d 875, 636 NYS2d 213 (1996, 3d Dept.).



player admitted that he had played on same field approximately 25 times and that he voluntarily participated in game, and thus he assumed foreseeable risk that he might be injured by running on uneven terrain of field.<sup>118</sup>

- Softball player's complaint against village was properly dismissed where it was based on injury suffered during eighth inning of softball game when he slid head-first into home plate and jammed his shoulder on protruding corner of plate, since he admitted knowing that third-base side of home plate was "dug out," and as he had batted several times during game, he had actually stood in "ditch" next to protruding corner; risk was not concealed and plaintiff consciously assumed risk by voluntarily participating in game.<sup>119</sup>

118 Alvarez v Incorporated Village of Hempstead, 223 AD2d 663, 637 NYS2d 463 (1996, 2d Dept).

119 Castello v County of Nassau, 223 AD2d 571, 636 NYS2d 817 (1996, 2d Dept).

## :: CHAPTER TWO ::

# Multi-Use Trails and Fitness Trails

## EXPOSURE ANALYSIS

Different recreational users share multi-use trails: hikers, cross-country skiers, mountain bikers, snowmobilers, horse riders and others. By their nature, multi-use trails are rife with different physical hazards – and present a different set of challenges – since they are usually unpaved and located in remote, off-road areas. Built on old railroad beds or near canals and used frequently when snow-covered, multi-use trails are subject to damage by weather or overuse.

Fortunately, NYMIR’s claims experience indicates a small number of losses resulting from the use of multi-use trails by the public.

## LEGAL LIABILITY

There is limited immunity under the NYS General Obligations Law (Section 9-103)<sup>120</sup> for certain delineated activities, such as hiking, cross country skiing, bicycle riding, sleigh riding and snow mobile operations. If an activity is not covered under this section, then a “reasonable person” standard applies, and notice of the defect is an issue. Once notice is received, the municipality has a reasonable period of time to inspect the defect and correct the problem if necessary.

## RISK CONTROL TECHNIQUES

### ***Ways to Limit Accidents and Control the Legal Liability Exposure resulting from Trail Use by the Public***

Trail maps can be a big help for trail users. Besides providing trail directions and compass points – which help reduce the likelihood of lost trail users – maps can also contain important information that a municipality wants and needs to convey to the public. For example, information about the park or trails, such as hours of operation, traffic flow, permitted activities, seasonal information, permit requirements, location of ranger stations or park headquarters, emergency contact numbers, and permitted activities by trail or section.

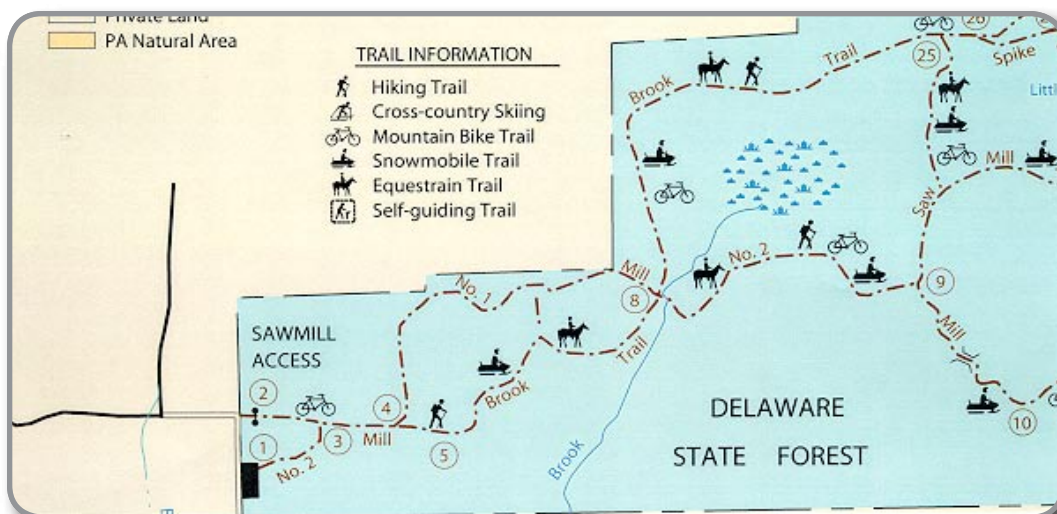
Trail maps should be made available in the park, at trailheads, in the City, Town, County or Village Hall, and on the municipality’s web site.

Signs are also a way to communicate the municipality’s rules concerning use of the trails, and warn the public about hazards. Signs may be required in some instances – such as for roads where all terrain vehicles (ATVs) are permitted. Signs can also indicate required personal protective equipment, the direction of traffic flow, as well as point out hazards and restricted areas. Instructional information – such as with playgrounds and fitness trails – can also be communicated with signs. Pictorial signs are helpful if more than one language is spoken in the community.

Respond to reported accidents and try to determine the cause of the event. If a hazard exists, a trail, or the portion of a trail should be repaired or closed-off to the public.

<sup>120</sup> For a more detailed discussion of Section 9-103, see Chapter One.

## Sample Trail Map



## Signs at a City Multi-Use Trail



## Sample Trail Signs



## :: FITNESS TRAILS ::

### INTRODUCTION AND EXPOSURES

The renewed interest in personal fitness has led to the development of outdoor fitness trails. They feature exercises and activities for improving cardiovascular fitness, agility, flexibility, strength, and endurance. Most fitness trails consists of exercise stations located along a trail used for walking or jogging. A typical trail is 1.5 miles with 13 stations. Trails are designed to work specific muscle groups. After completing the circuit, the participant should experience a full-body workout. The combination of running and exercising will usually takes 30 minutes per circuit in most parks.

A typical sequence includes warm-up and stretching (jumping jacks and toe touches); large muscle activities (pull-ups, sit-ups and push-ups) and a way to cool-down users at the end of the trail (twisting and walking).

Accidents frequently occur from slips and falls, misuse and poor maintenance of equipment, or



insufficient participant warm-up before exercising.

## SIGNAGE

At the start, most trails have signs posted to explain the general warnings about the course, as well as an assumption of risk statement. Signs should suggest consulting with a physician before starting a new exercise program, and indicate that the equipment should not be used as a playground.

Each individual station should have a sign with a picture of the exercise, along with a statement outlining the purpose of the activity, and the number of suggested repetitions for beginner, intermediate, and advanced participants. The signs often also specify whether to walk or to run to the next station.



## DESIGN AND SPACING

Trails should be designed to provide sufficient room for the specific exercise. Similar to the US Consumer Product Safety Commission guidelines for stationary playground equipment, a minimum of six-feet of unobstructed clearance is in order around fitness trail equipment. Course design and equipment purchasing should be done through experienced contractors who can demonstrate competency and are able to provide references from other municipalities or public schools.



## INSPECTIONS

- Inspect all trails and walkways for holes, broken curbs, obstructions, and other hazards.
- Ensure exercise signs are in place and not covered by vegetation. They must be legible with proper warnings provided.
- Trim tree branches as needed around stations.
- Maintain and repair stations as needed. Watch for rotted and splintering wood.
- Close damaged or vandalized stations until repairs are completed.

# Playground Equipment Design and Selection

## INTRODUCTION

The selection of playground equipment is one of the four components of a sound playground risk management program. These four components include:

- Selection of Playground Equipment
- Installation of Playground Equipment
- Inspection and Maintenance of Playground Equipment
- Playground Supervision

The selection of playground equipment will have a direct bearing on the overall safety of the playground. Approximately 150,000 children are injured seriously enough on public playgrounds annually to require professional medical attention. Selecting equipment based on the quality of materials, availability of repair parts, durability, safety, and warranty will assist in minimizing the number of potential injuries occurring on playground equipment. Playground equipment is expensive and must be considered an “investment” by the municipality versus a “cost”. Playground equipment vendors should look at your recreation program, available space, and budget, and help you with the decisionmaking process.

Many municipalities have wasted money on the purchase and installation of expensive, new playground equipment only to discover that it was unsafe. Prior planning and a good selection process can eliminate these nightmares from occurring.

There are a number of intangible considerations that go into the final decision as well. This chapter will explore these and other considerations that are essential to the successful selection of playground equipment and walk you through this process.

## DESIGN SPECIFICATIONS

There are two “standards” when it comes to design specifications involving playground equipment. In the selection and specification process, it is essential to specify that all supplied equipment “meet or exceed” the following “standards”. Although these “standards” are not mandatory standards required by New York State law, they are the nationally recognized standards of care. It is important for municipalities to be in compliance with these guidelines not only to reduce user injuries, but also to be in the best defensible position when an injury does occur.

The first standard for public playground equipment was published by the American Society for Testing and Materials in 1993 (ASTM F1487 standard). This standard has been revised several times since its initial publication. Since its publication, most playground manufacturers have rushed to produce products that comply with its recommendations. When the ASTM F1487 Committee began meeting to develop the standard, they made a conscious decision to avoid being a “design” standard, where every product is identical. The committee made the decision to be a “performance-based” standard. This leaves a lot of room for “professional judgment” on the part of the manufacturer, vendor and consumer.

The U. S. Consumer Product Safety Commission (CPSC) publishes a handbook on playground equipment entitled *Handbook for Public Playground Safety*. This handbook is a comprehensive manual on all aspects of playground safety and is adopted as the “golden standard” by most playground safety experts.

Another consideration in the selection process is a specification for the playground equipment vendor. The International Playground Equipment Manufacturer’s Association (IPMEA) has a program that certifies the equipment meets or exceeds the recommendations of ASTM F 1487 standard. You should specify that the playground equipment vendor be a Member of the IPMEA and provide proof of their membership.

If the playground equipment does not meet these two “standards” or if the playground equipment is or could be construed as “homemade”, this equipment must not be selected. Homemade refers to equipment not built by a recognized playground equipment manufacturer.

## EQUIPMENT SELECTION PROCESS QUESTIONS

Always consider the suitability of playground equipment before purchasing and installing it on a municipal playground. In preparing to purchase new or replacement playground equipment, ask and satisfactorily answer the following questions during the selection process.

### Equipment Compliance

- Is this piece of equipment in compliance with ASTM F 1487 and the CPSC’s Handbook for Public Playground Safety?
  - Ensure that the playground equipment manufacturer puts that compliance in writing and proves it with documented testing results.

### Durability

- How durable is the equipment?
- Can the materials of construction withstand heavy use and exposure to weather?
- Where can you go to see this type of equipment – both new equipment and equipment that has been in use for over five years? Who can I talk to at these locations to discuss the equipment and its maintenance?
  - Looking at the expected life of the equipment is an important consideration for the municipality when making this investment. Looking at new and equipment in operation for over five years is advantageous and will provide insight to durability, wear and future costs for ongoing and preventive maintenance.

### Installation Instructions

- Are detailed, understandable installation instructions provided for the equipment?
- Is the manufacturer’s representative available to perform the installation or assist with it by certifying that the equipment is installed properly?
  - Ask for specifications on each piece of equipment. Many manufacturers’ representatives will help in the design and layout of playgrounds. Ask if they provide these services. It is recommended that playground equipment be installed at a minimum with a manufacturers’ representative on site supervising the installation.

### Maintenance

- What kind of a maintenance program does the manufacturer recommend?

- Are there ongoing maintenance instructions?
  - Can your municipality perform the necessary routine maintenance or will it need to be contracted?
  - What are the procedures for ordering replacement parts and what is the availability of these parts?
- Request detailed product information from each manufacturer being considered.

### **Warranty Information**

- Are there warranties on all the materials and workmanship of the product?
  - How long are these warranties?
  - Are extended warranties available to be purchased?
  - What actions will null and void the warranty?
- Obtain and retain copies of these warranties. Choose a company that stands behind the materials used in its product (the component parts) as well as the product itself. Ask for references of both new and older installations (3 to 5 years) and contact them.

### **Manufacturer Information**

- How many years has the manufacturer been in business?
  - Does the playground equipment company carry product liability insurance and what are the limits?
  - What type of claims, if any, has the company had on the piece(s) of equipment you are considering for purchase?
- Choose a playground equipment company that carries at least \$1 million/ per occurrence and \$2 million/aggregate of general liability coverage and has carried the same amount of insurance for the last five years or longer. Longer coverage periods and greater insurance amounts carried may indicate greater stability.

### **Protective Surfacing**

- What type or protective surfacing have you selected to place beneath the playground equipment?
- The same questions listed above for durability and maintenance should be asked of the surfacing manufacturers. Remember the "Americans With Disabilities Act" requires that all public playgrounds be accessible to people with disabilities: those who may use wheelchairs, walkers, be blind, etc. Acceptable surfaces must pass impact testing specified by the CPSC. Concrete, asphalt, brick, wood or other hard surfaces must not be used under playground equipment.

## **SITE AND EQUIPMENT PLACEMENT**

The correct placement of playground equipment can be critical in the prevention of playground accidents, so the location of the equipment should be carefully chosen and be an essential part of the selection process. There are several considerations in choosing the best location for a playground.

### **Size of the Play Area**

The play area must be large enough to hold the equipment and necessary surfacing with appropriate fall zones (the area under and around the equipment where protective surfacing is required) and no-encroachment zone (an additional area beyond the fall zone where children using the equipment can be expected to move about and should have no encroaching obstacles).



### **Separation by Age Group**

Separate the play areas and equipment for different age groups on the playground. Provide appropriate sized appropriate equipment for school age children (5-12 yrs. of age), and separate playground equipment designated for preschoolers (2-5 yrs.of age).

### **Proximity to External Hazards**

Consider hazards and obstacles to youngsters traveling to or from the playground, and ensure that the youngsters are protected from them. The playground should be away and separate from:

- Busy Streets and Parking Lots
- Water
- Railroad Tracks
- Ravines
- Wooded Areas
- Industrial Plants
- Dumpsters and Recycle Bins
- Storage of Dangerous Materials
- Excessive Noise or Noxious Odors From Nearby Sources
- Steep hills or Inclines

Provide at least eight feet between the estimated use zone of the equipment and adjacent buildings, paths, fences and adjoining play areas.

### **Fences**

A barrier surrounding the playground is recommended. Fencing keeps children within the play area and prevents them from running into the street or other undesirable areas. Fencing also helps keep strangers off of the playground. Install fencing and barriers (such as landscaping) where needed to isolate hazards and to separate playgrounds from other activity areas.

### **Proximity to Internal Hazards**

Separate activities involving a high degree of movement from activities where children stay in one place. Locate playgrounds away from other activity areas such as ball fields.

Locate heavily used equipment away from each other to prevent crowding in any one area. Place moving equipment such as swings in a corner, away from main traffic areas.

Locate slide exits in an uncongested area. Have slides placed facing north or in the shade to prevent hot metal surfaces that can burn a youngster.

Design circulation patters around equipment to promote safe movement of children in and about the equipment. Consider play and traffic patterns for composite play structures.

Ensure that equipment is placed so that the playground equipment is approached from the desired location (for example, not located right at the bottom of a hill where children would run down into the play area too fast).

### **Ease of Supervision**

Ensure that two persons can observe all of the play area – both the equipment and the fields and police can see the areas day and night from their patrol vehicles. Keep the site free of visual

barriers (such as trees and bushes) that hamper visibility for supervision.

## **Drainage Considerations**

Locate the playground so that the site will dry out quickly. Ensure that there is proper drainage for the playground equipment, its surfacing and surrounding areas. If there is questionable drainage, the site should be reconsidered, or appropriate funding budgeted to provide adequate drainage.

## **EQUIPMENT INSTALLATION CONSIDERATIONS**

Playground equipment must be assembled and installed in accordance with the manufacturer's instructions. Playground equipment is much more sophisticated these days than it was twenty years ago. Given the importance of the assembly and installation, NYMIR recommends one of two scenarios for the installation of new playground installation.

### **Option 1**

The playground manufacturer or distributor performs the installation and certifies in writing that it was installed according to manufacturer's specifications. This option will be more expensive, however, it provides a more thorough means of risk transfer in the event of an injury on the equipment.

### **Option 2**

The playground manufacturer or distributor provides an installation supervisor to oversee the playground installation by volunteers or municipal employees. Again, a letter certifying that it was installed according to manufacturer's specifications must be obtained from the supervisor's employer following the installation. This option is less expensive, however, it provides a means of risk transfer in the event of an injury on the equipment.

These two options provide a link back to the manufacturer in the event of a claim resulting from the product design, malfunction of the equipment or improper installation.

## **PROTECTIVE SURFACING CONSIDERATIONS**

Approximately 75% of playground injuries are caused by falls and of that, most are caused by falls to the surface. Installing and maintaining an appropriate surface under playground equipment is probably the single most important factor to keep a playground as safe as possible.

Surfacing material comes in either as "loose material" or as a "unitary synthetic" material. Examples of organic loose materials are wood chips or engineered wood fiber. Inorganic loose materials are pea gravel and sand. Unitary synthetic materials are rubber mats or poured in place rubber. Loose synthetic material known as shredded rubber is also available. Each of these materials has advantages and disadvantages that will be discussed below. The final decision about choosing a surfacing must be made based on the manpower available to maintain the protective surfacing and the amount of funding to be invested in the playground.

### **Wood Chips**

There are a number of advantages to wood chips and engineered wood fiber products. These products are easy to install and are less abrasive than other products. They are also less attractive to animals. Wood chips are attractive and provide a nice appearance. Wood products that meet the CPSC guidelines are readily available. Wood chips help to facilitate drainage on the playground. Wood chips and engineered wood fibers provide a surface that is ADA Accessible.

Likewise, there are some disadvantages. Wood chips being an organic material will decompose.

As it goes through this process, if the wood chips are not “worked” on a regular basis, they will turn to mud. Wood chips, like any small material, can be thrown. Wood chips will burn, however it takes considerable effort to get a fire started. Wood chips can conceal debris. If delivered in the evening or over a weekend and not installed immediately, wood chips are highly desirable by homeowners as landscaping and are often “borrowed.” Wood chips will permit microbe growth and if not properly installed and drained, can support the growth of slime mold. Wood chips require raking and aerating on a regular basis to keep the chips in the fall zones and to keep the product resilient.

### **Pea Gravel**

Pea gravel has a number of advantages. The cost of this product is less than wood, poured or shredded rubber, but more than sand. The installation of this product is relatively easy. Pea gravel does not disintegrate or break down like wood chips and is not attractive to animals. Pea gravel has a low potential for microbial growth, promotes drainage and is non-combustible. The materials meeting the CPSC guidelines are readily available. It is important to consult these guidelines to ensure the proper type of pea gravel is purchased.

Likewise, pea gravel has a number of disadvantages. One of the biggest disadvantages is the fact that this surface is not ADA Accessible. It will require supplemental protective surfacing materials to provide an ADA Accessible Surface. Pea gravel is small and can be thrown and increases the potential for window breakage. If scattered onto sidewalks or parking lots, it can create a potential slip and fall hazard. Pea gravel requires regular raking to keep the material in the fall zones.

### **Sand**

Sand has a few advantages. This material is the least expensive and most readily available of the different protective surfacing materials available. This product is the easiest to install. Sand allows for good drainage and is non-combustible. The CPSC guidelines for the use of sand must be closely consult to ensure the correct depth of sand is installed based on the critical height of the equipment to be installed.

Sand has some major disadvantages. It is not ADA Accessible. It will create or be perceived as the neighborhood “kitty litter box”, and when it becomes wet and compressed, it will become hard and will provide minimal protection from a fall. In addition, it can get in the children’s eyes, collect in their clothes, scratch floors, and hide glass or foreign objects.

### **Rubber Products**

There are three types of rubber products available for use on playgrounds: poured rubber; shredded rubber and rubber mats. Poured rubber and rubber mats have similar advantages. They are easy to maintain and clean. They do not hide objects and are ADA Accessible. They provide good footing and slip resistance.

They have a few disadvantages. Both have high initial installation costs. However, when factored over the life of the playground, are usually less than wood chips when figuring in maintenance and material replacement costs. Poured rubber and rubber mats need level surfaces for installation. The edge of rubber mats can curl over time (several freeze-thaw cycles) and create potential trip and fall hazards. These surfaces are susceptible to vandalism and more expensive to repair.

Shredded rubber has advantages similar to wood chips. However, there are two disadvantages, which must be given careful attention. Shredded rubber is relatively easy to ignite. Several arson fires have been noted at playgrounds with shredded rubber surfacing. The standard for

shredded rubber permits 5% metal per ton of material. This means in an average ton of product there can be up to 100 pounds of metal. If this product is chosen, a magnetic rake must also be procured, to attract and remove the metal particles as the product is raked.

### **Surfacing Pricing Factors**

The pricing of surfacing materials depends on the following factors:

- Type of material
- Depth required for fall height
- Quantity required
- Shipping
- Installation
- Color

Unitary materials generally cost more than organic or inorganic loose materials but the long-term maintenance cost is less. If one's budget is tight, a way to reduce the cost of surfacing materials is to reduce the critical height of playground equipment elements. Going from a critical height of 84 inches to 72 inches saved one municipality nearly \$3,500 in protective surfacing materials.

A final thought on protective surfacing materials. They will not prevent all injuries. Having appropriate surfacing materials will decrease the likelihood of severe injuries. However, the CPSC notes, "...it should be recognized that some injuries from falls will occur no matter what playground surfacing material is used."

### **AMERICANS WITH DISABILITY ACT CONSIDERATIONS**

The ADA prohibits discrimination against the disabled in public accommodations, including municipal playgrounds. Municipalities must therefore plan to make playgrounds accessible to handicapped individuals.

Individuals with various disabilities must be able to access the playground. Every play activity does not have to be accessible for every child, but every playground must be accessible. Portions of the playground to consider for handicap accessibility include: play equipment area access, ramps, surfacing around play equipment and play structures.

### **INTANGIBLE SELECTION CONSIDERATIONS**

There has been considerable progress made in the development and improvement of safety standards for playground equipment. However, playgrounds can be installed that have little or no play value because the playground equipment selection committee was only interested in compliance with the standards and guidelines, but not child development. Designers, purchasers, and providers of playground equipment and play areas have a responsibility to provide a safe, challenging play environment that is more than simply compliant. Beware of choosing a pretty picture from a manufacturer's catalog that fits the budget and ground space rather than to attempting to develop an area that will truly meet the needs of the children who will use the equipment.

It is easy to be seduced when catalogs claim that their equipment meets or exceeds ASTM recommendations, or that the equipment is certified by the International Playground Equipment Manufacturers Association, which has established a program certifying products that meet the recommendations of the ASTM F1487 standard. Selecting IPEMA-certified equipment is a positive step; however, it does not guarantee the creation of a safe, challenging, or developmentally appropriate play environment.

This certification process was intended to assure the purchaser that the product he or she was buy-



ing met with ASTM recommendations; it was never intended to be the only consideration. Compliance means that the hazards described in the ASTM standard will not be present on the equipment or component as it was designed to be installed. A lot can change from the drawing board to the final installation. Many manufacturers produce play structures with modular components, which allow the purchaser to select exactly what they wish to be included. IPEMA does not certify every possible combination of equipment on many of the modular play structures.

The most common mistakes often relate to the selection of components placed on modular play structures and the placement of equipment within the playground environment. Modular, or composite, play structures are becoming more popular, with myriad component selections available. Consumers typically want more activity than their budgets will afford. Therefore, the market is driven by customer demand and, all too often, designs are IPEMA-certified and meet the recommendations of ASTM, but are not good design. They are too crowded, offering too many activities on one platform and no regard for the movement of children within the area. When selecting playground equipment and components to be placed on a play structure, much thought must be given to the following:

- What is the purpose of the playground?
- Who are the intended users, and how old are they?
- What are a specific age group's developmental needs?
- How will accessibility be provided for persons with mobility disabilities?
- How many children are expected to play on the structure?
- What level of supervision will be present at the site?

The answers to these questions will directly affect the overall design of the playground environment and the number and types of equipment placed on the play structure.

## EQUIPMENT ACCESS AND EGRESS

The issue of access and egress on a play structure is a good place to start the discussion of design. Children must have a means of getting onto the equipment. The type of access component that is selected should be appropriate for the age and ability of the intended user. When designing a structure for the preschool age group, an appropriate means of access is critically important. A wheelchair-accessible ramp with a slope of 1:12 is the least challenging form of access. A ramp should not be the only means of accessing a play structure, as the distance required to move from one point to another via a ramp is not practical for all users. A ramp that is not intended for wheelchair access, with a slope that does not exceed 1:8, is the next level of challenge.

The levels of challenge then progress from a stepladder to a vertical access ladder to a variety of climbers available on the market. Stepladders or vertical access ladders may be used on a structure intended for very young children, but not as the primary means of access, as they present a greater challenge to the user. The CPSC recommends that a vertical ladder not be used as the sole means of access onto a tot structure.

Failure to meet the needs of younger users may be hazardous. A stairway is one of the most gradual means of access and egress. A very young child's center of gravity is balanced on a stairway, allowing him or her to easily access the stairs by either crawling or walking up and down the device. A stepladder is pitched at a sharper angle. Young children are forced to either lean in or out while accessing the device and holding on to the handrails. The young child may have great difficulty walking down a stepladder, and will attempt to egress it facing outwards. As a vertical access ladder requires the most skill and the greatest strength, it is the most difficult method of climbing onto a platform that a very young child will master.

Most transfer platforms enable a wheelchair-bound child to transfer from the chair to the platform to access the equipment, then back to the chair. These transfer platforms are very easy to access and are considered a minor challenge. When a child with limited mobility exits a slide, it is important to provide a way back to the wheelchair or walker. The location of access components, and their relationship to egress components, is an important issue for all users. When laying out a play structure, consider a child's path of travel.

## DEVELOPMENTAL CONSIDERATIONS

The developmental differences of children in relation to their use of equipment should be considered, as physical size will affect the design of the equipment. During the development of the ASTM standard, anthropometric measurements of children were used as the basis for many of the recommendations. For example, the diameter of a hand-gripping component is listed as between .95 and 1.55 inches. These dimensions guarantee that the younger user will be able to grasp the components. The differences in step height and reach height are also considered in the standard. In the ASTM standard, there are different requirements for guardrails and barriers for younger children, and some guidance is given regarding which type of equipment are recommended for different age groups.

The behaviors and developmental needs of the different age groups must be taken into consideration when selecting playground components. Design mistakes are often made when the person selecting and placing the play equipment does not consider developmental differences among the age groups. These developmental differences determine the type and placement of appropriate equipment. Swings and other equipment with moving parts should be located outside the general path of travel. Young children do not anticipate walking in front of a slide exit area and being struck by another child who is coming down a slide. The relationship of the slide exit areas to the balance of the play structure will affect the overall safety of the area. Remember: All of the equipment and components may meet the recommendations of the ASTM standard, but it is their selection and location that may create the hazard.

## CONFLICT OF PLAY PATTERNS

Placing equipment inappropriately and creating conflict of play patterns within the playground environment may create hazardous conditions. Sliding devices on the market today must be given careful consideration in their selection and placement within the composite structure. A child's unencumbered access to return, as well as the proximity and type of activity located adjacent to, a sliding device are of vital concern. The ASTM standard mandates a clearance zone of 21 inches from the inside of the slide sidewall to any other object. This clearance zone is to be completely free of other objects. This is to prevent a child's hand or arm from striking an object while sliding. This clearance zone also prevents loose items of clothing from becoming entangled, and was developed to combat the deaths from strangulation associated with slides. When sliding, gravity takes over and the child descends somewhat out of control.

## PROBLEMATIC EQUIPMENT

While the equipment selected may be IPEMA certified and meet the ASTM and CPSC requirements, it may still not be a safe choice for your playground. NYMIR experience and loss history shows that some pieces of equipment that are more hazardous than other equipment. The following equipment provides a few examples of this equipment:

### **Wooden Components**

With all of the controversy surrounding CCA treated products, and the ban on pressure-treated lumber in public playgrounds, it is best to avoid using any wooden components in new playground equipment purchases.

## ***Certain Climbing Walls***

Climbing walls have become quite popular in new public playgrounds. For the most part, they are not problematic. The “traditional” rock climbing elements on a slanted board are challenging, popular and low maintenance. However, two styles should be avoided. The first are the climbing walls that have “look out” holes in them. A child could fall from this level onto children climbing beneath them. The second kind to avoid are the molded plastic “climbing rocks or mountains”. These devices have molded handles in the climbing surface. There are a number of instances where children have caught their toe in the handhold, have fallen and sustained significant orthopedic injuries.

## ***Gliders (or Track Rides)***

The “older style” of gliders are not recommended. These gliders require the user to have both hand positioned in front of another and do not have cushioned “stops”. When the glider mechanism hits the stop, the deceleration force continues and causes the child to fall forward. In frequent instances, the child places their hands in front of them to “break the fall” and the child ends up with injuries to the wrist (from strains to fractures). NYMIR has had a number of claims resulting from this equipment. The “newer style” gliders are significantly improved due to better engineering and design.

## ***Free Standing “Toad Stools”***

These devices come in a variety of sizes and shapes. They are designed for children to jump from one to another. They are installed in different positions and heights. These devices are problematic with younger children (3rd Grade and down) who are still developing their coordination and depth perception. Falls on this equipment result in dental and groin injuries.

## ***Bubbles or Shaded Domes***

These devices, while adding to the appearance of the playground, are vandalized (e.g. - burned, discolored) quite frequently and have a short life expectancy. Replacement costs of these devices run from \$150 to \$550 and alternative panels are recommended.

## ***Roller Slides***

These devices are not that popular, however they are beginning a comeback. The rollers can create a pinch-point for younger children. Also, there is a fair amount of horseplay with older children using this device. Roller slides are not recommended for public playgrounds.

## ***Bongo Jungle Climber***

These devices are becoming more popular. These climbers are a swinging style climber that children cross over. They swing from chains attached overhead and in a frame in the ground. Some designs do not adequately protect the ground frame and it is frequently exposed and difficult to keep covered. This potentially exposes the children to a hard metal frame should they fall. Also, there is a fair amount of horseplay with older children using this device. We do not recommend they be installed.

## ***“Tornado” Devices***

These devices are becoming more popular. These devices have the children swing around a pivot point. As they spin, their weight creates centrifugal force and increases the speed of the spinning, often times causing the children to fall to the ground. Again, there is a fair amount of horseplay with older children using this device. We do not recommend they be installed.

## GRADES OF PLAYGROUND EQUIPMENT

A final question to ask the playground equipment vendor is, do playground equipment suppliers offer different grades of playground equipment? This is an important question to ask. By moving from one style or type to another, the materials of construction may be significantly better and have higher quality. Other changes are the diameter of handrails and guardrails. In lower end styles, the diameter of these handrails and guardrails are smaller and thinner. Another area to evaluate are the welds. In lower end styles, the welds are not complete across welded components and there is evidence of weld porosity.

## COST SAVINGS OPPORTUNITIES

There are a few ways to stretch your playground equipment investment dollars. The first has been previously discussed. If you limit the critical height of playground elements, this will decrease the amount expended on protective surfacing materials.

Another area where significant costs can be saved is on the playground rules sign. These signs from playground equipment manufacturers are pleasantly appealing and “blend in” with the playground equipment. However, these signs cost between \$500 and \$1,500. In contrast, a playground rules signs from a traditional sign company are much less. Additionally, these signs give more flexibility in their placement and can be easily placed at all playground access points.

A final area for potential cost savings is to invest in a modular type playground that permits future additions. If a municipality’s initial investment funds are limited, the municipality can start “small” and over time expand the initial playground. If this approach is taken, it is important to ensure that areas for future expansion remain “green” and undeveloped.

## NYMIR RISK MANAGEMENT INVOLVEMENT

After your choices have been made and the plans developed, involve your NYMIR Risk Management Professional in the final review process. By including NYMIR Risk Management in the review process, problematic equipment or other hidden hazards may be identified and problems adverted before the equipment has been purchased and installed. The time it takes to do this review is minimal compared to the benefits.

## REFERENCES

- American Society of Testing and Materials, ASTM F 1487
- U. S. Consumer Product Safety Commission, Handbook for Public Playground Safety. [www.cpsc.gov](http://www.cpsc.gov)
- Playground Equipment Selection Websites
- U. S. Consumer Product Safety Commission – [www.cpsc.gov](http://www.cpsc.gov)
- The Consumer Product Safety Commission has developed guidelines for public playground safety. You can download a copy of the current guidelines or you can read them on-line. Note: you may need Adobe Acrobat Reader or similar software to download the documents.
- American Society for Testing and Materials – [www.astm.org](http://www.astm.org)
- The ASTM is an organization of professionals providing standards for everything from carpeting materials to concrete. Standards for safety information for public playgrounds was published by ASTM as in Standard F-1487 (Standard Consumer Safety Performance Specifications for Playground Equipment for Public Use). These Performance Standards nearly mirror the CPSC Guidelines.
- University of Northern Iowa National Program for Playground Safety – [www.uni.edu/playground](http://www.uni.edu/playground)
- The National Program for Playground Safety at the University of Northern Iowa website contains helpful information on playground safety, accessibility, fund raising and links to many



other websites.

- Americans With Disabilities Act Accessibility Guidelines – [www.access-board.gov](http://www.access-board.gov)
- This website provides guidelines for play areas and the updates on playground surfaces.
- National Playground Safety Institute – [www.nrpa.org/npsi](http://www.nrpa.org/npsi)
- The National Playground Safety Institute is a program of the National Recreation and Park Association. It is the only national program that certifies Playground Safety Inspectors. The web site has information on certification and playground safety issues.

# Playground Inspection and Maintenance

## INTRODUCTION

The inspection and maintenance of playground equipment is one of the four components of a sound playground risk management program. These four components include:

- Selection of Playground Equipment
- Installation of Playground Equipment
- Inspection and Maintenance of Playground Equipment
- Playground Supervision

The inspection and maintenance of playground equipment will have a direct bearing on the overall safety of the playground. Approximately 150,000 children are injured seriously enough on public playgrounds annually to require professional medical attention. Inspecting playground equipment on a regular basis will identify potential defects and wear related items requiring further maintenance before they fail. Regular preventive maintenance protects the investment of the municipality.

Municipalities must have a comprehensive inspection and maintenance program for their playgrounds. The type of equipment, amount of its use and local climate determines the frequency of these inspections. Appendix A of the U. S. Consumer Product Safety Commission's (CPSC) Handbook for Public Playground Safety lists general equipment maintenance concerns in its "Suggested General Maintenance Checklist".

## WHY INSPECT?

The municipality has the duty to maintain its premises in a reasonably safe condition, and to warn of any dangers, which are known or discoverable by reasonable inspection. This includes anticipating reasonably foreseeable dangers and taking precautions to protect the children in its custody from such dangers. Routine inspection is one way to look for potential dangers in equipment and facilities.

## LEGAL PROTECTION

In the event of a claim, documentation of regular inspections may provide proof that there was no defect in the equipment, or that the defect arose between routine inspections, so the municipality had no reasonable notice. Documentation may be the crucial in the defense of a lawsuit against the municipality, and could prove that the municipality routinely corrected unsafe conditions.

## IDENTIFYING EQUIPMENT AND REPLACEMENT NEEDS

A regular inspection with a written checklist identifies equipment problems, as well as equipment maintenance and replacement needs to help municipalities prioritize use of limited funds.

## PREVENTIVE MAINTENANCE

Preventive maintenance helps ensure that playground equipment is maintained in as safe a condition as possible. Perform maintenance periodically according to manufacturer's recommendations. Here are some general guidelines for preventive maintenance:

- Repair playground equipment according to manufacturer's specifications. This keeps the warranty intact and ensures appropriate repairs have been made.
- Use only equipment parts manufactured and tested by playground equipment manufacturers.
- Perform routine preventive maintenance. This includes regularly lubricating unsealed bearings, picking up litter, cleaning loose surfacing material and maintaining protective surfacing materials to specified depth. Visually check other parts.
- Fix small problems immediately or on the following workday. Small problems become bigger problems as time progresses.
- Disable, immobilize or temporarily remove the equipment if it cannot be immediately repaired and poses a serious hazard.
- Do not modify playground equipment unless manufacturer's recommendations are followed. Ask the playground equipment manufacturer to certify in writing that it recommends or approves of the modification.
- When you remove playground equipment or parts of equipment, take care not to create a greater hazard in the pieces left behind. For example, removing a tire swing leaves a high beam that tempts children to walk on, and fall from.



## WHEN TO INSPECT/WHO INSPECTS

### ***Playground Supervisors***

Playground or recreation supervisors should conduct an informal visual inspection of the playground; other play areas and all play equipment daily before each use by program participants. When problems are found that are beyond the scope of the playground supervisor to correct, report and document these hazards for corrective action by the municipality. If necessary, take the equipment out of service until the corrective action is made.

### ***Parks/Recreation Department Maintenance Employees***

Parks or Recreation Department Maintenance employees should perform a thorough, documented inspection of playgrounds at least once a month. These workers must be familiar with the CPSC playground requirements. Items requiring corrective action must be tracked to completion.

### ***Parks/Recreation Department Managers***

Parks/Recreation Department Managers should inspect playgrounds, formally or informally, periodically and when problems or concerns arise. These individuals are responsible for the overall safety of the park and/or playground facility, so inspections of the playground is an essential part of his/her duties.

## HOW TO INSPECT

Municipal playgrounds should be inspected to the CPSC standards. While these are voluntary guidelines, playground safety experts consider them the authoritative source on the safety of playground equipment.

## Tips for Inspections

- Train employees charged with the task in inspecting playgrounds in their duties and inspection requirements. NYMIR Risk Management can assist with this training.
- Equip inspectors to perform their duties with the necessary inspection tools. A ladder is necessary to inspect swing brackets and “S” Hooks. A pen knife is needed to probe wood for rot. A rake is needed to level loose surfacing materials. A ruler is needed to measure “loose-fill” surfacing.
- Teach inspectors to mentally view the site from a “child’s point of view” to gain a different perspective on potential misuse or dangers.
- Have inspectors write up any work orders needed and take immediate action if potential for serious injury is found. Ensure that notes outlining problems are specific and clear to ensure that the repairs will be completed.
- Follow-up is an important final component of playground inspections. Charge a specific employee with the responsibility of ensuring that corrective action is taken.

## What to Look for During Playground Equipment Inspections

Sections 7 and 8 of the CPSC Handbook outline general and other playground equipment hazards. Common hazards that should be identified and assessed include:

- Sharp Points, Corners and Edges
- Protrusions and Projections
- Protrusions on Suspended Members of Swing Assemblies
- Pinch, Crush and Shearing Points
- Entrapment Hazards
- Tripping Hazards
- Suspended Hazards

## Common Maintenance Hazards

NYMIR Risk Management Department Professionals have identified several common maintenance/safety problems. These problems are frequently seen on municipal playgrounds that we inspect.

- Inadequate Protective Surfacing (none or not enough)
- Broken Equipment
- Rotting or Otherwise Deteriorating Wood Structures or Posts
- Wood With Cracks and Splinters
- Loose, missing, corroded or worn hardware





- Pieces of equipment too close to each other or too tall
- Exposed Concrete Anchors

In addition, there are several other areas of concern, which create hazards in playgrounds.

- Exposed Corroded Metal
- Hard, Suspended Equipment that may strike a child
- Water Puddles or Slippery Surfacing
- Obstructions or Obstacles in the Activity Zone

### Playground Inspection Form

The sample form included in this Chapter is a one-page, easy to use check off sheet, which has a section for remarks. To make this form usable, it is assumed the user is familiar with the CPSC Playground Handbook guidelines. The criteria on the form are not detailed, but should serve as reminders to all inspectors.

Contact your playground manufacturer for a playground equipment inspection form, specific to the playground your municipality has installed. Follow their recommendations for inspection frequency.

### NYMIR RISK MANAGEMENT INVOLVEMENT

Contact your NYMIR Risk Management Professional to perform an inspection of all municipal parks and playgrounds. They can assist in evaluating the equipment in place and make recommendations to correct identified deficiencies.

### SUMMARY

No matter how good your playground safety plan is, it is possible that there will still be injuries as children often play in unanticipated ways. However, having a sound risk management plan will make your playgrounds safer and, in case of an accident, this will improve the defense if litigation occurs.

### REFERENCES

- U. S. Consumer Product Safety Commission, Handbook for Public Playground Safety. [www.cpsc.gov](http://www.cpsc.gov)
- Playground Equipment Manufacturer Websites
- The following are links to some popular playground equipment manufacturers. This list is not all-inclusive, nor is it intended to reflect any preferred manufacturers by NYMIR.
  - Big Toys – [www.bigtoys.com](http://www.bigtoys.com)
  - Burke – [www.bciburke.com](http://www.bciburke.com)
  - Game Times – [www.gametime.com](http://www.gametime.com)
  - Little Tykes – [www.littletikescommercial.com](http://www.littletikescommercial.com)
  - Miracle – [www.miracle-recreation.com](http://www.miracle-recreation.com)
  - Play World – [www.playworldsystems.com](http://www.playworldsystems.com)



## SAMPLE PLAYGROUND EQUIPMENT INSPECTION FORM

Turn in this checklist to the Parks/Recreation Department Manager.

PLAYGROUND NAME

DATE

LOCATION OF EQUIPMENT

YES

NO

DOES PROTECTIVE SURFACING MATERIAL NEED TO BE  
REDISTRIBUTED AROUND ANY PIECES?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

IS HARDWARE BROKEN ON ANY PIECES OF EQUIPMENT?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

ARE THERE SHARP POINTS OR EDGES?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

ARE BORDERS UNSAFE IN ANY WAY?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

IS THE AREA SAFE TO PLAY IN?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

ARE THERE ANY UNUSUAL SAFETY HAZARDS?

\_\_\_\_\_

\_\_\_\_\_

Describe: \_\_\_\_\_

Describe any other deficiencies that were identified during this inspection:

\_\_\_\_\_

Corrective action:

\_\_\_\_\_

REPAIRER NAME (PLEASE PRINT)

SIGNATURE

DATE

RECREATION AND RISK HANDBOOK :: NYMIR

## :: CHAPTER FIVE ::

# Athletic Fields

## INTRODUCTION

Most park districts and recreation facilities face spring and summer seasons packed with the games and practices of various baseball, softball and soccer programs. Thus, it's essential that playing facilities be in proper condition for use and proper liability controls are in place, for good customer service and to reduce potential liability issues.

## RULES AND REGULATIONS

### *Park Regulations*

Local park use regulations should address specific hours of use ("from dawn until dusk" is vague and subjective and changes daily making even enforcement impossible); motor vehicle operation and parking; use of play vehicles; acceptable conduct; noise; alcoholic beverages; litter and garbage disposal; preservation of property; animals; fees for use; reservation policy; use of waterways and swimming facilities; prohibited activities; open fires; camping; indemnification or insurance requirements; activities which require a permit or reservation; and enforcement and penalties for offenses. (From NYCOM Handbook)

### *Warning Signs and Notices*

Municipalities have an affirmative duty to warn the public of dangerous conditions. Signage is important. Therefore, municipalities should post all relevant information such as instructions for proper usage and rules of conduct in all recreation areas. Signs are used in recreation areas for various reasons: to control traffic flow, communicate prohibited activities, provide instruction, and warn of inherent dangers. Signs should be placed at the entrance to parks, fields, pools, or courts, near playgrounds, on beaches, next to fitness trails, and equipment. In many communities, more than one language is needed. Therefore, standardized signage, using universal pictorial symbols, lettering and design, is helpful. The value of a sign is determined by how well it is understood and if it influences the reader's behavior. If properly used, signs can help reduce the frequency and severity of accidents, and assist in the defense of lawsuits. (From NYCOM Handbook)

Examples of field signage language:

- Park hours
- Park is for the sole use of (municipality).
- Garbage must be placed in trash containers.
- Organized groups may not use the park without permission.
- Alcoholic beverages may not be brought into the park.
- Vehicles are not permitted on the lawns.
- Horseback riding is not permitted.
- Nothing may be sold or offered for sale in the Park, unless the vender first obtains a permit from (insert) in accordance with the following rules and procedures:
  - An Application must be completed and signed by the vender.
  - A fifty (\$50.00) dollar application fee must be submitted along with the application, which such fee is non-refundable in the event that the application for the vender permit is denied.
  - The (insert) must grant or deny an application for a vender permit within ten (10) days of the receipt of it.
  - The (insert) may deny an application for a vender permit for good cause.

- If a vender is issued, the vender must post or display such permit at the merchandise or food booth when such vending is in progress; and
- A group or organization which has obtained permission to use the park and which sells food or merchandise at its event as a means of funding such event is exempt from the requirement of rule "12" herein.
- No loudspeakers or similar apparatus is permitted without permission
- No guns or other weapons will be permitted.
- Hardball will not be permitted.
- Park vehicles at own risk.

## MAINTENANCE

### Fields

- Play area has a uniformed surface and is well drained
- Turf is free of any litter or debris
- Infields have a uniform surface and are free of lips, holes and other tripping hazards
- Bases and plates are properly installed, level and at the proper distances and anchored in accordance to manufacturer's specifications and league requirements.
  - Many injuries to players occur while sliding into bases, breakaway bases should be used on playing fields.
  - To prevent sliding injuries, it is recommended that municipalities install breakaway bases in their playing fields. A breakaway base is snapped onto grommets attached to an anchored rubber mat, which hold it in place during normal play. When a runner slides into the base, it can be dislodged to avoid direct contact and injury. (During normal base running, the breakaway base is stable and will not detach.)
  - A traditional stationary base, bolted to a metal post and sunk into the ground, becomes a rigid obstacle for an athlete to encounter while sliding and often results in injury.
- On-deck areas or circles should be far enough away from the batter's box so that ample reaction time is afforded players in on-deck areas when batted balls and players chasing balls come their way. The on-deck hitter also should be far enough away from the dugout that they would not be distracted from paying attention to the game. Plus, they should not pose a safety threat to other player in the area while swinging the bat.
- Warning tracks should be clearly indicated.
- Baseball backstops should be properly installed, anchored and in good sound condition
- Backstop fencing is galvanized chain link and is the appropriate gauge wire
- Backstop fencing is free of holes and protrusions.

### Bleachers

- In 1999, the US Consumer Product Safety Commission (CPSC) published guidelines on retrofitting to prevent falls from bleachers. Many of the bleachers today pose a fall hazard, especially to children, in part because these bleachers may have been built and installed when building codes did not require guardrails and allowed openings that were big enough to permit a child to fall through them.
- Summary of bleacher standards (CPSC Pub. 330)
  - Guardrails should be present on backs and portions of the open ends of bleachers where footboard, seatboard or aisle is 30 inches or more above the floor or ground below.
  - The top surface of guardrail should be at least 42 inches above leading edge of the footboard, seatboard, or aisle, whichever is adjacent.
  - Any opening between components of the guardrail, under the guardrail and components of the seating, such as between the footboard, seatboard, and riser, should prevent passage of a 4-inch sphere.
  - Aisles, handrails, non-skid surfaces and other items that assist in access and egress on bleachers should be incorporated into any retrofit project



## **Lights**

- Electrical systems and components are operational and in compliance with appropriate building codes
- No electrical conducting wires are exposed
- Ballast boxes and components are properly installed and secured
- Lights provide uniform coverage on facilities and fixtures are adjusted to eliminate dark and blind areas
- Parking area and other security lighting should be operational

## **Fencing**

- Fencing material is galvanized chain link and is appropriate gauge wire for specified use
- Fencing material is properly secured to support rails.
- Support rails are properly connected and straight
- Fencing is free of holes and protrusions
- Gates and latches are operational
- Bolts and screws are flush with the surface with no exposed sharp points

## **Soccer goals**

- Goals should be made of lightweight aluminum
- Goals are properly installed and anchored
- Goal frames show no excessive bending
- Refer to US CPSC Guidelines for additional information

## **Restrooms**

- Restrooms doors are properly marked according to gender
- Restroom doors and locks are operational.
- Lights are operational.
- Restrooms are in compliance with the requirements of the American with Disabilities Act.
- Restrooms are clean, sanitary and properly stocked with paper products

## **Athletic Field requirements and recommendations**

The area required for a regulation baseball field should be 400 feet by 400 feet, an area of approximately three acres. This will allow for dugouts and bleachers as well as the playing area.

The orientation may vary a little, depending on where the field will be located and the time the games will be played (afternoon or twilight). It is recommended that the line from home plate through the pitcher's mound toward second base run East-Northeast.

The official diamond is 90 feet on a side, with dimensions across the diamond 127 feet 3-3/8 inches. There should be a minimum of 60 feet from home plate to the backstop. From home plate, down the foul lines to the outfield fence, the distance varies. The shortest part of the ball park is usually down the foul lines with the fence gradually going out to reach its deepest point in center.

A large frame backstop with a sturdy wire fence should be located 60 feet behind home plate. This backstop should be a minimum of 20 feet high to help keep the ball in the field of play. Attached to each end of the backstop should be a fence at least four feet high, 60 feet from the nearer foul line, and extending to the outfield fence where they join in foul territory at least 45 feet from the foul line. The outfield fence should be eight feet high for maximum safety. All fence posts should be on the outside of the playing area.

Dugouts, warning track, scoreboard, press box, auxiliary mounds, and other accessories should be considered. Dugouts are too often built too small, with not enough headroom. It is recommended that the end of one dugout be used for storage. The traditional dugout, sunk into the ground to allow for spectator clearance, is costly because of drainage problems. By having dugouts at ground level, the chance of trip/fall hazard is lowered to players.

## RECORD KEEPING

The majority of hazardous conditions can be corrected through routine maintenance procedures and should be completed before field use that day. Daily inspections provide a method of tracking the more difficult problem areas that will require work too extensive to be handled during the playing season.

Record keeping is essential since accurate records can play a vital role in the event of a lawsuit. The following records should be retained:

- Inventories
- Personnel
- Daily maintenance reports
- Accident reports
- Incident reports
- Weather conditions
- Use of Facilities forms

## ADDITIONAL RESOURCES

- US Consumer Product Safety Commission :: [www.cpsc.gov](http://www.cpsc.gov)
- National Recreation and Park Association :: [www.nrpa.org](http://www.nrpa.org)
- Americans with Disabilities Act :: [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

## :: CHAPTER SIX ::

# Skate Park Risk Management

*By Marilyn L. Rivers, CPCU ARM AIC, Risk and Safety Manager, City of Saratoga Springs, NY*

## INTRODUCTION

The number of people who skateboard is increasing. Approximately 9,000,000 people skateboard each year, resulting in an 8 to 10-percent increase in participation annually. There are over 300 skate parks across the United States, owned by both private and public sector interests.

The demand for skateboard facilities is increasing, and municipalities face a tricky dilemma: how do we balance the needs of the community for a safe place for youth to skateboard, while at the same time address safety issues?

Building a skate park is an involved endeavor, and careful planning is in order. Coordinate with your municipal attorney, recreation director, safety or risk manager and, if applicable, community members, including park users.

## INJURY ANALYSIS

The United States Consumer Product Safety Commission (CPSC) published the "Consumer Product Safety Review Spring 2003" edition outlining the relationship between age, sex, and injuries based upon medical studies conducted by physicians from the Children's Hospital of Philadelphia and CPSC medical staff. The results of these intensive studies indicate that the most common injuries relating to the sport of skateboarding are musculoskeletal. These injuries include wrist sprains, strains and fractures; ankle sprains, strains and fractures; and facial lacerations.<sup>1</sup>

The CPSC reports that skateboarding is a relatively safe activity. When compared to other sports, the injury rate per 1,000 participants is relatively low.

**Table One :: Participant-Based Injury Reports 1**

SPORT	INJURY RATE PER 1,000 PARTICIPANTS
Basketball	21.2
Football	20.7
Bicycling	11.5
Snowboarding	11.2
Skateboarding	8.9
Inline Skating	3.8

More than 86% of the injuries reported in the report were to male skateboarders, which is not surprising given the fact that the female participants comprise a minority of the skateboarding population.

As these statistics continue to be tabulated, it is important to clarify that the skateboards and skate park structures have undergone many changes, particularly in aerodynamic design. These design changes may help lower the frequency of skate park accidents and injuries. Additionally, skateboarder techniques have become increasingly complex as a result of enhanced structures. It is also impor-

tant to factor improved safety equipment into the injury equation, as breakthroughs have been made in types of materials utilized for helmets and pads and an increased use of body conforming materials in safety related products and surfaces. This is substantiated by the overall decrease in injuries, from 15.5 per 1,000 participants in 1987 to 8.9 in 1998 (the last year studied in the CPCS report).

## A SNOWBOARD WITH WHEELS?

That's correct – without the wheels, a skateboard is a snowboard. With the four wheels and two axles it becomes a skateboard. The physics of speed and the correlation to injury may be distinct but they are definitely similar. With the addition of snowboarding to the Winter Olympic games, there is talk of adding skateboarding to the Summer Olympics. The popularity of both sports among the young (and young at heart) promises to be a new and viable sport. Your municipality's ability to proactively manage this interest in the context of a new or existing skate park will have a significant financial and community relations impact overall, since a proactive safety and claims management program will help control accidents, injuries and liability claims.

## REGULATIONS GOVERNING THE OPERATION OF SKATE PARKS

On November 16, 2004 Governor George Pataki signed into legislation NYS Vehicle and Traffic Law Article 34 Section 1238 which took effect on January 1, 2005. The NYS Vehicle and Traffic Law is printed in its entirety below: <sup>2</sup>

“Section 1238. Passengers on bicycles under one year of age prohibited; passengers and operators under fourteen years of age to wear protective headgear.

1. No person operating a bicycle shall allow a person who is under one year of age to ride as a passenger on a bicycle nor shall such person be carried in a pack fastened to the operator. A first violation of the provisions of this subdivision shall result in no fine. A second violation shall result in a civil fine not to exceed fifty dollars.

2. No person operating a bicycle shall allow a person one or more years of age and less than five years of age to ride as a passenger on a bicycle unless:

(a) such passenger is wearing a helmet meeting standards established by the commissioner. For the purposes of this subdivision wearing a helmet means having a helmet of good fit fastened securely upon the head with the helmet straps; and

(b) such passenger is placed in a separate seat attached to the bicycle and such seat shall have adequate provision for retaining the passenger in place and for protecting the passenger from the moving parts of the bicycle.

2-a. The commissioner shall promulgate rules and regulations establishing standards for helmets required to be worn while bicycling, in-line skating, or operating a skateboard. Such standards, to the extent practicable, shall reflect the standards recommended by the Snell Memorial Foundation, Safety Equipment Institute, or United States Consumer Product Safety Commission.

3. Any person who violates the provisions of subdivision two of this section shall pay a civil fine not to exceed fifty dollars.”

## GENERAL CONSIDERATIONS REGARDING THE OPERATION AND MAINTENANCE OF SKATE PARKS

Whether your skate park is contained within a fenced in area or open to the surrounding field, maintenance is a must in the proactive management of your park. Every surface will be assessed as a potential moving ramp by the skaters including the furniture located within reach of the skate park, as well as: trash cans, picnic tables, and movable signage.

Daily maintenance checks are a must in determining the wear and tear on your equipment. When developing a daily checklist to meet the determination of your workforce needs, ask yourself what questions will best allow you to assess the physical characteristics of your community environment.



Here's a sampling for consideration:

- What are the weather and ground conditions of the day?
- Are there any weather conditions including water retainage that may effect your operation for the day?
- Is your public telephone working and available for emergency assistance?
- Are all surface areas free and clear of rocks, debris and foreign materials?
- Are handrails, fencing, steps, and viewing areas in good condition?
- Are your skate surfaces free of exposed and/or jagged edges, cracks, gaps or ridges?
- Does any of the equipment exhibit rust, rot, crack or splinters?
- Is all the equipment securely anchored in place?
- Are your trash receptacles secured?
- Has all trash and debris been appropriately disposed of?
- Are current regulations governing operation clearly posted?



Your checklist should be completed and filed every day throughout your season. The benefits of the use of a daily checklist are twofold. First, the checklist allows you to document the conditions of the site in the event your municipality is subject to a claim or suit. Second, the daily checklist allows you to document the wear and tear of your equipment and will provide necessary documentation for long term capital budgeting and expenditures.

Careful planning and maintenance provides short and long-term risk management benefits from a claims management and fiscal planning perspective. Remember to consider the implications of labor on your planning and the costs associated with weather related issues for usage and maintenance. Take the time to find contractors with experience and insurance specific to skate park infrastructures to assist you with your short and long term maintenance needs.

An important point for consideration is deciding who within your municipality will be responsible for the assessment and reporting of deficiencies. Additionally, who within your municipality will be responsible for ensuring the deficiencies are corrected and within the necessary budget for maintenance expenditures? Your decision on personnel may be effected by civil service job specifications.

## VOLUNTEERS

Approving volunteers to perform a task for a municipality is not unlike hiring employees. The organization assumes a level of vicarious liability for the actions of its agents, which volunteers can very well be. Therefore, plan wisely when using volunteers in the design, construction or maintenance of skate parks. In addition to liability risk, the use of volunteers may create union or civil service problems. Most young volunteers, while energetic and enthusiastic, have little experience in construction technique or management. This lack of experience may have a wide-ranging impact on your defense in the event a claim is filed against your municipality where a person claims an injury was the result of a negligent act allegedly performed by a volunteer.

## SIGNAGE

If your municipality's skate park is open to the public without the benefit of supervision, your number one goal is to place one large sign with bright neon print stating one simple fact: "Skate at your own risk." Place it at several points around the perimeter of the skate park so that the visual message is apparent from every angle. If a large number of residents speak another language, consider including the message in another language as well.

Regardless of whether or not your skate park is enclosed or not, the basic rules of engagement need to be prominently posted. Here's a sampling of what many skate park signs cover:

- Participants must supply their own equipment.
- Participants must wear all required safety gear and must remain fully clothed when using the skate park facilities.
- The use of safety gear will be strictly enforced.
- It's the law – helmets are mandatory for all skateboard users under the age of 14 when using public areas.
- Elbow, kneepads and wrist guards should be mandatory when using municipal skate park facilities.
- Smoking and alcoholic beverages are prohibited within the skate park and its adjoining areas.
- Roughhousing and abusive language will not be tolerated with the skate park and its adjoining areas.
- Bicycles are prohibited in and around the skate park.
- The skate park will be closed during inclement weather or when the surfaces are wet or slippery.
- Skateboards may only be used on designated surfaces.
- If your skate park is enclosed: "All skaters must register every season. Failure to register will prohibit your use of the skate park."
- The municipality reserves the right to remove the privilege of use of this facility to anyone who disobeys these basic rules.

Again, remember to place the placards at multiple locations at the entrances to your skate park. Print the signage in as many languages as necessary. It will be important to ensure the signage is solidly anchored as it could otherwise become a movable ramp.

## SKATE PARK DESIGN MATERIALS: CONCRETE, STEEL OR WOOD?

In the early days of skate park construction, wood was the primary material for skate park structures. Nails and screws often joined wood structures. Sheet metal was added as a layer for durability. Because the vast majority of skate park structures are exposed to the weather in your region, rain, snow and ice buildup all will have a direct impact upon the durability of these types of structures.

Wooden structures that are painted or sealed experience a high level of impact through everyday use during the skate season. Impact loosens screws and nails however securely driven in. The use of an everyday maintenance checklist will provide you with an opportunity to review these wooden surfaces and identify protruding nails and screws that may cause cuts and injury. Inevitably, wooden structures experience deterioration at the base. The wood may become soggy and deteriorate causing an uneven skating surface and a potential trip hazard.

Sheet metal attached to wooden structures creates issues at the point of attachment. Again, the high level of impact invites protruding nails and screws. At some point, the steel and the wood provide too much give on the screw point and require replacements. The holes left behind as a new screw is driven create the potential for moisture to enter the structure and deterioration to intensify. The metal itself becomes worn and rusty. While the surface may be continually painted for preserva-

tion, a point will be reached when the steel must be replaced. A good indicator for replacement is the proverbial sheet bent beyond fixing or the tear that cannot be hammered smooth.

The use of concrete for above ground obstacles and in ground bowls provides long-term durability, but these types of structures have unique issues unto themselves. Chipping, cracking, spauling or a weakness in the structure may create unknown liabilities with use. As with any type of structure, there may be hidden or latent defects in concrete structures, which manifest at the time of impact. The use of rebar and steel framing should be well encased within the concrete to avoid protrusion upon impact. Care should also be taken in patching concrete failures as improper patching has the ability to contribute to additional spauling or cracking.

The purchase and use of steel structures for skate parks comes with product warranties and its own set of maintenance criteria. It is important to add in the additional manufacturing maintenance criteria to your daily and annual checklists to maintain the integrity of your warranty. Pre-assembled steel structures when first installed require an initial distress technique applied to surfaces as the original prefab surface is very slippery and may be hazardous for usage. The overall maintenance of these heavy, immovable structures (depending upon the manufacturers rating) will provide longer lasting usage and less maintenance than wood or a combination of wooden and steel structures.

As your municipality chooses the construction material for your skate park, consider the prevailing weather of your geographic environment. Winter weather, extreme high and low temperatures including rainfall and humidity will take a toll on the longevity of your equipment and contribute to your daily and annual maintenance costs. From a financial perspective, it will be important to conduct a cost/benefit analysis on the durability of materials you wish to purchase including ongoing maintenance needs – both anticipated and unexpected – and the overall life expectancy of the equipment.

Regardless of what type of structures you choose for your skate park, use a professional to design the layout of your park and provide assistance in choosing the types of structures best suited for long-term usage. The placement of structures for compatibility and ease of use will contribute to easier maintenance and increased interest amongst users. Money spent on the construction of safe structures will reap long term cost benefits in dollars saved on unnecessary claims.

Design professionals who have specific skate park experience may be difficult to find, including those with appropriate professional errors and omissions liability coverage. Establish minimum insurance and indemnification requirements for your project both initially and an ongoing basis. Basic limits for this type of construction should include:

- Commercial General Liability (CGL) Insurance - \$1,000,000 per occurrence and separate \$2,000,000 General and Completed Operations Aggregates.
- Professional Errors and Omissions Insurance - \$1,000,000 per Occurrence and Aggregate.
- Statutory Workers Compensation and Employers Liability Insurance for all employees.

Require additional insured status for the CGL policy and thirty-day notification for cancellation, termination or material change in condition from the insurer.

The Request for Proposals (RFPs) your staff develops should include original design drawings and “as built drawings,” showing changes made and clouded. The phrase “a picture is worth a thousand words” has great meaning to any claims professional. It is important to take pictures of the construction of your project as it evolves. Take notes with your photos and keep them in a safe place for posterity. The photos, notes and drawings will be useful in the event a claim is filed. RFPs should also contain indemnification agreements in the municipality’s favor.

Lastly, the importance of community participation in the operation of your skate park is imperative. The placement of a skate park in or adjacent to any neighborhood will create noise, traffic and may create additional instances of loitering. Use your local noise ordinances as a template for the distance to surrounding residential or commercial establishments. The formation of a community based skate park committee will promote consensus for your project from both users and community members at large. This community participation will be essential to the park's success and longevity from an operational and maintenance perspective.

## USE OF SKATE PARKS IN EDUCATIONAL PROGRAMMING

Teachers across the globe have increasingly used skate parks in educational physics classes to teach Newton's Laws, including the Law of Inertia; Force equals mass times its rate of acceleration; and the Principle of Opposite and Equal Reactions.<sup>3</sup> The principles of motion including mechanical, potential and kinetic energy, work and power will provide an appreciation of skateboard dynamics and speed. Skate park structures provide real life experience in the presentation of physics in everyday life.

As teachers take advantage of the physics in the sport of skateboarding, the principles of safety are reinforced and appreciated. Speed, energy and the resulting force create the need for skateboarding techniques and the use of safety gear. The old adage "seeing is believing" takes shape here as students of all ages see cause and effect relationships from their movements and use of equipment.

Your municipality's ability to interest the educational institutions within your area will have multiple benefits to your skateboarding program. First and foremost, an appreciation of the sport is instilled in a growing user population with first hand educational experience of the dangers and adventure associate with a simple piece of curved board with two axles and four wheels. Secondly, the lessons have the potential of generating community interest in your skateboarding program and positively effecting membership.

## PARTICIPANT AGREEMENTS FOR ENCLOSED SKATE PARKS

The utilization of participant agreements for skate parks will benefit both the skater and the municipality. A participant agreement is usually employed at the point of registration; therefore, they are used when a municipality charges a fee or if strict entry control is in place. For any of these two scenarios, the participant agreement should outline the general rules of the park, residency or fee requirements, emergency contact numbers as well as the inherent risks associated with skating, required use of safety gear, minimum age for participation, and any other rules or requirements the municipality wants to convey to users. Additionally, it will be important to utilize this type of agreement if your municipality plans on holding recreational skateboard clinics.

A parent or guardian must sign for any child under the age of eighteen – in the presence of an employee with proper identification. If that can't be accomplished, the form must be returned with a notary's verification. Parental or guardian permission is mandatory.

### ***What should be in the Participant Agreement?***

The participant agreement should have specific language acknowledging the inherent risk involved in skateboarding and the potential injuries that may occur from participating in the sport. The agreement should outline the participant's assumption of risk, a voluntary release and indemnification of claim from injury, and the acceptance of cost for injury, attorney's fees or damages.

Safety requirements and behavior expectations should be included as well. Required personal protective equipment includes an approved protective helmet, kneepads, and elbow pads as advocated by various national safety and medical associations. As previously discussed, the helmets are required for children under the age of fourteen in New York State while riding skateboards in public areas.



Lastly, your participant agreement should request information on emergency contact names, emergency telephone numbers, date of birth of the participant, and names of parents or guardians. This information will be useful in the event of an emergency. Remember to ensure that employees sign off on each participant agreement they process. Samples forms are contained in Chapter 13.

## IN SUMMARY

- Skate park risk management starts with the physical characteristics of your geographic site and the construction type of your equipment as designed and installed. Documentation on the design, build or product installed should be kept for the longevity of the skate park. Hire a professional when needed and always obtain the necessary additional insured status and indemnification from your contractors and/or professional service provider.
- Skate parks should undergo a daily maintenance check outlining the physical deficiencies of the equipment, groundskeeping and usage issues. The checklists should be maintained on an annual basis in accordance with New York State Records Retention Schedules.
- Use the totality of your daily maintenance checklists to develop your annual capital budgeting expenditures for skate park enhancements and/or refurbishing.
- Signage installed should be clear, concise, safety oriented and prominently displayed.
- Your community should be consulted throughout the design, construction and continued operation of your skate park. Local ordinances such as noise or loitering should be strictly enforced.
- Educational partnerships with local schools should be established and capitalized upon as they establish sound foundations for safety programming and foster responsibility for physical plant security.
- The use of individual indemnification agreements for supervised skate parks is strongly recommended. The agreement should include the rules for usage and indemnification language within the same agreement, along with an acknowledgement of the risk inherent to the sport. Require identification for parental or guardian permissions.
- Communicate with your skateboarders on an ongoing basis. Your skateboarders, when appropriately trained, will individually become your own front line risk managers.

## REFERENCES

- U.S. Consumer Product Safety Commission. "Consumer Product Safety Review." Spring 2003, Vol.7, NO.4.
- "NYS Department of Motor Vehicles Governor's Traffic Safety Committee: Bikes & Wheel Sport Safety: Frequently Asked Questions," [www.nysgtsc.state.ny.us/bike-faq.htm](http://www.nysgtsc.state.ny.us/bike-faq.htm)
- [www.drskateboard.com/curriculum/physics\\_resources.htm](http://www.drskateboard.com/curriculum/physics_resources.htm)

## Web References

- [www.tonyhawkfoundation.org](http://www.tonyhawkfoundation.org)
- [www.skatersforpublicskateparks.org](http://www.skatersforpublicskateparks.org)
- [www.skateboard.about.com](http://www.skateboard.about.com)
- [www.skateboarddirectory.com](http://www.skateboarddirectory.com)
- [www.drskateboard.com](http://www.drskateboard.com)
- [www.exploratorium.edu/skateboarding](http://www.exploratorium.edu/skateboarding)
- [www.mcgruff-safe-kids.com/f\\_kidwheelskitpg.htm](http://www.mcgruff-safe-kids.com/f_kidwheelskitpg.htm)
- [www.safekids.org](http://www.safekids.org)
- [www.skateboarddirectory.com](http://www.skateboarddirectory.com)

## Government Resources

- United States Consumer Product Safety Commission: "Consumer Product Safety Review Spring 2003"
- US Consumer Product Safety Commission Publication #93: "Skateboards"

- “A Practical Guide to Planning and Development,” [www.dcnr.state.pa.us](http://www.dcnr.state.pa.us)
- “Bikes & Wheel Sport Safety Kids Page,” [www.nysgtsc.state.ny.us/Kids/kid-bike.htm](http://www.nysgtsc.state.ny.us/Kids/kid-bike.htm)
- City of New York, “Skate Park Participant Agreement, Agreement to Indemnify, & Risk Acknowledgment,” [www.nycgovparks.org/sub\\_about/parks\\_divisions/capital/owl\\_skate/skate\\_park\\_participant\\_agreement\\_form.pdf](http://www.nycgovparks.org/sub_about/parks_divisions/capital/owl_skate/skate_park_participant_agreement_form.pdf)

### **New York State Law**

- “NYS Department of Motor Vehicles Governor’s Traffic Safety Committee: Bikes & Wheel Sport Safety: Frequently Asked Questions,” [www.nysgtsc.state.ny.us/bike-faq.htm](http://www.nysgtsc.state.ny.us/bike-faq.htm)

**:: CHAPTER SEVEN ::**

# Ice Skating and Rink Safety

## INTRODUCTION

Ice-skating is a great way to keep active during the cold winter months. Whether your municipality has a state of the art ice-skating facility, a temporary outdoor skating surface, or just a frozen pond, there are many things to be aware of to ensure the safety of your residents and employees. This section will cover the following issues.

- Indoor Air Quality (indoor rinks)
- Outdoor Rink Safety
- Proper Signage and Rules of Conduct
- Use of Safety Gear
- Duties of Rink Guards
- Safety for Spectators

## INDOOR AIR QUALITY

Potential hazards for indoor rinks include the ice making system and ice resurfacing equipment. The most common ice making systems use hazardous chemicals like ammonia, chlorodifluoromethane (CFC) or freon. While there are hazards associated with each of these systems, they all can be used safely as long as the proper maintenance and safety procedures are in place. The National Institute for Occupational Safety and Health (NIOSH) has developed the following recommendations:

- ensure that workers are adequately protected from recognized hazards by installing appropriate engineering controls
- develop and implement a maintenance program that will address routine inspection and repair of refrigeration systems
- develop and implement a safety program designed to help workers recognize, understand, and control hazards
- ensure that workers are adequately protected from recognized hazards with appropriate personal protective equipment
- develop and implement a comprehensive emergency action plan.
- The manufacturer of the system should be the most helpful resource in assisting with developing a safety program.
- In addition, your local fire departments and emergency rescue services should:
- establish a registry identifying potentially hazardous facilities, and inform emergency rescue personnel of these potential hazards, and of appropriate rescue methods and equipment
- ensure that responding personnel are properly trained in the selection and use of respiratory protective equipment.

With respect to ice resurfacing equipment, it is important to recognize that internal combustion engines produce carbon monoxide (CO) which can cause headaches, fatigue or even death. While many "Zamboni" type machines now are propane fueled, some still are gasoline powered and almost all edging machines are gas powered. If such equipment is used indoors, adequate ventilation must be provided for the safety of the patrons as well as employees.

Periodic air testing should be done at least once a week and at various locations throughout the rink area. Readings should be entered into a log book to properly monitor the results. The recommended testing device consists of gas detector tubes that are certified by NIOSH. Other methods can be used

if they are acceptable to the Commissioner of Health.

Detection devices can also be installed in the rink area that link to the fresh air intake fans and exhaust fans in order to maintain good air flow if a detector is set off.

## OUTDOOR RINK SAFETY

If your municipality allows skating on ponds or lakes or maintains a temporary outdoor rink, the main responsibility is to maintain a safe ice surface. For ponds and lakes, the ice must be at least six inches thick before skating is allowed. Testing should be done twice a week or more frequently during a warm spell where temperatures may rise above 30 degrees. If you don't have ice-resurfacing equipment, the ice can be flooded with a fire hose at the end of the day to provide a clean and safe skating surface the next day.

Signage should indicate when ice-skating is allowed such as the “red dot” to cover the “No” on the “No Skating” sign or a green flag to indicate skating is allowed. Whatever method you use, it must be clear to all residents. Pictorial signs can be considered. Details for proper signage and rules will be discussed in the next section.

If your pond or lake is large enough to accommodate ice hockey, a separate section far from other skaters should be designated. A separate area for figure skating may also be appropriate if the need arises.

Emergency equipment such as ladders, ropes and flotation devices should be readily available. If possible, a first aid station should be established with a qualified EMT on hand.

Safe parking lots, paths and walks to the skating surface should also be maintained.

## PROPER SIGNAGE AND RULES OF CONDUCT

Probably the most cost effective way of limiting the municipality's liability for ice skating injuries is the proper use of signs. The purpose of signs is to make people aware of the common hazards of ice-skating and to provide rules of conduct to ensure the safety of all participants and spectators. Most safety rules are common to both indoor and outdoor skating but there are some that are unique to each. The following are recommendations for outdoor skating:

- Hours of Operation
- No Skating Unless Otherwise Stated
- Adult Supervision Required
- Hockey/Figure Skating Only in Designated Areas
- Only Skaters Are Allowed on Ice
- We Are Not Responsible for Any Lost or Stolen Personal Items

General safety rules should be posted in addition to the above. The following are rules that can be used for indoor and outdoor rinks regarding the ice surface:

- No speeding, weaving through other skaters or roughness





- No tag or games of any kind
- No throwing snowballs or any objects
- No headphones or any personal listening devices
- No cell phones
- No food or beverages
- No dogs or other pets
- No carrying of children or secondary items like handbags, knapsacks or cameras
- No figure skating or backwards skating except in designated areas
- Persons who appear under the influence of alcohol or other intoxicating substances are not permitted on this property
- Immediately report any problems to management

A separate sign for Skaters Code of Conduct and Assumption of Risk should also be posted next to the rules. The following is an example:

### SKATERS CODE OF CONDUCT AND ASSUMPTION OF RISK

Skaters and spectators understand and agree to the following:

- Maintain reasonable control of his/her speed and course at all times
- Read and abide by all posted signs and warnings and cooperate with rink staff
- Maintain a proper lookout to avoid other skaters, objects or conditions on the ice
- Accept responsibility for knowing the range of his/her ability while on skates and skate within the limits of that ability and as appropriate for the session he/she is skating
- Refrain from skating while under the influence of alcohol, drugs or other control impairing substances
- Refrain from taking food or beverages onto the ice
- Refrain from throwing or leaving objects on the ice
- Refrain from instigating or becoming involved in any type of altercation
- Refrain from any abusive, disorderly or dangerous conduct



Assumption of Risk: By engaging in skating, skaters and spectators are deemed to have knowledge of and assume the inherent risks of skating, which include but are not limited to the following:

- Injuries that result from collisions or contact with others
- Injuries that result from falls
- Injuries that involve objects or artificial structures that are properly within the intended path of travel of the skater
- Protective gear such as helmets and other pads are recommended

An additional sign for spectators of hockey games should also be present to indicate the location of the designated viewing area and to warn of the danger of flying pucks.

## USE OF SAFETY GEAR

While use of safety gear is usually not required for public skating, many rinks now require at least helmets for children under the age of 10. For children 10 and under, most ice-skating injuries were to the face (23 of 60 cases; 38.3%) and head (12 of 60 injuries; 20%). Children less than 6 years old experienced a higher proportion (8 of 9 cases; 88.9%) of head or face injuries while ice-skating than older children (27 of 51 cases; 52.9%).

Other common injuries are fractures of the wrists, arms and coccyx. Personal use of safety gear such as helmets, wrist guards, elbow pads and knee pads can prevent the majority of these common skating related injuries.

## DUTIES OF RINK GUARDS

The Rink Guard is your eyes and ears out on the ice. He/she must demonstrate good skating ability and, preferably, have at least some basic first-aid training. The Rink Guard's primary purpose should be to maintain a safe, orderly skating session. In addition to enforcing the rink's stated rules, he/she should visually inspect the ice after resurfacing to check for any defects such as ruts or holes and make the necessary repairs before allowing skaters onto the ice. Visual inspection of the dashboards, glass or fence, gates and doors should also be done to ensure there are no defects that might catch a finger, skate or piece of clothing. The Rink Guard must immediately attend to fallen skaters to provide assistance in getting up, to prevent other skaters from skating into them and provide any first-aid if necessary.

## SAFETY FOR SPECTATORS

As with participants, spectators are also responsible for reading the posted signs. The rink should not allow spectators near any of the hockey player's benches or penalty boxes. Designated areas for spectators of skating sessions, hockey games and practices should be clearly identified. In addition to maintaining the facility to eliminate the potential hazards associated with any public place, the rink should maintain the glass/fence to minimize flying pucks from entering into the viewing areas. Additional netting behind the high glass/fence behind the goals should be checked regularly for gaps and defects.

## REFERENCES

- NIOSH, Division of Safety Research :: [www.cdc.gov/niosh/im-dsr.html](http://www.cdc.gov/niosh/im-dsr.html)
- Centers for Disease Control and Prevention :: [www.cdc.gov/mmwr/preview/mmwrhtml/00040728.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/00040728.htm)
- University of Maine, Campus Environmental Safety & Health :: [www.usm.maine.edu/osh/EmergencyResponseIceArena.html](http://www.usm.maine.edu/osh/EmergencyResponseIceArena.html)
- League of Minnesota Cities :: [www.lmnc.org/lmcit/pdfs/icearenasc.pdf](http://www.lmnc.org/lmcit/pdfs/icearenasc.pdf)



## :: CHAPTER EIGHT ::

# Summer Camp Risk Management

## INTRODUCTION

Summer camps should provide a safe haven for children to participate in various activities. Depending on the type of camp, the activities should be fun and instructional. At the same time, they should encourage skill-building sessions and help campers to be enthusiastic, develop confidence, experience teamwork, and make new friends. Camps are as diverse as Sports Camps, Arts & Craft Camps to Wilderness Camps. Whatever the type of camp, the staff should include counselors, trainers, coaches, specialists and administrators who are experienced and dedicated to their profession.

All summer camps in New York State must have a state, city or county health department permit to legally operate. The permits are issued only if the camp is in compliance with New York State Department of Health regulations. Once a permit is obtained it must be displayed in a conspicuous location on the premises. The camp must be inspected twice per year; with one of the inspections taking place while the camp is in operation. The camps are checked to see if the facilities are safe and that children are properly supervised, in accordance with the New York State Sanitary Code. In addition to meeting federal, state and local health and safety standards camps should participate in voluntary certifications, such as the American Camping Association (ACA) and or the Association for Experiential Education. The ACA accredited camps provide written employment agreements and personnel policies, in addition to a multitude of policies.

## RIGHTS AND RESPONSIBILITIES

New York State Department of Health places responsibility on camp operators and on local health departments to enforce regulations.

### *Rights of Parents and Guardians*

- To be informed by the camp director, or his or her designee, of any incident involving their child, including serious injury, illness or abuse.
- To review inspection and investigation reports for a camp, which are maintained by the local health department issuing the camp a permit to operate (present and past reports are available).
- To review the required written camp plans. These are on file at both the camp and the health department issuing the permit to operate.

### *Responsibilities of the Camp Operator*

- To inform the parent/guardian and the local health department if their child is involved in any serious injury, illness or abuse incident.
- To screen the background qualifications of all staff.
- To train staff about their duties.
- To provide supervision for all campers at all times of operation.
- To maintain all camp facilities in a safe and sanitary condition.
- To provide safe and wholesome meals.
- To have and follow required written plans for camp safety, health and fire safety,
- To notify the parent or guardian, with the enrollment application or enrollment contract, that:
  - the camp must have a permit to operate from the New York State Department of Health or the designated permit-issuing official
  - the camp is required to be inspected twice yearly
  - the inspection reports and required plans are filed (address of state, county or city health

department) and available for review.

## STAFF CREDENTIALS/SUPERVISION

The New York State Health Code requires that the camp director of an overnight camp be at least 25 years old or hold a bachelor's degree. A day camp director must be a minimum of 21 years of age. All directors must have experience in camping administration or supervision. Camp directors' backgrounds are screened by the Office of Children and Family Services Central Registrar Database for reported incidents of child abuse and maltreatment. Their backgrounds are also screened by the Health Department for criminal convictions. Only individuals who do not pose a risk to campers are accepted by the Health Department as camp directors.

Camp counselors must have experience in camping and supervising children or they must complete an acceptable training course. There are strict, mandated counselor to camper ratios and staff qualifications for the supervision of swimming, archery, riflery and camp trip activities.

- Overnight camps must have 80% of their counselors 18 years of age and up to 20% may be 17 years of age. There must be at least 1 counselor for every 10 children aged eight years or older. There must be 1 counselor for every 8 children who are under 8 years old.
- Day camps must have counselors that are a minimum of 16 years old and there is a minimum of 1 counselor for every 12 children. Keep in mind that children with special needs may require additional supervision and counselors.

Camps that must provide at least 10 counselors may choose to use counselors-in-training (CIT's) to meet 10% of the required number of counselors. These CIT's must be at least 16 years old for overnight camps and 15 years old for day camps. CIT's must work with senior staff members, have had previous experience as a camper and complete a training program.

Background checks of prior work and volunteer experience, as well as mandated certifications that may be applicable should be conducted and records maintained. At a minimum, candidate-screening requirements for staff members and volunteers should include:

- A position description describing the principal responsibilities for the position
- An application form
- Face-to face interviews with at least 2 staff members
- Reference checks that include contact with the applicant's former supervisors

Once the applicants have successfully completed the screening process, they should attend a "pre-camp" employee orientation at least 2 weeks prior to the start of camp. All policies, procedures and job duties should be reviewed. Counselors should be instructed on child abuse detection and reporting procedures. (For specific information regarding training on Child Abuse, consult with your local Child Protective Services Agency.)

Effective training includes oral, written or performance tests to measure the trainees' retention of knowledge and ability to perform the skills they were taught. Training should continue all summer. At the start of each day, employees should be briefed on their responsibilities and special topics as they arise. Training should stress camper and employee safety, child abuse prevention and detection, how to manage difficult camper behavior, emergency management and other risk management issues. The investment of money, time and resources to train the staff is well worth your return on investment. Training should promote camper safety, improve employee morale and increased customer satisfaction.

When municipalities sponsor camps or provide recreational facilities, they create a greater potential for liability claims. Municipalities must exercise reasonable care against foreseeable dangers under



the circumstances that exist at the time. The camp operator must develop a written plan to include maintenance of facilities, provisions for training staff and orientation and supervision of campers, campsite hazards, emergency procedures and drills, safety procedures and equipment for program activities. Camps should be inspected on a regular basis to ensure the safety and security of all campers, guests and employees. Daily tours of the property should be conducted by trained employees to review:

- Grounds

Sidewalks/Stairs – These areas should be level and clear of debris. Poor sidewalks should be reported to the Director of Facilities for repair. Handrails on stairs should be secure to reduce the chance of personal injury.

Grounds Keeping – Trees and bushes should be trimmed and branches should not hang less than seven feet from the ground. Regular pruning prevents children from inadvertently coming into contact with branches, and also eliminates hiding spaces. Trees should regularly be surveyed to see that they are healthy and that trees and limbs are not considered a hazard. All poisonous plants should be removed from areas where children may come into contact with them.

Parking Lots – Ample parking should be available and the parking lots should be well maintained. All potholes and depressions should be repaired to prevent accidents.

Designated parking spaces must be available for handicapped persons and the spots should be in compliance with the NYS Uniform Fire Prevention and Building Code (9 NYCRR) and Americans With Disabilities Act Accessibility Guidelines (ADAAG).

If children are being dropped off and picked up by their caregivers, then an arrival/dismissal procedures should be developed and enforced by the Camp Director. Clear directions, such as painted directional arrows in the parking lot and signs should help the flow of traffic. Post traffic speed limits (no more than 10-15 mph) and stop signs or “yield to pedestrian traffic” signs. Paint parking stops, curbs, speed bumps and other raised surfaces with reflective yellow paint. Use signs and/or crosswalks to channel pedestrians in the safest manner to and from the parking lot. If the camp uses cables or chains to block access to certain areas, they should be covered with 4-inch diameter yellow plastic tubing to increase visibility. Where possible, these chains should be replaced with gates.

Fencing – Fences should be sturdy and in good repair. Chain link fences should not be rusted and there should be no sharp protrusions. If there are chain link fences near baseball fields the camp should consider fence caps to prevent injuries.

Aquatic Sites – The design, construction and maintenance of all boat docks, slips and mooring areas must meet safety standards and regulations of local, state, federal authorities and the U.S. Coast Guard, where applicable. Small craft and waterfront equipment must also comply with U.S. Coast Guard regulations. All piers, floats, docks and platforms should be in good repair. Water depth should be indicated by printed numerals on the deck or planking at 3 to 4 foot intervals. Where the depth of the water fluctuates, a vertical marker should indicate the depth. If the area is designated for swimming, it must be as free as possible from hazards and swimming and boating areas must be separated and clearly marked.

- Life Safety

Inspect all emergency exits on a daily basis to ensure they are clearly visible, illuminated and clear. Exterior doors must be clear of debris and brush over-growth. Smoke detectors and heat sensors must be operable and the alarms should be tied into a central station monitoring company.

- Security

Lighting – All parking lots, hallways and stairwells should be well lit.

Access – Access to the camp should be controlled. Visitor policies should be established. Contractors and vendors must also register with the camp and they should be provided with a visitor badge and they should be escorted to their destination.

The facilities and the programs should be free of areas in which a child or employee might be isolated and assaulted. If there are any such areas, then they should be under surveillance.

Unused or poorly maintained buildings should be demolished, since they pose an attractive nuisance exposure.

- Emergency Communications

An Emergency Management Plan (EMP) should be developed to include the following events:

- Flood
- Fire
- Thunderstorm and Lightning
- Hurricane
- Tornado
- Earthquake
- Power Failure
- Water Contamination
- Explosion
- Civil Disturbance
- Intruder
- Hazardous Material Spill
- Medical Emergencies

The EMP should be reviewed with all staff and drills should be frequently conducted. Campers should be taught to take shelter if they see lightning and they should be made aware of the “30-30” rule: take shelter if the time from seeing the lightning flash to the time of hearing thunder is 30 seconds or less, and not to resume activities until 30 minutes have elapsed from the last lightning bolt and thunder. In addition to drills, the Camp Director should have a NOAA (National Oceanic and Atmospheric Administration) Weather Radio to alert of pending storms. The NOAA Weather Radio should be monitored prior to outdoor events to ascertain if thunderstorms are in the forecast. During the event a designated and responsible person should monitor on-site developments and keep everyone informed.

In addition to First-Aid/CPR/AED training for staff, the camp should have first aid kits readily available and fully stocked. AED’s (Automated External Defibrillators) should be accessible and staff members should be trained in their operation. Flashlights should also be available, enough for each staff member.

Summer camps are a time for kids to develop educational, social and recreational opportunities. Providing a safe haven for campers and staff members is the ultimate goal. By providing a safe environment, caring counselors, personal attention to children and fun activities the camp experience will be a positive one.

## :: APPENDIX ::

### SAMPLE SUMMER CAMP ACTIVITY RELEASE FORM

#### **\*\* Release of Liability \*\***

I understand that the activities in which I might be engaged, may be hazardous to my personal safety, and therefore release (camp name) \_\_\_\_\_ Camp, its coordinators, workers, staff and (Municipality) \_\_\_\_\_ from liabilities for any injuries that may occur to me while I am participating at this Camp or in any activities associated with the Camp.

Participant's Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

#### **Sample Medical Release Form – Minor**

I consent to the participation of my child in \_\_\_\_\_ Camp, part of (Municipality) \_\_\_\_\_ Summer Camp Program. I understand that the activities in which my child may participate while at the camp include, but are not limited to \_\_\_\_\_

I certify that to the best of my knowledge, and subject to the limitations listed below, my child is physically capable of participating in the activities described above and has the basic skills necessary to participate in the activities so that his/her participation will not pose any undue risk to his/her health or the health and safety of others.

I certify that my child has the following health conditions which may limit or prevent his/her participation in the activities described above: \_\_\_\_\_

In the event that all reasonable attempts have been made to contact me at \_\_\_\_\_ (telephone number) or to contact \_\_\_\_\_ (Other parent, guardian or emergency contact) at \_\_\_\_\_ (telephone number) have been unsuccessful, I give my consent to the administration of my child of any medical treatment deemed necessary by a licensed health care professional and the transfer of my child to any hospital reasonably accessible. I understand and agree that the (Municipality) \_\_\_\_\_ does not assume responsibility for any damage which might arise out of or in connection with such authorized emergency medical treatment.

I certify that I will immediately inform \_\_\_\_\_ (Camp) if there is any change in the information provided above. I understand that this consent and certification is valid unless revoked by me.

Camper's Name \_\_\_\_\_

Name of Parent or Guardian \_\_\_\_\_

Signature of Parent/Guardian \_\_\_\_\_ Date \_\_\_\_\_

## Sample Incident Report for campers and staff

Date of Incident: \_\_\_\_\_ Date Prepared: \_\_\_\_\_  
Prepared by: \_\_\_\_\_ Position: \_\_\_\_\_

Name of involved party \_\_\_\_\_  
Address: \_\_\_\_\_  
Age \_\_\_\_\_ Phone Number \_\_\_\_\_

Witness Name & Address & Phone Number: \_\_\_\_\_  
\_\_\_\_\_

Did incident occur during employment? \_\_\_\_\_  
If yes, describe \_\_\_\_\_

Name of Activity \_\_\_\_\_  
Supervisor's Name \_\_\_\_\_  
Exact Location of Incident \_\_\_\_\_

Were outside authorities involved? (Police, ambulance, doctor, hospital, etc) \_\_\_\_\_  
If so, whom? (Be specific – give names & phone numbers) \_\_\_\_\_

Was individual sent home? \_\_\_\_\_ If yes, how and by whom? \_\_\_\_\_  
Were any unusual circumstances involved, such as severe weather? \_\_\_\_\_

Was First Aid given? \_\_\_\_\_ If so, by whom? \_\_\_\_\_  
Describe treatment \_\_\_\_\_

If the incident involved a minor, were the parents notified? \_\_\_\_\_  
If so, by whom? \_\_\_\_\_  
Parent/Guardian's Name, Address & Phone Number \_\_\_\_\_

## REFERENCES

- American Camp Association – ACA Camp Accreditation :: [www.acacamps.org](http://www.acacamps.org)
- National Oceanic & Atmospheric Administration :: [www.noaa.gov](http://www.noaa.gov)
- New York State Department of Health – Children's Camps in New York State :: [www.health.state.ny.us/nysdoh/camps/nyscamp.htm](http://www.health.state.ny.us/nysdoh/camps/nyscamp.htm)
- Nonprofit Risk Management Center – Child Abuse Prevention Primer for Your Organization, 1995 :: [www.nonprofitrisk.org](http://www.nonprofitrisk.org)



## SAMPLE AGENDA FOR SUMMER RECREATION PROGRAM STAFF MANUAL

Municipality

Address

Name of Recreation Program

### **I. WELCOME STATEMENT**

- Welcome from Chief Municipal Official
- Welcome from Recreation Director
- Statement regarding the importance of the recreation program to community
- Overview of recreation program
- Job descriptions
- Responsibilities of staff when working with children
- Why a commitment to the entire season is important
- Staff as representatives of the municipality
- Staff code of conduct

### **II. ATTENDANCE**

- Reporting to work on time
- Sign in and sign out procedures
- Time cards
- Call in procedures (absence, lateness)
- Requests for days off
- Certifications and licenses
- Illness or injury during work day
- Use of substitutes or replacements
- Work hours

### **III. DRESS CODE**

- ID Tags:
  - ID tags
  - Procedure if ID is lost
- General Attire:
  - Full torso coverage – except in pool or swimming areas
  - Prohibited attire (e.g., midriff and high-rise belly shirts, halters, spaghetti straps and shirts with offensive graphics or written material)
  - Program tee shirts
  - Consequences for infractions
  - Sneakers or closed-toes shoes – no flip flops
- Pool and Swimming Sites:
  - Lifeguards and Water Safety Instructors wear swim suits with lifeguard tee shirts
  - No street clothes

### **IV. CELL PHONES AND ELECTRONIC DEVICES**

- Cell phones – just for emergencies during work hours

- Personal calls through main office
- Staff should bring cell phones on field trips
- I Pods and other listening devices should not be used during work hours

## **V. WORK RULES**

(List all applicable work rules concerning employment for the municipality. It should include:)

- Hours
- Disciplinary actions and penalties
- Municipal policies and procedures
- Breaks
- Staff evaluations
- Alcohol and drug policies
- Payroll procedures
- Insurance
- Personal Possessions

## **VI. SECURITY AND CONFIDENTIALITY**

- Key and ID tag control
- Reporting incidents of suspected child abuse
- Confidentiality – staff and participant records
- Incident reporting
- Sign in and sign out procedures for equipment
- Disciplining children – procedures and protocols
- Rules for distributing medication

## **VII. FIELD TRIPS**

- Advance registration is required
- Parental/Guardian permission required
- Review Program Emergency Management Plan
- Cell phones and group rosters are required
- Review trip itinerary before leaving

## **VIII. EMERGENCY RESPONSE PLAN**

(Insert Municipality's emergency management plan for the recreational program. It should include:)

- Fire, Police, Poison Control and Utility Company emergency numbers
- Nurse and staff emergency contacts and telephone/ cell numbers
- Emergency rescue and first aid procedures
- Locations of first aid kits
- Accident or incident reports
- Lockdown and evacuation procedures
- "Missing Child" procedures

## **IX. SAFETY**

(Insert safety information, procedures and accident prevention methods by position or activity. For example:)

- Swim Instructors
- Lifeguards
- Recreational Instructors
- Recreational Supervisors

- Recreational Assistants
- Group Leaders
- Drivers
- Field Trips
- Horseback Riding
- Boating
- Arts and Crafts
- Swimming
- Camping
- Water Games
- Playgrounds
- Sports/Athletics
- Field
- Games

## SAMPLE EMPLOYEE ACKNOWLEDGEMENT FORM

All staff will read, sign and return the acknowledgement by (date).

From: \_\_\_\_\_ Staff Member

\_\_\_\_\_ Position

To: Program Director

Re: 2006 Summer Recreation Program Staff Manual

I have read the Staff Manual and other information provided by the (Municipality). I am aware of my job responsibilities, and have addressed all questions with my supervisor.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Home Phone No: \_\_\_\_\_ Cell Phone No: \_\_\_\_\_

Emergency Contact No: \_\_\_\_\_

Relationship: \_\_\_\_\_

Received By: \_\_\_\_\_

Date: \_\_\_\_\_



## :: CHAPTER NINE ::

# Managing Special Events (Fairs, Carnivals, Bazaars, Parades, etc.)

## INTRODUCTION

Each year, the municipalities throughout New York State receive a variety of inquiries regarding use of their facilities, particularly with regard to open spaces such as parks and athletic fields. Permitting outside groups to conduct special events by utilizing municipal space can increase the overall liability exposures, and pose significant new challenges.

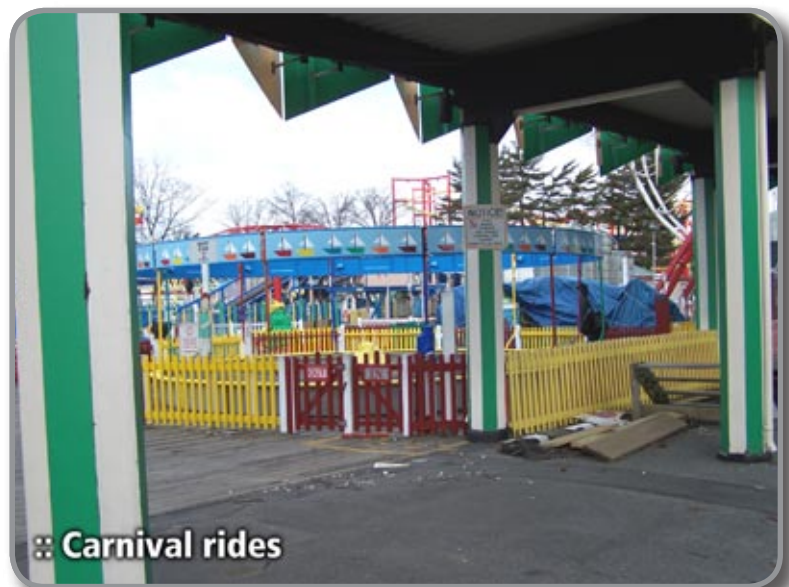
Special events can consist of fairs, carnivals, bazaars, parades, fundraisers, concerts, festivals and circuses, etc. These events bring in mechanical rides, animal rides, arcade-type games, food vendors, and additional activities, as well as large crowds, onto municipal grounds. This increase in usage and activities generally translates into more accidents and potential claims. Municipalities can sponsor a variety of special events with the establishment of adequate risk management safety plans that coordinate policies and procedures, management controls, and facility inspections.

## LIABILITY EXPOSURES FACING MUNICIPALITIES

Fairs, carnivals and bazaars present potentially the greatest challenge for municipalities, as they frequently present the introduction of mobile amusement rides and temporary structures. Mobile rides can include mechanical units as well as inflatable attractions. The U. S. Consumer Product Safety Commission has jurisdiction over these mobile rides that can be relocated (with or without disassembly) from place to place, however local states and communities are responsible for inspections and oversight. New

York State has standards for amusement devices and temporary structures. Included in these standards are requirements for permits, inspections and insurance certificates.

The U.S. Consumer Product Safety Commission has completed an in-depth investigation into amusement ride-related incidents. Their findings indicated hazard patterns involving mechanical failure, operator behavior, consumer behavior, additional factors, and a combination of factors. In addition, their study revealed hazard patterns for inflatable amusement attraction-related incidents as well. Examples of losses associated with mobile rides include equipment failure, abrupt stopping and starting, inappropriate maintenance and inspection of equipment, failure of safety equipment, and inappropriate use by consumer. Losses from inflatable attractions included collisions of users, falling outside of the object onto a hard surface, wind gusts that blow over an inadequately secured attraction and rapid deployment upon power loss causing users to fall onto a hard surface.



Parades represent a variety of exposures as well. Their inherent nature to monopolize various roadways within a municipality with a variety of activities (floats, marching bands, emergency vehicles, balloon characters, horses, specialty vehicles, etc.) create unique hazards. Municipalities may be required to provide temporary roadway-closure barriers, crowd control and protection, temporary seating, event clean-up, and general assembly locations.

Circus events usually require the construction of large viewing tents that may require building code approval and inspection, plus submitting architectural plans to the Department of Labor if they have a capacity of over 300 persons. In addition, animal controls, including storage, emergency response for escaped or dangerous animals, and custodial care must be accounted for.

General special event hazards can include crowd control/supervision/security, parking allocation/traffic control, equipment assembly and maintenance, arcade-type games, food preparation and sales, alcohol sales, money handling, animal rides, fireworks, electrical hazards, and life safety exposures, among others.

## **RISK MANAGEMENT TECHNIQUES AND CONTROLS**

Prior to the authorization for a special event to be conducted on municipal grounds, a planning team should be assembled to plan, evaluate and trouble-shoot the event. The team should be familiar with municipal codes, including permit requirements and insurance requirements. In most cases, municipal clerks may receive initial inquiries and use of facility documentation, with approval required from board/council members. Building departments should be included for any equipment (mobile amusement rides) and structures (tents, grandstands, etc.) and local health departments involved in the event that food will be served. Planning teams should consider whether selected areas are adequate for the event (i.e. parking, lighting, electric, restrooms, emergency vehicle access, etc.), if emergency management and evacuation plans are in place (disaster response, responsible parties aware of events, and communication through all effected personnel), and if legal attendance capacities have been verified.

### **ADMINISTRATIVE CONTROLS:**

Administrative controls require the adoption and enforcement of policies and procedures by a municipal board/council. Facility Use applications, permit system, and Insurance controls can offer a municipality some of the greatest protection for loss relating to these special events. Municipalities should have in place adequate use of facility application processes that communicate the rules and conditions regarding facility use and evaluate information from a perspective user before a permit is issued. Included within these facility use procedures should be a hold harmless and indemnity agreement that contains wording in favor of the municipality, and which has been reviewed by municipal legal counsel. In addition, all applications should clearly identify all event managers with emergency contact information and their responsibilities (set-up, security, site maintenance, etc.).

The procedures for obtaining appropriate municipal permits should be clearly defined and stated for various activities and construction of temporary structures. For example, parades should require an initial application with detailed routes, dates for activities, event contacts, number of parade participants, animals to be included (with controls), vehicles (with controls such as licensing, registrations and insurance), hours for parade operation, assembly areas (start and termination), construction of seating and viewing stands, crowd control and clean-up procedures. Permit applications should be distributed for review to all applicable municipal departments, such as DPW/Highway, Police/Public Safety and Emergency Services.

All outside users of municipal facilities and grounds/fields should be required to provide a certificate of insurance, naming the municipality as an additional insured, with appropriate coverages and limits. Insurance certificates provide proof of insurance coverage from the applicant/outside user.

Generally, a minimum of \$1,000,000/occurrence and \$ 2,000,000/aggregate for general liability coverage, should be required. Special events insurance coverage may be available, based on an event-by-event or seasonal basis – confirm with your local insurance broker or municipal insurance carrier. Premiums are based on the size and duration of the event, with additional activities (i.e. rides, animals, food sales, etc.) that can impact rates.

When properly designed and executed, these documents assist a municipality in transferring risk (shifting the responsibility to pay claims to the outside user). See Chapter 11 for further details regarding outside use of facilities.

Additional administrative controls include a permit or inspection program that is required by a separate agency. NYS Department of Labor enforces amusement ride safety throughout the state, except in New York City. Labor Department staff inspects all rides at stationary parks at least once a year, and rides at traveling carnivals or fairs are inspected every time the ride is set-up in a new location (at least annually) – utilization of NYS Department of Labor form SH 87.1 – “Equipment Inventory for Amusement Devices, Viewing Stands or Tents at Carnivals, Fairs and Amusement Parks” is required. A ride cannot be operated without a permit from the Labor Department. In addition, Certificates of Insurance require a minimum liability coverage of \$1,000,000 each occurrence (each individual ride is required to be identified).

### **FACILITY CONTROLS:**

Special events can alter the original or intended use of municipal facilities, especially when hosting one-time events such as fairs, amusement rides, fire works, and parades. Facility controls should be in place that address premises management, crowd control, life safety, electrical safety, signage/safety rules, animal control, and an overall inspection program.

To better manage municipal premises, consideration should be given to zoning the premises/facility into different activity areas.

Public Areas should identify where the public may move freely with access to public facilities and event activities.

Performance Areas are restricted to performers and their staff that are physically separated from the public. It includes dressing facilities, performance stages, parade staging areas (including start and termination of route), and firework staging areas.

Service Areas include shops and repair facilities, concession booth, concession supply areas, employee locker and storage facilities, and equipment storage areas.

Support Personnel Areas are put aside for staff and emergency services to operate safely with limited public interference. These areas should be located in such a manner as to permit emergency response to all special events in a timely manner.

Crowd control procedures are not strictly limited to police/public safety. As part of the application and permit process, it should be clearly defined as to the parties responsible for security and crowd control – with an established understanding of security numbers required based upon the overall scope of the event, including participant numbers and public in attendance. From this information, police presence and emergency services can be determined. Additional crowd control can be required, including temporary street closure barriers (manned and un-manned) with possible detour routes, public access barriers prohibiting access to secured/protected sites such as fireworks staging areas, and seating. For public seating (ranging from grandstands to portable bleachers), there are safety guidelines published by the U.S. Consumer Product Safety Commission that include rail

heights and fall protection. Consideration should also be given to maximum occupancy limits for some areas, with posted capacity limits and oversight.

Additional facility controls include building/property inspections, completed prior to the event, during the event and post-event to identify any problems that may have resulted from the activities. Facilities should be inspected periodically, identifying hazards as they may arise, and corrected or areas restricted within a reasonable period of time. Appropriate illumination of events, public areas, and parking lots should be considered for all special events. Electrical safety should also be reviewed, especially with relation to temporary lighting, temporary power supplies (portable generators), cooking equipment, and use of extension cords. National Electric Codes should be in compliance at all times and appropriate municipal personnel should be responsible for initial and continuous inspections. Restricted electrical areas should be clearly identified and secured. Animal controls should include, at a minimum, a list identifying each animal present, storage of animals, emergency controls for escaped or suddenly dangerous animals, responsible persons for animal control, and at the municipalities discretion, emergency veterinarian service/personnel should be present or on-call. The NYS Department of Agriculture and Markets has animal health requirements for fairs.

The installation of proper signage and rules can assist a municipality in reducing its liability exposure arising from activities present at special events. Mobile amusement rides and temporary structures have safety rules developed by NYS Department of Labor<sup>1</sup>, including identification tags (subsection 45-2.5), daily inspection and testing (subsection 45-2.7) and control and operation (subsection 45-2.8), which identifies competent operators of rides. Proper signage can identify crowd access zones and prohibited areas, and should be posted where needed. Signage can indicate appropriate use of equipment/instructions (i.e. age/height restrictions for rides, safety standards for rides, etc.) and supervision requirements.



### **ADDITIONAL CONTROLS:**

If admission tickets be issued for special events, waiver language with assumption of risk and release language can be included on the tickets. Municipal counsel can provide further assistance for this control.

Accident reporting procedures should be in place, with appropriate emergency contacts identified and communicated with event personnel. A formal, documented accident reporting and investigation procedure that includes appropriate municipal staff should be required. Follow-up with injured parties and/or correction measures installed should be included in the accident reporting procedure.

Consideration should be given for cash handling. Admission for various special events is usually handled through cash transactions. As part of the application process, responsibilities for funding accountability should be identified – is additional security required at the site for money handling as well as spectator accountability and enforcement for ticket purchasing?



## IN SUMMARY

- Special events present unique risks for municipalities, as they include activities with risks that may not be normally associated with the daily activities for a municipality.
- Hazards can include mobile rides, crowd control, animals, food service, and amusement activities.
- The U.S. Consumer Product Safety Commission has studied amusement related injuries for mobile rides and inflatable attractions.
- Administrative controls should include a formal application process, requirement for permit approval, hold harmless agreements and insurance requirements with certificates of general liability insurance.
- Application requirements should include event manager information with emergency contact information.
- Application requirements should also indicate responsibilities for all parties involved, whether it is security/crowd control, food service, power sources, ticket issuance, cash control, clean-up, etc.
- Insurance requirements should be in place for vehicles, rides, and liability exposures for all event participants.
- The NYS Department of Labor regulations for mobile amusement rides and general safety guidelines
- Facility use controls should include zoning locations, crowd control and protection, facility inspections, electrical safety, life safety, and safety rules and signage.
- Accident reporting procedures should be incorporated into the overall safety program.

## REFERENCES

- New York State Department of Labor – Division of Safety and Health. Section 202, Subsection 45-2 – “Amusement Devices and Temporary Structures.” [www.labor.state.ny.us/workerprotection/safetyhealth/sh45\\_2.shtm](http://www.labor.state.ny.us/workerprotection/safetyhealth/sh45_2.shtm)
- U.S. Consumer Product Safety Commission – “Amusement Ride-Related Injuries and Deaths in the United States: 1987-2000.” [www.cpsc.gov/LIBRARY/AmRd2000.PDF](http://www.cpsc.gov/LIBRARY/AmRd2000.PDF)
- New York Municipal Insurance Reciprocal – Risk Management Handbook – “Managing Special Events.” [www.NYMIR.org](http://www.NYMIR.org)
- U.S. Consumer Product Safety Commission – “Guidelines for Retrofitting Bleachers.” Publication #330. [www.cpsc.gov/CPSCPUB/PUBS/330.pdf](http://www.cpsc.gov/CPSCPUB/PUBS/330.pdf)
- New York State Department of Agriculture and Markets – Division of Animal Industry – “Animal Health Requirement for Admission to NYS and County Fairs.” [www.agmkt.state.ny.us/AD/FairRegs.pdf](http://www.agmkt.state.ny.us/AD/FairRegs.pdf)

### **State and National Organizations Supporting Special Events:**

- Outdoor Amusement Business Association. [www.oaba.org](http://www.oaba.org)
- National Association of Amusement Ride Safety Officials. [www.naarso.com](http://www.naarso.com)
- NYS Department of Labor. [www.labor.state.ny.us](http://www.labor.state.ny.us)
- NYS Department of Agriculture and Markets. [www.agmkt.state.ny.us](http://www.agmkt.state.ny.us)

# Controlling Risk of Snowmobile and ATV Operation on Municipal Property

## INTRODUCTION

The operation of Snowmobiles and All Terrain Vehicles (ATV's) on public property presents a risk exposure that must be managed effectively to prevent losses. This popular form of recreation with motorized equipment is expanding at a rapid rate in New York State (NYS), and continues to grow. According to a study conducted by SUNY Potsdam in 1998, snowmobiling accounted for an economic boost of approximately \$476.2 Million; by 2003, this figure had grown by 84% to \$878 Million. In terms of registered snowmobiles in NYS alone, in 2003, there were approximately 172,000. That did not count visitors to the State for recreational purposes. The NYS Office of Parks, Recreation and Historical Places (OPRHP) logged approximately 10,000 miles of snowmobile trails in 2004 - 2006.

With the anticipated continued growth in recreation by operators of snowmobiles and ATV's, it is likely that municipalities will be, at some time in the future, requested to develop riding trails or to allow access to property for the development of riding trails by Snowmobile or ATV "recognized" rider clubs. At this time, snowmobile clubs and other "trail maintenance entities" may apply for grant funding from the OPRHP to develop and maintain trails in NYS. While there is no similar source of grant funding at this time for ATV's, that situation is subject to legislative change in the future.

The challenge of managing liability for allowing access to property and use of trails comes from two sources; human behavior and trail construction. Part of this challenge comes from trail design and maintenance. However operator error and misjudgment also will lead to property damage and personal injury accidents. Adopting and enforcing safe operation laws and trail use rules will control the area of safe operation administratively. However, the key is observation of operation and enforcement of these rules.

In order to better understand risk control strategies for allowing access to, or developing and maintaining trails for snowmobiles and ATV's, the legal environment regulating their use and operation in NYS must be reviewed and understood. NYS has rather extensive regulations regarding the operation of snowmobiles, and to a lesser extent, ATV's. The following is a brief condensation of these regulations.

## REGULATIONS GOVERNING OPERATION AND REASONABLE CONTROLS

Snowmobile operation is regulated under law promulgated and adopted by the New York State Office of Parks, Recreation and Historic Places; specifically PAR Article 21 and Article 25. These sections deal with Rules and Regulations, operation on public and private lands, trail development and maintenance grant funding, operator qualifications, equipment, liability insurance requirements and accident reporting. Snowmobiles are registered through the OPRHP, and a portion of the registration fee is placed in a Snowmobile Trail Fund. To ensure adequate funding, ALL snowmobiles operated in NYS – including those registered in other states – (with some limited exceptions) must be registered through OPRHP and have a current registration sticker attached to the cowl of the machine. Registration fees may be reduced for members of a "recognized" snowmobile club that is a "trail maintenance entity." One notable exception is for snowmobiles that are operated ONLY on the snowmobile owner's property.

ATV's, on the other hand, are regulated under law promulgated and adopted by the New York State Department of Motor Vehicles; specifically Vehicle and Traffic Law (VTL) Article 48-C. These sections deal with Rules and Regulations, operation on public and private lands, operator qualifications, equipment, liability insurance requirements and accident reporting. ATV's operated off of the ATV owner's property MUST be registered with NYS DMV and have a license plate attached. At this time, there is no dedicated source of funding to develop and maintain ATV trails in New York, although it has been proposed in the legislature.

Registration of both snowmobiles and ATV's requires proof of ownership; payment of sales taxes to the county of registry and the owner must have proof of adequate liability insurance. Registration and proof of insurance must be carried by the operator while operating on public property at all times.

Operation of either machine on municipal property must be limited to properly registered machines. The proof of registration must be visible and insurance proof must be carried while the machine is on municipal property. A sign so stating may be placed at the entrances to trails on municipal property.

To address the issue of operator age and safe operation training, NYS has adopted laws regarding minimum ages of operation and requires operator safety certificates for youth operators. This mirrors the graduated licensing system in place for automobiles; and is as follows:

- Snowmobiles –
  - Operators 14 yrs. old or under may operate a snowmobile on private land only.
  - Operators between 10 yrs. and 14 yrs. old, with an Operator's Safety Certification or accompanied by an operator 18 yrs. old or over within 500 ft., may ride on public trails.
  - Operators between 14 yrs. and 18 yrs. old, with an Operator's Safety Certification, may ride on public trails alone.
  - Operators older than 18 yrs. may operate a snowmobile alone without a Operator's Safety Certification.

The youth operator must carry the Operator's Safety Certification at all times while operating the snowmobile.

- ATV's-
  - Operators under 16 yrs. old or under may operate an ATV on private land only.
  - Operators under 16 yrs. old may operate an ATV on public land only if accompanied by an operator over 16 yrs. who has an Operator's Safety Certification or by an operator over 18 yrs. old.
  - Operators between 10 yrs. old and 16 yrs. old, with an Operator's Safety Certification, may operate an ATV on public land alone.
  - Operators over 16 yrs. old may operate an ATV on public land alone without an Operator's Safety Certification.

The youth operator must carry the Operator's Safety Certification at all times while operating the ATV.

Operator's Safety Certifications for snowmobiles and ATV's are NOT the same document. Safe Operator training courses are quite different for each type of machine – snowmobile or ATV – and are specific as to type.

Given the fact that age limits for operation alone on public trails or lands, with or without Operator's

Safety Certification, are somewhat confusing, restricting the operation of snowmobiles and ATV's to persons holding valid Operator's Safety Certification, or over 18 yrs. old, is the best practice. A sign stating that requirement at the trail entrance to municipal property is required. Operator's Safety Certification training at least will educate operators of snowmobiles and ATV's to safe and prudent riding practices and laws governing operation.

Operators may be held liable for unsafe operation under NYS regulations. Both snowmobile operators regulated by PAR Article 25 (specifically Article 25.23) and ATV operators regulated by VTL Article 48-C (specifically Section 2411) contain provisions so stating. These regulations both state it is unlawful to:

1. Operate at a speed greater than "reasonable or prudent" under conditions.
2. Operate in a "careless, reckless or negligent" manner.
3. Operate on active railroad tracks.
4. Damage a tree nursery or planting or seeded field.
5. Pull or tow a person on skis, toboggan or sled unless by a rigid towbar.
6. Operate within 100 ft. of a area cleared for ice skating or ice fishing or within 100 ft. of a dwelling between the hours of 12:00 midnight and 6:00 AM; except at a speed necessary to just maintain forward motion of the machine. (Slow speed.)
7. Operate while intoxicated on alcohol or drugs. (The section prohibiting intoxicated operation of a snowmobile – Article 25.24 – contains penalties similar to operating an automobile on public highways while under the influence. Conviction of operating a snowmobile while intoxicated requires the court to report the conviction to the Commissioner of Motor Vehicles.)
8. Trespassing on private lands with a snowmobile or ATV.

The NYS regulations do not spell out in clear language what is considered "excessive speed" or what defines operation in a "careless, reckless or negligent" manner. Other states have been reluctant to assign a numerical value to speed on trails, preferring to leave that up to operator and law enforcement personnel judgment so as to allow operators to ride as their skill level will allow. However, excessive speed has been cited as a primary factor in personal injury and property damage accidents.

Assigning speed limits to trails crossing municipal property may be considered prudent, if in the judgment of trail designers and maintainers, one is necessary to prevent damage to the trail, property or personal injuries to riders. Enforcing speed limits and ensuring operators ride within a safe and prudent manner is best left to sworn law enforcement agents.

Patrol activities by sworn law enforcement officers on trails can have a positive effect on modifying rider behavior to operate their machines in accordance with applicable regulations.

To that end, to enforce snowmobile regulations, NYS OPRHP provides grant funding for law enforcement efforts (up to 50%) and a snowmobile law enforcement officer class every January. If a municipality has a police department, it is a good plan to have a snowmobile unit to enforce laws on the trails, or encourage County Sheriffs to assist in that effort. At this time, no such comparative program exists for ATV regulation enforcement funding.

Accident reporting for personal injury and property damage accidents is a requirement of both snowmobile and ATV operation. Reports must be filed with law enforcement agencies; the County Sheriff's department is the default agency at the time of the accident. In addition, reports must be filed with NYS OPRHP within 7 days for a snowmobile accident involving more than \$100 in property damage for snowmobiles, or with NYS DMV within 10 days for more than \$600 in property damage for ATV's. Reports are required to the appropriate agency if personal injuries occur. Accident investigation and reporting is another justification for law enforcement presence on public trails.



Reviewing the legal environment governing the operation of snowmobiles and ATV's in New York State is necessary for municipalities considering allowing private clubs land access for trail development and maintenance or developing and maintaining their own trails. Worth considering is that the current regulations do not prohibit the municipality from adopting regulations that are more stringent than the State regulations. It is worth considering doing so if the rule or regulation improves risk management for the municipality. For instance, Suffolk County bans the use of Off-Road Vehicles, defined as ATV's, on county lands for recreational purposes.

Another point that must be considered is equipment restrictions on municipal trails. ATV's may also include off-road motorcycles, 3-wheeled ATV's (vs. the 4-wheeled version) and ski-cycles (a hybrid machine combining a single ski and a track; the machine looks like a motorcycle). Manufacturers, in accordance with a consent decree with the Consumer Product Safety Commission, halted further importation and sale of 3-wheeled ATV's in 1988. This was in response to a rising trend of serious rider injuries and fatalities. However, the continued use of 3-wheeled ATV's was not banned; there are still riders that prefer these machines. It is prudent for municipalities to consider that there are motorized recreational vehicles that pose a higher level of risk than others; they may wish to exercise the right of a landowner to restrict operation of those machines on municipal property.

## GENERAL CONSIDERATIONS REGARDING TRAIL DEVELOPMENT AND MAINTENANCE

The NYS OPRHP provides grant money from the Trail Development fund to rider organizations to offset the cost of developing and maintaining snowmobile trails. The rules and regulations governing reimbursement for these activities are beyond the scope of this article. If trails are developed and maintained using grants money from the fund, then the municipality or "trail maintenance entity" may NOT charge riders a user fee. Only charges such as "parking fees" and "access fees" (such as what is normally charged a vehicle entering a municipal park). If user fees are charged, then the fees must cover all development and maintenance activities and equipment.

If a municipality is considering developing and maintaining riding trails, it is worth partnering with established snowmobile and/or ATV rider clubs to do so. Experienced operators are familiar with features of a trail that riders seek for enjoyment of their respective machines. They also are familiar with the hazards of terrain that may cause damage to machines or rider injury. This is also an opportunity for risk transfer; if the private "trail maintenance entity" indemnifies and completes a hold harmless agreement with the community in exchange for land access and trail construction, both parties benefit. The riders gain additional land to ride on and the municipality gains a trail to offer residents.

Whether or not the municipality develops and maintains the trail on their own or allows access to an organized club for trail development and maintenance, there design considerations that must be taken in to account. These are to avoid incurring liability for inadvertently or knowingly creating a hazard or failing to mitigate an existing one. Seeking the assistance of experienced snowmobile or ATV trail riding leaders or designers is highly recommended in laying out a trail. These people are familiar with the machines used on the trail and the limitations of these machines. They will be able to assist in hazard identification and mitigation.

## TRAIL LAYOUT

One important consideration is that snowmobile and ATV trails ARE NOT THE SAME. Snowmobiles have a wide flat track and skis; the machine is best (and safely) operated on trails with level surfaces and smooth changes in elevation. Ruts in the trail, steep hills and sharp turns are potential causes of loss of control for snowmobiles. ATV's on the other hand, usually have wheels, are capable of handling uneven terrain, steep hills and tight turns. ATV use on snowmobile trails may create a hazardous condition for snowmobile operators as the wheels create ruts. The two machines must not

be allowed to operate on the same trail system at the same time, unless the trail is properly designed to allow it.

Snowmobile and ATV trails should be laid out so as to segregate pedestrian and muscle powered recreation activities (cross-country skiing, snowshoeing, hiking, mountain biking, etc.) from the motorized activity. The discrepancy in speed and size between pedestrians and motorized recreation can lead to struck-by injuries to the pedestrian. Motorized recreation machines will damage trails designed for muscle-powered recreation. Trail segregation must allow enough space to compensate for operator error and potential loss of vehicle control.

Trails must not be laid out so as to cross water directly. If a snowmobile or ATV crosses a frozen body of water, the 'trail development and maintenance entity' may be held responsible for ensuring that the ice is of adequate thickness to support the weight of the machine and rider and withstand the degradation of ice integrity by the passage of traffic. Considering the consequences of drowning accidents, municipalities must not allow trails to cross bodies of water deeper than 1 foot, located within property they control.

If creeks, streams and other flowing waters are crossed, snowmobile and ATV traffic will degrade the integrity of the banks (soil erosion) and bottoms (siltation), degrading water quality. Either one will have a negative environmental impact that will require review by the NYS Department of Environmental Conservation and an Environmental Engineer. The best plan is to bridge flowing waters with a well-constructed hard support bridge.

The trail must be well marked. This is to avoid confusion by operators and delineate off-limits areas. Snowmobile trails have a system of trail markings and signs that have been standardized in North America by the International Association of Snowmobile Administrators (IASA). Those specified in the United States Department of Transportation, Federal Highway Administration and/or the NYS Department of Transportation Manual of Uniform Traffic Control Devices (NYS DOT MUTCD) govern traffic control on constructed roads in the municipality (regarding snowmobile operation permitted on designated roads and notification of snowmobile crossings ahead, for example). IASA guidelines govern sign construction and wording, sign placement, distance to signs and orientation. The IASA Guidelines for Snowmobile Trail Signing and Placement, 2000 edition can be thought of as the MUTCD for snowmobile trails.

Unfortunately, no such standardized guidelines for ATV trail signs were found. Municipalities and/or trail development and maintenance entities may develop their own signs to delineate trails. Guidance regarding trail design and signage may be found in the publication "So You Want to Build an ATV Trail"; Wisconsin Department of Natural Resources publication Pub-CF-018 2005. In the absence of published standards, the municipality may want to print and/or post a listing of trail marking signs. Issuing trail maps to riders indicates approved routes.

When trails are laid out, all reasonable and prudent efforts must be taken to prevent the passage of trails through, or near to, known hazards. Steep sided ravines, fences, guy wires, low tree branches, sudden changes in elevation, culverts, and etc. are all examples of hazards to avoid. If it is reasonably anticipated that trail users may veer in to the hazard area, appropriate warning signs MUST be posted along the trail indicating existence of the hazard. Failure to do so may void any protections that would be available under NYS General Obligations Law. When developing trails, experienced recreational riders can be very helpful in identifying and evaluating hazards and recommending practical control measures for them.

In addition, the municipality must take care with the established trail to ensure that a hazard is not developed AFTER the trail is installed and marked. For instance, any bridge installed to cross a stream bank must be inspected periodically for structural integrity; especially if it was impacted

by flood. If a gate is installed across a park road to restrict “after hours” access, if there is a chance snowmobile or ATV operators may use the trail at night, then ample warning must be given that the trail is blocked. These situations may be construed as a “dangerous condition that the landowner willfully fails to warn against.” Use signs and reflective barricades as appropriate to indicate hazardous conditions and trail closures.

After trails have been developed and marked, they need to be inspected on a regular basis to ensure that hazards remain under control and signs are still present. It is best to implement a documented inspection (digital photos are a good way to document this) program with a specified frequency, and keep to it. Remember that hazardous weather incidents may change trail conditions; inspections after storms are necessary. All repair and maintenance activities need to be documented as well. If necessary to complete hazard abatement, closure signs must be posted at the head of the trail from each direction it enters property. Documentation should be kept on file for at least one usage season.

## IN SUMMARY

- Snowmobiles and ATV's must be properly registered in NYS. Registration requires proof of liability insurance. Restrict operation of both on Municipal property to legally registered machines only. Proof of insurance must be carried at all times.
- All operators on Municipal property must have Operator's Safety Certification or be over 18 years old. Youth operators, while on Municipal property, must carry operator's Safety Certifications.
- All operation of snowmobiles and ATV's must be in accordance with the provisions of appropriate NYS laws. Law enforcement personnel patrolling Municipal trails can help operators follow the law.
- Establishing and enforcing speed limits on trails and policing operation will help reduce instances of property damage and personal injuries.
- Municipalities, as the property owner, may establish and enforce rules more stringent than NYS laws. Barring the use of 3-wheel ATV's or Snow-Cycles or operation on Municipal trails after sundown are examples of more stringent rules.
- It may be desirable for the Municipality to partner with a private trail rider organization to develop and maintain the trail on Municipal property. In exchange for appropriate risk transfer (certificate of insurance, waiver of liability) procedures, property access may be granted. This relieves the Municipality of trail design, installation and maintenance.
- Snowmobile, ATV and Muscle Powered recreation users must be segregated for the safety and enjoyment of all. Adequate “buffer zones” to allow for operator error must be established between trails and recreation areas. Issue trail maps to riders to indicate trails and off – limits areas.
- Do not allow trails to cross bodies of water deeper than 1 foot. Protect bodies of water from vehicle traffic damage by distance or bridging.
- Use signs appropriate for either snowmobiles or ATV's to delineate trails and warn of hazards. Standardize signs where possible using the appropriate organization's protocol or MUTCD to avoid confusion.
- Avoid or eliminate hazards in trail layout and development.
- Use appropriate trail signs to warn of hazards in time to avoid them. Use barricades to block trails only if necessary, and then with appropriate warning signs.
- Inspect trails regularly for hazards. Document inspections – photo documentation of inspections is a good plan. Remove or repair hazardous conditions promptly and document efforts.
- Use signs to indicate trail conditions and closures at the entrance to Municipal property. These may be changed to reflect prevailing conditions and acceptable conditions for use (i.e. Minimum snow cover for use – 3 inches.)

## REFERENCES

- International Snowmobile Manufacturers Association. "Snowmobiling Facts: Economic Impact." [www.snowmobile.org/facts\\_econ.asp](http://www.snowmobile.org/facts_econ.asp)
- New York State Office of Parks, Recreation and Historical Preservation "State Parks announces \$2.6 million for Winter Recreation Grants" press release December 26, 2003. [www.nysparks.state.ny.us](http://www.nysparks.state.ny.us)
- Fleming, Deirdre. "Can Laws Decrease Sledding Deaths?" Portland, Maine, Press-Herald. January 15, 2006
- Suffolk County, NY Legislature. "Suffolk County, NY Local Law Restricting Use of Off-Road Vehicles". Suffolk County, NY Local Law 29-1998. [www.pb.state.ny.us/lec/county\\_atv\\_law.htm](http://www.pb.state.ny.us/lec/county_atv_law.htm)
- United States Consumer Product Safety Commission (US CPSC). "All Terrain Vehicle Exposure, Injury, Death and Risk Studies" Washington, DC, April 1998. [www.cpsc.gov/library/foia/foia98/os/3548A4B.pdf](http://www.cpsc.gov/library/foia/foia98/os/3548A4B.pdf)
- International Association of Snowmobile Administrators (IASA). "Guidelines for Snowmobile Trail Signage and Placement 2000" IASA, 2000. [www.snowmobilers.org/signal\\_guides/IASA-signguideline\\_july05.pdf](http://www.snowmobilers.org/signal_guides/IASA-signguideline_july05.pdf)
- Wisconsin Department of Natural Resources. "So You Want to Build an ATV Trail". Wisconsin Department of Natural Resources Publication CF-018-2005. [dnr.wi.gov/org/caer/cfa/LR/ATV/BuildATVTrail.pdf](http://dnr.wi.gov/org/caer/cfa/LR/ATV/BuildATVTrail.pdf)
- LaGrasse, Carol W. "Liability for Recreational Uses of Private Property – NYS protections leave landowners vulnerable." Property Rights Foundation of America, Inc, January 2004. [prfamerica.org](http://prfamerica.org)

### ***New York State Safe Operation Guidelines resources:***

- "New York State Snowmobiler's Guide – A handbook for recreational riding in New York State". New York State Office of Parks, Recreation and Historical Preservation Planning Bureau – Snowmobile Unit. [www.nysparks.com](http://www.nysparks.com)
- "Information for Owners and Operators of ATV's" New York State Department of Motor Vehicles, Brochure C – 29. [www.nysgtsc.state.ny.us/atv-tip.htm](http://www.nysgtsc.state.ny.us/atv-tip.htm)

### ***National organizations supporting snowmobile and ATV safety:***

- American Council of Snowmobile Associations. [www.snowmobilers.org](http://www.snowmobilers.org)
- International Snowmobile Manufacturers Association. [www.snowmobile.org](http://www.snowmobile.org)
- ATV Safety Institute. [www.svia.org](http://www.svia.org)
- New York State Snowmobile and ATV recreational riders websites:
- New York State Snowmobile Association. [www.nyssnowassoc.org](http://www.nyssnowassoc.org)
- New York State Offroad Vehicle Association. [www.nysorva.org](http://www.nysorva.org)
- New York Trail Riders Organization (NYTRO). [www.nytroatv.org](http://www.nytroatv.org)



## :: CHAPTER ELEVEN ::

# Swimming Pools/Beaches

## INTRODUCTION

The most common swimming injuries are fractures, cuts and bruises resulting from falls on pool decks. Alcohol, horseplay and misbehavior are the leading causes of most serious accidents occurring in or near swimming areas.

Drowning is a leading cause of death for children under the age of two years of age and the third leading cause of death of adolescents resulting from unintentional public injuries.

## RULES AND REGULATIONS

Develop rules and regulations for staff, users and groups are helpful in reducing accidents.

Post signs located in visible and appropriate locations around the swimming area. These signs should communicate important information to the pool or beach user regarding rules, hazards and ways to avoid injury, so use pictorial instructions and warning whenever possible.

If the area is frequented by foreign language speaking users, rules printed in various languages on cards are a good idea. Post signs conveying instructions and general rules at the entrance to the swimming pool.



:: Park and beach signage

- Some example language for public pool regulation signage:
  - Use pool at own risk. Do not use with out lifeguard on duty.
  - No glass, food or drink in pool area.
  - No animals allowed.
  - Be considerate – no yelling or other loud noises.
  - No running, pushing or dangerous horseplay.
  - Management reserves the right to deny use of pool to anyone at any time.
  - Dive only in designates areas.
  - An adult or responsible adult supervisor must accompany all children or non-swimmers.
  - Any person having an infectious or communicable disease is prohibited from using a public pool.
  - "In case of emergency, call 911."
  - Pool hours.
  - Maximum capacity for swimmers of pool.

Rules of conduct and procedures within the locker room/bath house should be posted in the locker room or bathhouse.

- Bathhouse rules (example)
  - All patrons must take a shower before entering pool.
  - Please use the toilet facilities before entering the pool.
  - Any person who is supervising a child 6 years and under, and anyone using the pool area must be wearing a swimsuit.
  - NO cutoffs, street clothes, aqua socks or street shoes in the pool. Clean T-shirts may be worn over suits.
  - NO food, candy, drinks or glass containers in pool area.
  - Smoking is not allowed in the pool area or bathhouse.
  - Persons with infections, open sores, cuts, a cold, or other communicable disease will not be admitted.

Post instructions and rules to instruct and caution swimmers as to the proper use of diving boards, water slides and wading pools.

- Diving Board Rules (example)
  - Follow lifeguard's instructions.
  - The diving well is only for swimmers using the diving board or on the drop slide.
  - There is only one diver is allowed on the board at a time.
  - All divers must wait for the area below the board to be clear before diving.
  - There is only to be one bounce taken on the diving board.
  - Only feet may touch the diving board. No handstands, cartwheels, hanging or sitting on the board.
  - There will be no cut-away dives, back flips, or gainers allowed.
  - No chain diving, games or tag is allowed.
  - Divers must leave the water immediately after completing their jump or dive.
  - Swimmers must use the ladder when leaving the water.
  - No horseplay is allowed in or around the diving area.
  - When pool is closed, no one should be permitted on the diving boards – no exceptions.
  - Failure to follow rules can result in serious injuries and may result in a patron being required to leave the pool, pool area and surrounding premises.
- Depth markings should:
  - Be visible at or above the water surface of the vertical pool wall and on the deck within twenty-four inches (24") of the water's edge and positioned to be read while standing on the deck facing the water.
  - Be made in meters and feet.
  - Be located at maximum and minimum depth points.
  - Be at points of break between shallow and deep.
  - Be spaced at not more than twenty-five foot (25') intervals around the entire perimeter of the pool.
  - Be at least four inches (4") in height.
  - Be permanently applied.
  - Be of contrasting color to the background on which they are applied.
  - Spell out "Feet" or "Inches" or abbreviate "Ft." or "In."
  - Note: If the depth markings cannot be posted on the vertical wall of the pool, a sign with letters at least eight inches (8") in height placed above the pool deck level on a wall or fence no further than twelve feet (12') from the pool, or some other means to display the depth must be provided.
- Deck warning signs:
  - Be clearly marked on the pool with an acceptable contrasting color.

- Letters at least four inches (4 ") in height.
  - Be placed at least every 25 feet or fraction thereof, around the pool where the water depth is six feet (6') or less.
  - At least one at the extreme ends have the minimum depth and one at the extreme ends of the maximum depth at six feet (6').
  - At least one on each side of the pool/spa.
  - These warning signs shall be slip-resistant.
  - Be within twenty-four inches (24") of the water edge and positioned to be read while standing on the deck facing the water.
- Beach rules (example)
    - Always swim directly in front of a Lifeguard or in designated areas.
    - Alcohol, pets and glass containers are not allowed.
    - Place litter in trash containers. It shall be unlawful to throw, place, deposit, sweep or scatter, or cause to be thrown, placed, deposited, swept, or scattered, any paper, food, cigarette butts, bottles, cans, trash, fruit peelings or other refuse upon the beaches or structures erected thereon. Beach goers must contain their trash at all times.
    - Music or noise which can be heard from more than 50 feet of the source is prohibited.
    - No running or pushing on the dock. No swimming under the dock.
    - No jumping from rocks or other dangerous locations. Do not jump from or sit on the lifeguard chair or use any other rescue equipment.
    - The municipal parks by-law is in effect.
    - Follow all posted rules and obey the instructions of any lifeguard or authorized person.
  - Emergency and First Aid Equipment
 

Ensure emergency equipment is readily available and in good condition. Below are recommended safety equipment that should be present at all swimming locations:

    - Rope and lane line dividing the shallow end with deep end
    - Rescue tube
    - Ring buoy with throw line
    - Shepherd's crook.
    - First aid kit
    - Rubber gloves
    - AED
    - Floating back board
    - Spine or back board
    - CPR facemasks

Contact your local public health officials for suggestions regarding type and quantity of first-aid equipment and supplies

Have at least one phone designated for emergency use only. At every telephone located within the swimming area, post emergency numbers including police, hospital and other emergency services.

## EMPLOYEE TRAINING

Job orientation, hazard communication training and regular in-service training, such as first-aid or CPR/AED, are necessary.

Provide written description for all employees and distribute copies of pool operations manual

Site-specific training should also be performed. This training includes hazard recognition, rules and regulations, enforcement of policies and procedures, emergency operations, use of safety and rescue

equipment, standard operating procedures and safety and emergency operations

Lifeguards should have first aid, CPR/AED and life guard training with copies of their certifications on file

The staff should also be trained on how to handle emergency situations. Post emergency procedures for handling accidents in conspicuous locations.

Adhere to all applicable OSHA standards for employee training, including:

- The Hazard Communication Standard ( 29 CFR 1910.1200)
- The Respiratory Protection Standard ( 29 CFR 1910.134)
- The Personal Protective Equipment Standard (29 CFR 1910.132)

## PHYSICAL SAFETY INSPECTIONS

Daily inspections of the swimming areas are essential. These inspections should be performed several times when the swimming area is open to the public. These inspections should be documented and kept on file.

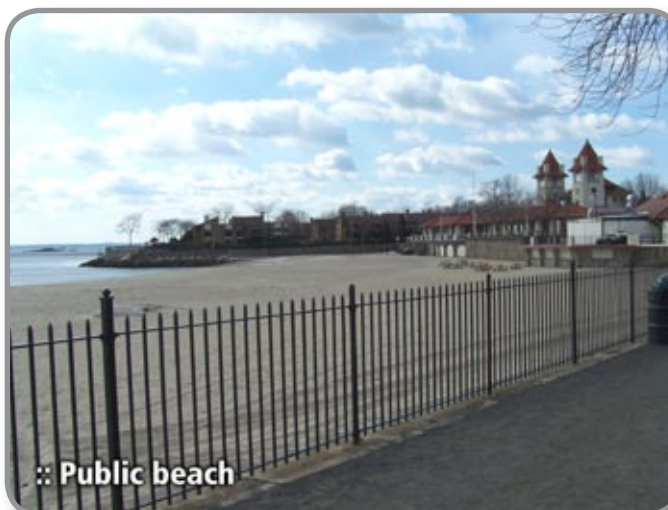
The first check safety check should be performed before the swimming area opens. Note the condition and temperature of the water. Ensure all safety equipment is in place and in working order. Check that the first aid station is well stocked and the telephones are working.

The following six main areas should be checked at every safety inspection:

- Decks
- Pools
- Diving boards, slides, and ladders
- Recreation equipment
- Showers, locker rooms and rest rooms
- Chemical storage areas

Check the filtration and chlorination systems and areas that are used to store chemicals and maintenance equipment. Store swimming pool sanitizers away from combustibles, oxidizing materials and other incompatible substances such as ammonia, gasoline, paints and detergents.

Lock doors and keep area secure. Only those properly trained should be allowed to enter the chemical storage areas. Any suspicious odors should be reported immediately. Eyewash, or other emergency equipment should be supplied as necessary. NO SMOKING signs should be posted.



## SECURITY

Control access to the swimming areas by using fences and gates or doors and walls. Make sure that the fences are in good condition and that locks are present and in working order.

Swimming area hours should be posted on fences and “no trespassing after hours” signs are also recommended.

When possible, the swimming areas should be patrolled after hours for unauthorized use.

## RECORD KEEPING

Record keeping is essential, since accurate records can play a vital role in the event of a lawsuit. The following records should be retained:

- Daily attendance
- Inventories
- Personnel
- Daily maintenance
- Accident reports
- Water and air temperatures and weather conditions
- Pool conditions

## ADDITIONAL RESOURCES

- US Consumer Product Safety Commission :: [www.cpsc.gov](http://www.cpsc.gov)
- OSHA :: [www.osha.gov](http://www.osha.gov)
- National Spa and Pool Institute :: [www.nspi.org](http://www.nspi.org)
- US Department of Health & Human Services :: [www.cdc.gov](http://www.cdc.gov)
- National Recreation and Park Association :: [www.nrpa.org/](http://www.nrpa.org/)
- American National Red Cross :: [www.redcross.org/services/hss](http://www.redcross.org/services/hss)



# Managing Community Use of Facilities

## INTRODUCTION AND EXPOSURES

Allowing outside groups to use facilities increases the overall liability exposure faced by municipalities. Not surprisingly, participation in organized youth sports - particularly soccer and basketball - is on the rise, putting a strain on the limited number of ball fields, outdoor courts and recreational centers. This increase in usage, in all likelihood, translates into more accidents and claims. The autumn season also means fall and harvest festivals, high school football pep-rallies and Octoberfests. As the landowner, a municipality is a likely target in any resulting litigation.

This scenario creates an interesting challenge—how do you manage the increase in usage with a finite number of facilities? How can these risks be controlled? With proper administrative controls, a facility inspection program and by establishing a procedure for users to sign an application before a permit or permission for use is granted.

### **Administrative Controls**

Administrative controls require the adoption and enforcement of a procedure or law by administration or the governing board. Municipalities get in trouble when laws or procedures are in place but are ignored or selectively enforced.

The following administrative recommendations are worth noting:

- All community use restrictions and prohibitions must be in compliance with local, state and federal laws. For example, if for-profit use of facilities is prohibited, is this prohibition enforced consistently? Is alcohol and tobacco use prohibited or restricted? Is there a discriminatory effect resulting from denials of use of municipal property?
- A permit system should be used. It allows administration to carefully track and control use of facilities.
- Many municipalities will not allow outside groups to use the facilities without a custodian present. Permit scheduling should take this into consideration. Are users assessed a portion of this cost?
- Security issues have come to the forefront. Does administration provide security for after hours use? If so, are there controls in place to supervise the guards? Many municipalities choose not to provide security. If so, are outside groups required to provide security during high-risk events, such as: concerts, large group meetings or athletic tournaments?

### **Inspections**

As a landowner, a municipality has a duty to provide a safe place for individuals and groups who visit or use facilities. Subscribers face a liability exposure when a defect is not repaired within a reasonable period of time after notice.

- For long-term use of fields, courts and gymnasiums - inspect before the start of the season and periodically thereafter. Meeting rooms and other facilities used for one-time events should be checked before and after the event. Pay particular attention to occupancy and exit signs. Additionally, all notices of defects should be quickly investigated and corrected.
- Providing a public telephone makes it easy for groups to contact emergency services when

needed.

- Procedures should be in place so outside users know how to report facility problems to administration.
- Records used in the normal course of business are usually discoverable in litigation. This includes inspection reports, maintenance and repair records as well. Therefore, make certain they are properly written and documented.

Special events, such as circuses, rodeos, fairs, or large concerts present complex exposures. Items to consider when planning these events include:

- Can your resources and infrastructure support the event?
- Can traffic be controlled?
- Is special transportation or parking requirements needed?
- Will police and emergency service personnel be able to properly staff and manage the event?
- Who is the intended audience, or, whom do the event sponsors want to attend?
- Will sponsors be able to secure all proper permits and/or licenses
- Will food and alcohol be sold?
- Are special attractions, such as tractor-pulls, stockcar races and rodeos planned?
- Can proper safety management be assured?
- Will the event be assessable to physically challenged persons?
- Is there a viable emergency management plan and reporting system in place?

## FEES FOR USE

A municipality may not charge its residents an admission fee as a condition of entrance to a public park without specific statutory authority,<sup>121</sup> but it may charge non-residents an entrance and use fee.<sup>122</sup> However, residents may be charged for the use of special recreational facilities -- such as pools, tennis courts, golf courses -- including parking areas,<sup>123</sup> which are available to the public within the park.<sup>124</sup>

Villages are specifically authorized to establish recreational facilities and parking areas and to charge fees, tolls, rates, or admissions for their use. This is considered a self-supporting improvement.<sup>125</sup>

## RESERVATIONS FOR USE

Special recreational facilities may be reserved by segments of the public so long as the public at large has an equal opportunity to use the facilities in question.<sup>126</sup> This would include a pavilion, gazebo, special field, etc.

## USE OF FACILITIES APPLICATIONS

A use of facilities application allows a municipality to explain the rules and conditions regarding facility use. It is also a way to ask for and evaluate information from a perspective user before a permit is issued. More importantly, the user can be required to sign a hold harmless and indemnity agreement, and to provide proof of liability insurance with the municipality listed as an additional insured.

Each municipality has a unique set of circumstances and local conditions. However, use of facilities applications typically contain the following terms and conditions: user fees, prohibitions, rules for use, supervision responsibilities, language regarding reimbursement for damages to facilities, and clean-up responsibilities should be in the application.

When properly designed and executed these documents assist by transferring risk, in effect shifting the responsibility to pay claims to the outside user. Insurance procurement, listing the municipality

121 See NY General Municipal Law §144, which provides that trusts for parks, playgrounds and libraries created under this title by local governments shall be free and open to the public for use and enjoyment

122 See *Gerwitz, supra*, and *Lawrence v. Kraushaar*, 195 Misc. 487, 89 N.Y.S.2d 685 (1949), which dealt with a differential parking fee structure for nonresidents.

123 1983 Op. St. Compt. 83-199, p. 255.

124 1982 Op. St. Compt. 82-209, p. 265; N.Y. Statute of Local Governments §10(3); and N.Y. Municipal Home Rule Law §10(1)(ii)(a)(9-a).

125 N.Y. Village Law §13-1300, et seq..

126 1982 Op. St. Compt. 82-289, p. 364.

as an additional insured and indemnification agreements are also needed.

When should additional insured status be required? Certainly from groups protected by a public liability policy - such as organized athletic teams, scouts, schools and private sector organizations. Uninsured groups presenting a sizable liability exposure - like athletic teams - should be compelled to purchase a liability policy before a permit or permission is granted. Contact your insurance representative or the NYMIR Risk Management Department for assistance.

A sample use of facilities application is included in Chapter 13.

## REFERENCES

- Giliberto, Donna. "Regulation of Parks and Other Municipal Property." New York Conference of Mayors and other Municipal Officials. NYCOM Municipal Management Series. December 2003.
- NYMIR Risk Management Handbook. "Community Use of Facilities." Summer 2000.



# Forms & Waivers

## SKATEBOARD PARK SAFETY & MAINTENANCE CHECKLIST

YES NO

- ☐ ☐ Are surface areas swept clean and free of rocks, debris, foreign materials?
- ☐ ☐ Are fencing, steps, handrails, parking, and viewing areas in good, clean condition and free of exposed jagged edges, cracks, gaps, ridges, broken rails or cut fencing?
- ☐ ☐ Do all rails have end caps installed?
- ☐ ☐ Are ramps, walkways, skating surfaces free of trip, slip and fall hazards?
- ☐ ☐ Is adequate lighting available?
- ☐ ☐ Is the Skate Park facility free of any visible construction deficiencies?
- ☐ ☐ Are handicapped ramps required and provided? If so, do they meet the standard for grade at 12 to 1 slope ratios? Are handrails installed on slopes that drop more than 30 inches at any location adjacent to the ramp? Are lips also constructed on both sides of the handicap ramp surface?
- ☐ ☐ Is graffiti present at the site? Is there a plan or policy to address removal of graffiti?
- ☐ ☐ Is the sign displaying rules of operation in good condition, free of graffiti or vandalism?
- ☐ ☐ Are all safety inspections and maintenance checklists properly signed, dated, and filed for future reference? Are all work orders for repairs signed, dated and documented?
- ☐ ☐ Is a public phone, limited to 911 calls only, available for Skate Park users in the event of an emergency?
- ☐ ☐ Does the police / sheriff's department routinely patrol the park area?

EmployeeName: \_\_\_\_\_ Department: \_\_\_\_\_

Date: \_\_\_\_\_ RECOMMENDATIONS: \_\_\_\_\_

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**City of Saratoga Springs**  
Department of Recreation

**Participant Agreement, Indemnification and Risk Acknowledgement**  
(For All Those Participants Under the Age of 18 Years of Age)

In consideration of \_\_\_\_\_ (print minor's name) ("Minor") being permitted by the City of Saratoga Springs and the Department of Recreation, their agents, officers, participants, consultants, employees and all persons or entities in any capacity on their behalf (hereinafter referred to as "**The City**"), to participate in its activities and use its equipment and facilities, I now agree to release and discharge **The City**, on behalf of myself, my child, assigns, personal representatives and estate as follows:

1. I hereby acknowledge that **inline skating and skateboarding** entail known and unanticipated risks which could result in physical or emotional injury, paralysis, death or damage to myself, to property or to third parties. I understand that such risks cannot be eliminated without jeopardizing the essential qualities of the activity. In an effort to minimize those risks, I agree to wear a protective helmet, knee pads and elbow pads at all times when involved in **inline skating and skateboarding**. THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:
  - (1) Nature of the activity
  - (2) Latent or apparent defects or conditions in equipment or property supplied by **The City**, or other persons or entity
  - (3) Use of property by myself, others or equipment supplied by **The City**
  - (4) Acts of other participants in this activity, employees or agents of **The City**
  - (5) My own physical condition or acts or omissions
  - (6) Conditions of **The City** facility and surrounding grounds or terrain and accidents connected with their use
  - (7) First Aid emergency treatment or other services
2. I expressly agree and promise to accept and assume all risks associated with this activity. My participating in this activity is purely voluntary and I elect to participate in spite of these risks.
3. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless **The City**, from any and all claims, demands, or causes of action which are in any way associated with this activity or my use of City equipment or facilities, including any such claims which allege negligent acts or omissions of **The City**.
4. Should **The City**, or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this agreement, I agree to indemnify and hold harmless **The City** or any such person from all such fees and costs.
5. I hereby state that I will bear the cost of any injury or damage that I may cause or suffer while participating. I further certify that I have no medical or physical conditions which would or could interfere with my safety in this activity, or else I am willing to assume and bear the costs of all risks that may be created, directly or indirectly, by any such condition.

By signing this document, I acknowledge that if anyone is hurt, or property is damaged during my participation in this activity a court of law may find me to have waived my right to maintain a lawsuit against **The City**, on the basis of any such claim or claims from which I have released them herein.

**I have had sufficient opportunity to read this entire document contained herein. I have read and understood it and agree to be bound by its terms. I hereby certify that I am the parent/guardian of this minor child and that I have legal responsibility and the right to allow this minor child to participate in this activity.**

Signature of Parent or Guardian: \_\_\_\_\_  
 Printed Name of Parent or Guardian: \_\_\_\_\_  
 Emergency Telephone Number or Pager: \_\_\_\_\_ Date: \_\_\_\_\_  
 Photo ID furnished, type and ID Number \_\_\_\_\_

-----Notarization REQUIRED if not filled out in presence of Recreation Supervision-----

City Attorney/Risk and Safety Management

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Derived from the City of New York Parks and Recreation participant agreement form: [http://nycgovparks.org/sub\\_about/parks\\_divisions/capital/owl\\_skate/skate\\_park\\_participant\\_agreement\\_form.pdf](http://nycgovparks.org/sub_about/parks_divisions/capital/owl_skate/skate_park_participant_agreement_form.pdf)

State of

County of

On \_\_\_\_\_, 20\_\_\_\_ before me \_\_\_\_\_, personally appeared who proved to me on the basis of satisfactory evidence to be the person whose names are subscribed to the foregoing **City of Saratoga Springs Department of Recreation Participant Agreement, Agreement to Indemnify and Risk Acknowledgement**, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument executed the instrument.

Witness my hand and official seal.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## City of Saratoga Springs

### Department of Recreation

#### Participant Agreement, Indemnification and Risk Acknowledgement (For All Those Participants 18 Years of Age or Older)

In consideration of the services of the City of Saratoga Springs and the Department of Recreation, their agents, officers, participants, consultants, employees and all persons or entities in any capacity on their behalf (hereinafter referred to as "**The City**"), I now agree to release and discharge **The City**, on behalf of myself, my children, my parents, my heirs, assigns, personal representatives and estate as follows:

1. I hereby acknowledge that **inline skating and skateboarding** entail known and unanticipated risks which could result in physical or emotional injury, paralysis, death or damage to myself, to property or to third parties. I understand that such risks cannot be eliminated without jeopardizing the essential qualities of the activity. In an effort to minimize those risks, I agree to wear a protective helmet, knee pads and elbow pads at all times when involved in **inline skating and skateboarding**.

THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:

- (1) Nature of the activity
  - (2) Latent or apparent defects or conditions in equipment or property supplied by **The City**
  - (3) Use of property by myself, others or equipment supplied by **The City**, or other persons or entity
  - (4) Acts of other participants in this activity, employees or agents of **The City**
  - (5) My own physical condition or acts or omissions
  - (6) Conditions of **The City** facility and surrounding grounds or terrain and accidents connected with their use
  - (7) First Aid emergency treatment or other services
2. I expressly agree and promise to accept and assume all risks associated with this activity. My participating in this activity is purely voluntary and I elect to participate in spite of these risks.
  3. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless **The City**, from any and all claims, demands, or causes of action which are in any way associated with this activity or my use of City equipment or facilities, including any such claims which allege negligent acts or omissions of **The City**.
  4. Should **The City**, or anyone acting on their behalf be required to incur attorney's fees and costs to enforce this agreement, I agree to indemnify and hold harmless **The City** or any such person from all such fees and costs.
  5. I hereby state that I will bear the cost of any injury or damage that I may cause or suffer while participating. I further certify that I have no medical or physical conditions which would or could interfere with my safety in this activity, or else I am willing to assume and bear the costs of all risks that may be created, directly or indirectly, by any such condition.

By signing this document, I acknowledge that if anyone is hurt, or property is damaged during my participation in this activity a court of law may find me to have waived my right to maintain a lawsuit against **The City**, on the basis of any such claim or claims from which I have released them herein. I have had sufficient opportunity to read this entire document. **I certify that I am 18 years of age or older and that I have read and understood it and agree to be bound by its terms and conditions.**

Signature of Participant: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone No.: \_\_\_\_\_  
Date: \_\_\_\_\_ Emergency Contact/Tel. No.: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ NYS Drivers License No.: \_\_\_\_\_

CHECK ALL THAT APPLY:

Daily Member: \_\_\_\_\_ Weekly Member: \_\_\_\_\_ Season Member: \_\_\_\_\_  
Skate Board: \_\_\_\_\_ Rollerblade: \_\_\_\_\_ Both: \_\_\_\_\_  
City Resident: \_\_\_\_\_ Non-City Resident: \_\_\_\_\_

Staff Name: \_\_\_\_\_ Date: \_\_\_\_\_

City Attorney/Risk and Safety Management

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## City of Saratoga Springs

### Recreation Department Policy and Procedures Manual

**Title:** Participant Agreement, Indemnification and Risk Acknowledgement Protocol

**Date of Origin:** 091103

**Responsible Party:** Recreation Department Personnel

**Date of Review:** Annual

**Last Review:** 060904; 051105

**Title:** Participant Agreement, Indemnification & Risk Acknowledgement Protocol

**Program:** East Side Recreation Skate Park

#### **Policy:**

Any individual utilizing the City of Saratoga Springs' East Side Recreation Complex Skate Park shall be required to complete a **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** on an annual basis. Every individual must annually complete the **Participant Agreement, Indemnification & Risk Acknowledgement PRIOR** to participating in ANY Skate Park's activities. An individual under the age of eighteen years must annually have his/her guardian or parent complete the **Participant Agreement, Indemnification & Risk Acknowledgement** providing permission for the under age individual **PRIOR** to participating in ANY Skate Park's activities.

#### **Protocol:**

1. The City of Saratoga Springs shall provide a **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** to every individual requesting permission to use the East Side Recreation Skate Park.
2. Every individual shall be required to execute a **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** prior to any use of the East Side Recreation Skate Park.
3. If an individual is eighteen years of age or older, he/she may execute the **Participant Agreement, Indemnification and Risk Acknowledgement Agreement**.
4. If an individual is younger than eighteen years of age at the time of the execution of the agreement, a parent or guardian's signature must be obtained on the **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** before access to the park is granted.
5. Parents or guardians of the individual under the age of eighteen years must provide written permission in front of a City of Saratoga Springs Recreation employee by signing the **Participant Agreement, Indemnification and Risk Acknowledgement Agreement**.
6. If a **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** is requested by mail and will be returned by mail for an individual under the age of eighteen and the individual's parent or guardian will not be present during the individual's visit, the **Participant Agreement, Indemnification and Risk Acknowledgement Agreement** must be signed in the presence of a Notary Public.
7. At no time shall any individual be given access to the East Side Recreation Skate Park without first having completed the **Participant Agreement, Indemnification and Risk Acknowledgement Agreement**.

# NYMIR SAMPLE USE OF FACILITIES DOCUMENT

NAME AND ADDRESS OF MUNICIPALITY

## APPLICATION FOR USE OF COMMUNITY FACILITIES

Today's Date: \_\_\_\_\_ Date(s) Requested: \_\_\_\_\_

Facility Requested: \_\_\_\_\_

## INFORMATION ABOUT YOUR GROUP

Name of Organization or Individual: \_\_\_\_\_

Time: \_\_\_\_\_ to \_\_\_\_\_. Your supervisor in charge: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: (Day) \_\_\_\_\_ (Night) \_\_\_\_\_

## INFORMATION ABOUT YOUR INTENDED USE OF MUNICIPAL FACILITIES

Purpose of Use: \_\_\_\_\_  
 \_\_\_\_\_

Total Participants Expected: \_\_\_\_\_ Adults: \_\_\_\_\_ Children: \_\_\_\_\_

Is material or equipment required from municipality? Yes \_\_\_\_\_ No \_\_\_\_\_

If needed, state what types and for what purpose: \_\_\_\_\_

Residents (Number): \_\_\_\_\_ Non-Residents (Number): \_\_\_\_\_

Is an admission fee charged? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, what will proceeds be used for? \_\_\_\_\_

## AGREEMENT

The undersigned is over 21 years of age and has read this form and attached regulations and agrees to comply with them. He/she agrees to be responsible to the municipality for the use and care of the facilities. He/she, on behalf of Name of Organization does hereby covenant and agree to defend, indemnify and hold harmless the Municipality from and against any and all liability, loss, damages, claims, or actions (including costs and attorneys fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in connection with the actual or proposed use of Municipality's property, facilities and/or services by Organization.

\_\_\_\_\_  
 Signature of Organization's  
 Representative

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

## READ ATTACHED REQUIREMENTS AND RETURN APPLICATION TO:

NAME AND ADDRESS OF MUNICIPALITY  
ATTENTION: MUNICIPAL CONTACT PERSON

NAME AND ADDRESS OF MUNICIPALITY  
FACILITY USE REQUIREMENTS

The use of all Recreational and Parks facilities shall be subject to the approval and rules of the Recreation Commission administered by the Superintendent of Recreation and Parks.

1. Organizations wishing to use municipal facilities shall first apply to the Superintendent of Recreation and Parks on the prescribed form. The Superintendent or his/her designee has final authority on approval.
2. In the event of inclement weather, the Superintendent or his designee has the final authority on whether facilities are usable.
3. [Intoxicants shall not be brought onto municipal facilities at any time.] or [Alcohol use is allowed only by permit. Alcohol is not permitted in glass bottles, kegs or barrels. A separate fee of \$\_\_\_\_\_ is required for an alcohol permit.]
4. All posted rules must be adhered to.
5. Profanity, objectionable language, disorderly acts or illegal activities of any kind are absolutely prohibited, and those violating this prohibition will be ejected from the premises.
6. Any damage to municipal facilities shall be promptly repaired at the user's expense. No exceptions. If maintenance personnel are not available, make sure all doors are locked and lights are turned out when leaving.
7. Organizations using the facilities must clean-up afterwards.
8. Permits may be revoked at any time.
9. Any organization with youth under 18 years old requires the presence of adequate adult supervision at all times.
10. The fee for use is \$ \_\_\_\_\_, payable before use begins.
11. A public telephone is located in \_\_\_\_\_. The emergency telephone number for police is: \_\_\_\_\_; fire \_\_\_\_\_. The appropriate authority must be contacted in the event of an emergency. When required, users must provide the following insurance prior to using facilities.
12. FAILURE TO DO SO PRIOR TO USE WILL RESULT IN REVOCATION OF YOUR PERMIT:

### COMMERCIAL USERS:

- A. The user hereby agrees to effectuate the naming of the municipality as an unrestricted additional insured on the user's policy.
- B. The policy naming the municipality as an additional insured shall:
  - » be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer;
  - » contain a 30 day notice of cancellation;
  - » state that the organization's coverage shall be primary coverage for the Municipality, its Board, employees and volunteers; and
  - » additional insured status shall be provided with ISO endorsement CG 2026 or its equivalent.
- C. The user agrees to indemnify the municipality for any applicable deductibles.
- D. Enclose a copy of the endorsement providing additional insured status.
- E. **Required Insurance:**
  - » Commercial General Liability Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate.
- F. User acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the municipality. The user is to provide the municipality with a certificate of insurance, evidencing the above requirements have been met. The failure of the municipality to object to the contents of the certificate or the absence of it shall not be deemed a waiver of any and all rights held by the municipality.

### INDIVIDUALS:

#### Required Insurance:

- » Homeowners Insurance: Section Two – Liability: \$100,000 limit of liability. Policy shall not exclude the off-premises activities of the insured.
13. In the event of an accident, please notify the custodian on duty, or call the business office the next morning.

