

Legal Alert: Considerations in Placemaking

What is Placemaking

Placemaking is a process of community-oriented design focusing on turning “spaces” into “places”, i.e., making dynamic public areas where people are drawn by mixed uses. Placemaking differs from previous modes of design in its emphasis on and utilization of a positive feedback loop incorporating community needs and aspirations. Some examples of this are:

- Turning an otherwise empty lot into a community garden or play space
- Converting underutilized thoroughfare into a public plaza through the Parks Department Plaza Program
- Starting a farmers’ market in a local plaza or park

The key to placemaking is tailoring spaces to meet the needs and desires of the utilizing communities. Community-based organizations actively situate and familiarize themselves with the communities they serve and as a result are uniquely aware of the problems and opportunities in the spaces they access. Participation in placemaking is a particularly effective way for nonprofits to make use of their knowledge and skillsets for the furthering of their mission and the betterment of the community at large. Placemaking presents a valuable opportunity for nonprofits to serve their communities. However, it brings a varied palette of legal considerations with it, many of which may be new for your nonprofit group. Some of these concerns are specific to acquisition and use of space, but perhaps equally important are tangential issues related to novel programming initiatives. Below are the legal considerations for a nonprofit contemplating a placemaking project.

Securing the Use of a Space

The first steps towards successful placemaking is identifying the target space; then securing usage rights for the space in question. How to do so will vary based on whether the contemplated use is temporary or permanent and whether or not the contemplated space is privately or publically owned. Access to and use of private space will generally be secured through contract lease, purchase, or other temporary use agreement which should be reviewed by an attorney before execution. Access to and use of public space is usually under some kind of permitting process. There can be some overlap in approaches and there are generally multiple subsidiary issues.

Private Spaces

Use of private spaces for public purposes will be governed through contracts for sale or lease/license. However, if your proposed use does not conform to current zoning then it will have to be approved through the Uniform Land Use Review Process (ULURP). The intricacies of the ULURP process are beyond the scope of this alert, but we invite you to contact Lawyers Alliance with any questions.

Public Spaces

In New York City, public spaces largely fall under the jurisdiction of specific City agencies (most often either the Department of Transportation or Parks Department) and access to them is controlled by specific permitting processes. To undertake a project on City land, find and approach the agency in control of the space in question. Depending on the proposed project it will then either be approved by the agency itself or brought to the New York City Public Design Commission (NYC PDC). Each city agency has a [design liaison](#) that brings project proposals to the [NYC PDC](#), a body which meets monthly to review public art and spaces. The Design Commission will act both as a gatekeeper, approving the agency's proposal, and a resource with suggestions to help the project come to fruition. As with a lease for a privately owned space, licenses for use of public space should be reviewed by and negotiated with the assistance of an attorney.

The Issue of POPS

Privately-Owned Public Spaces, or POPS, are privately-owned areas committed by their owners to some degree of public use in exchange for zoning variances permitting the owner to pursue an adjacent project that otherwise would not conform to applicable zoning regulation (without the variance). While the spaces have been pledged and recorded as available for public use, they are still under private ownership and cannot wholly be classified as either public or private spaces. Theoretically, each should be useable by contacting and making arrangements with the owner/managing entity of the space. In reality, the entities in control of POPS often have no protocol for use and are sometimes hostile towards groups trying to plan events. If you are interested in the use of POPS, a list of all POPS is contained in the [POPS Inventory](#). Additionally, [Advocates for Publicly-Owned Private Spaces](#) can provide information regarding the area.

Legal Concerns Surrounding Programming

When placemaking involves implementation of activities, many of the concerns are similar to those related to programming generally. Although they are equally important, sometimes, because of the focus on the space itself, applicable "new programming" concerns can be overlooked. However, it is important that these issues are considered. Several common areas of concern are:

- Employment Law Compliance
- Insurance
- Contracts with Vendors
- Arts and Intellectual Property

Conclusion

Placemaking can be a valuable way for a nonprofit to leverage its unique knowledge of its community's wants and needs.

This alert is meant to provide general information only, not legal advice. Please contact Noah Sapse at 212-219-1800 ext. 282, nsapse@lawyersalliance.org, or visit our website www.lawyersalliance.org for further information.

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