



**A Legal Guide for
Community Kitchens**
in Massachusetts

**Conservation Law
Foundation** in partnership with
**Metropolitan Area Planning
Council**

 **LEGAL FOOD HUB**
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MAPC
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1.0 Introduction

Establishing a Community Kitchen

Community kitchens are springing up around the country in response to the needs of civic groups and food entrepreneurs seeking access to kitchen space. Across New England, communities are working to improve access to locally grown food, support local farmers, inspire healthy eating, and encourage the growing movement of food entrepreneurs. Often, finding kitchen space is among the biggest hurdles for community groups or food entrepreneurs to prepare meals or develop food products.

Fortunately, communities are full of kitchens that can potentially be used for these purposes. Schools, religious institutions, government entities, private entities, and other organizations can consider opening their kitchens for community use. With some preparation, these existing kitchen spaces can be made available to community groups to prepare food for their own consumption or to food entrepreneurs looking to develop their recipes or prepare their products for sale.

Community kitchens are kitchen spaces owned by organizations or businesses that are opened to community groups and local food entrepreneurs for use. For example, a church might make its kitchen available to civic groups for preparing shared meals or making food for donation. A school might make its kitchen available to food entrepreneurs for production when it is not being used for student meals. Making use of these existing kitchens through “community use,” which is also called “joint use” or “shared use,” is an important tool for enhancing access to these important resources.

Opening kitchens to shared use has many advantages. These benefits include providing new opportunities for community groups to prepare and enjoy healthy, local food; providing affordable market entry for food entrepreneurs; and maximizing existing community resources.

How to use this guide

This guide provides advice for making shared use of kitchens a success in your community in Massachusetts. The information is targeted to organizations that host community kitchens and the community groups and entrepreneurs that use them. So, if you are (1) an organization with a kitchen you’re willing to share; (2) a community group looking for kitchen space to use; or (3) a food entrepreneur looking for space to use to make your products, read on. Further, if you are in a facilitator’s role and in the position of connecting potential users to available kitchens, this is also for you.

This guide provides an overview of the legal issues you should consider when starting or using a community kitchen. It is meant to serve a starting point for your planning process. The following sections contain information about some of the key legal considerations for community kitchens and their users. In Section 5, you will find a sample community use agreement for kitchens and their users that lays out the key provisions that a contract for kitchen use should contain. Here is what you can expect to learn from this guide.

I am part of an organization with a kitchen we're willing to share

This guide includes the following legal considerations:

- What should my business structure be and what are the legal considerations?
- What permits and licenses will I need to operate as a community kitchen?
- How do I manage risk in the kitchen?
- What should I include in my community use agreement with kitchen users?

Don't forget other important considerations that are not addressed in this guide, including:

- How do I develop a business plan for the kitchen?
- What equipment will I need before opening my kitchen to others?
- How do I advertise the availability of my kitchen?
- Do I charge for kitchen use, and how much?

I am part of a community group looking for kitchen space

This guide includes the following legal considerations:

- What should our organization's legal structure be?
- What permits and licenses will I need to use a community kitchen?
- How do I manage risk when using the kitchen?
- What should be in my community use agreement with the kitchen?

Don't forget other organizational considerations that are not addressed in this guide, including:

- How can I find a kitchen for my organization to use?

I am a food entrepreneur looking for kitchen space

This guide includes the following legal considerations:

- What should my business structure be and what are the legal considerations?
- What permits and licenses will I need to use a community kitchen and sell my products?
- How do I manage risk while using the kitchen?
- What should be in my community use agreement with kitchen users?

Don't forget other business considerations that are not addressed in this guide, including:

- How should I decide whether to start a food business?
- How do I develop a business plan?
- How do I market and sell my food products?
- How do I find kitchens available to use?

This guide is intended to help community kitchens and their users identify key legal issues, but it is not conclusive and does not constitute legal advice. We encourage you to seek legal help if you have questions or concerns about how any of the issues raised in this guide apply to your organization. You can begin by reaching out to the Legal Food Hub, which provides free legal assistance to income-eligible food entrepreneurs and non-profit and community organizations at legalfoodhub@clf.org or 1-844-LAW-GROW. To learn more about the Legal Food Hub, visit www.legalfoodhub.org.

2.0 Choosing a Business Structure

Whether you have a kitchen you are willing to make available to others, you are a community group seeking a space to prepare food, or you are an entrepreneur looking for space to prepare your products, it is important to consider how your organization is set up. Establishing a legal entity is important to consider, as it can allow you to formalize your governance structure, create funding opportunities, and limit personal liability.

The kind of business structure you use – for example, a partnership, a corporation, or a non-profit – affects how you make business decisions, what kinds of funding are available to you, what your risks and liabilities are, and how you will be taxed. While this section provides an overview of the forms your organization or business can take, we recommend that you consult a qualified attorney and accountant when selecting a business structure.

Business structures can be divided into two main types: informal and formal entities. Informal entities, including sole proprietorships and general partnerships, are formed by default, just by doing business. Formal entities, for example corporations, LLCs, and non-profits, need to file paperwork with the state and follow other steps to incorporate.

Some readers of this guide who are thinking about making a kitchen available to community users may already have an existing business structure. You may be a governmental entity, such as a public school or municipal recreational center, or you may be a religious institution or a non-profit organization. Some kitchen users may also already be formal entities: for example, your community group may already be a non-profit organization, or you may have already created an LLC for your food business. You may want to review this section to review the implications of your business structure.

KITCHEN HIGHLIGHT

Root

Youth culinary training, community meals in Salem’s school kitchen: Root is a nonprofit organization based in Salem that provides culinary workforce training for youth. Once a month, students have the opportunity to work with a professional chef to prepare free community meals that are open to all residents of Salem. Root hosts the community meals at a Salem public school and uses the school’s kitchen under the supervision of a food nutrition worker from the school.

Organization status: Root is a nonprofit organization.

Arrangement with kitchen: The organization has an informal partnership with Salem public school, in which it operates, and the City of Salem. It has been a true team effort between the school administration and staff, city staff, and Root, though it has not been formalized into a specific legal arrangement.

Lessons learned: Root and other community members involved in planning the meals learned that diners enjoyed interacting with the youth preparing their meals, so although they initially had a volunteer wait staff serve diners at tables, it turned out that a cafeteria line was a much better set up.

Learn more: <http://rootns.org/>

The following table provides a brief overview of key features of various types of business entities. The table has been adapted from Conservation Law Foundation’s *How to Choose a Business Structure: A Decision Guide*. You can see that different types of entities have different benefits and drawbacks. The requirements for each type of entity will vary based on state law.

It is important to remember that forming an entity that limits personal liability is not a substitute for taking steps to manage risk and getting appropriate insurance coverage. Even if you choose an entity that limits liability for you personally, your business still has potential liability for issues that might arise. To protect your business assets, you should obtain insurance coverage. Please see Section 4 for more information.

Choosing a Business Structure: Key Considerations

Entity Type	Formation	Governance	Funding	Risk & Liability	Taxation
Sole Proprietorship	Formed by default	Sole control, share profits	Owner capital; Fewer funding opportunities	Unlimited personal liability	Pass through: only the individual is taxed
<p>A business owned by one individual.</p> <p>Pros: A sole proprietorship has the advantage of simplicity and ease of formation. It also allows the founder to have a high level of control.</p> <p>Cons: The proprietor and the business are the same for legal purposes. Unlike formal structures (i.e. LLC, corporation), the business does not have a separate legal identity. As a result, liability is not limited, so individuals are open to more personal risk. Funding opportunities may be limited.</p> <p>Examples: A food entrepreneur who is just getting started in building her business may operate as a sole proprietor in the early days. As her business starts to grow, it makes sense to formalize it into an entity (for example, LLC or corporation) to limit personal liability and enhance funding opportunities.</p>					
General Partnership	Formed by association; draft agreement	Partners control; share profits	Partner capital	Unlimited personal liability for partners	Pass through: only the individual is taxed
<p>A business owned by two or more individuals, who are partners.</p> <p>Pros: A general partnership with multiple owners has the advantage of simplicity and ease of formation. It also allows the partners to have full control of governance.</p> <p>Cons: Liability is not limited, so individuals are open to more personal risk. Funding opportunities may be limited.</p> <p>Examples: Two or more food entrepreneurs working to develop a product may operate as a general partnership at first. As the business starts to grow, it makes sense to formalize it into an entity (for example, LLC or corporation) to limit personal liability and enhance funding opportunities.</p>					

Entity Type	Formation	Governance	Funding	Risk & Liability	Taxation
Limited Partnership	File with state; draft agreement	General partners have direct control	Partner capital; Liquidity for limited partners	Limited Liability	Pass through: only the individual is taxed
<p>A partnership with one general partner and several limited partners.</p> <p>Pros: A limited partnership can limit personal liability for limited partners, which is an advantage over a general partnership. It may allow more opportunities to raise capital.</p> <p>Cons: Higher startup costs than a general partnership.</p> <p>Examples: A group of business partners creating a food company may want to consider a limited partnership to limit the liability of some of the partners. This form would provide greater protection to those limited partners than a general partnership.</p>					
C Corporation	File with state; Draft articles of incorp. and bylaws; Appoint board	Board controls; Dividends	Greater opportunities for debt/equity; Liquidity	Limited	Double - corporate entity taxed; owners taxed
<p>A for-profit business form that has its own separate legal entity and is owned by shareholders.</p> <p>Pros: A C corp offers greater opportunities for financing and raising capital. It also limits personal liability.</p> <p>Cons: This complex type of entity requires more upfront work, including appointing a board that will control the entity. The founder will have less direct control as a result of the board. Taxation is double.</p> <p>Examples: A large community kitchen or large food business may want to consider this form; however, the tax implications should be carefully considered, especially for small businesses.</p>					
S Corporation	File with state (elect to be S corp); Draft articles of incorp. and bylaws; Appoint board	Board controls; Dividends	Greater opportunities for debt/equity; Liquidity	Limited	Pass through: only the individual is taxed
<p>A for-profit business form that has its own separate legal entity and is owned by shareholders, with tax benefits compared to C corp.</p> <p>Pros: Like a C corp, an S corp offers greater opportunities for financing and limits personal liability. The taxation is a benefit of the S corp as compared to a C corp, because the corporate entity itself is not taxed; it is a pass through to the individuals. This type of corporation is often used by small businesses.</p> <p>Cons: Requires more upfront work, including appointing a board that will control the entity. The founder will have less direct control as a result of the board.</p> <p>Examples: A for-profit community kitchen could consider this form, which would allow it to raise outside capital. A food entrepreneur may want to consider this form, especially when she scales up enough to bear the expense of the filing process.</p>					

Entity Type	Formation	Governance	Funding	Risk & Liability	Taxation
Benefit (“B”) Corporation	File with state (elect to be B corp); Draft articles of incorp. and bylaws; Appoint board. (Can convert existing corp to B corp.)	Board controls; Dividends; Must adhere to public benefit purposes as well as shareholder profit; Annual report	Greater opportunities for debt/equity; Liquidity	Limited	Can be taxed as C corp or S corp
	<p>A corporation with social benefit central to its purpose.</p> <p>Pros: B corps status shows the public that you are committed to social and environmental benefits as well as profit and can help maintain your company’s values over time. It allows directors to consider more than the company’s bottom line in decision-making.</p> <p>Cons: Formal steps required with state; may want to use third-party B corp certification provider. This is a relatively new form, so may evolve in state law over time.</p> <p>Examples: A community kitchen that has a social purpose as well as a profit motive may want to form a B corp. A food entrepreneur who has a social purpose may also want to consider this form.</p>				
Limited Liability Company (LLC)	Filing with state; Draft operating agreement	Flexible control; Equal relationship among owners	Member capital; debt/equity opportunities	Limited	Pass through: only the individual is taxed
	<p>A for-profit business form combining aspects of corporation and partnership.</p> <p>Pros: The LLC retains the flexible control of informal business entities while creating opportunities to raise capital and protecting personal assets and limiting personal liability. The LLC entity itself is not taxed; it is a pass through to the individuals. It is a popular form for small businesses.</p> <p>Cons: The LLC provides fewer funding opportunities than the corporate form.</p> <p>Examples: A community kitchen could form an LLC for its business if it is seeking the flexibility of a partnership or other less formal entity while also protecting personal liability. Similarly, a food entrepreneur could form an LLC if the entrepreneur wants to retain a high level of control and flexibility while protecting herself from personal liability. This form is popular for small businesses and it is simpler than a corporation.</p>				
Low-profit Limited Liability Company (L3C)	Filing with state, including identifying social mission; Draft operating agreement (Not currently available Massachusetts)	Flexible control; Equal relationship among owners	Member capital; debt/equity opportunities; Program Related Investment funding from foundations	Limited	Pass through: only the individual is taxed
	<p>A variation of the LLC with public interest mission.</p> <p>Pros: The L3C combines public interest mission with greater ability to generate profits than a non-profit. This form is intended to attract Program Related Investment from foundations.</p> <p>Cons: The L3C form is <i>not</i> available in many states, including Massachusetts.</p> <p>Examples: If this form becomes available in your state, a community kitchen with a social mission could use this structure to allow it to also generate modest profits.</p>				

Entity Type	Formation	Governance	Funding	Risk & Liability	Taxation
Non-Profit	File with state + fed gov't; Draft bylaws; Elect directors	Board controls; Significant filing process	Limitations on profits; More grant and donation opportunities	Limited	Tax Free
<p>An organization that pursues a charitable purpose, not profit.</p> <p>Pros: Non-profit status allows organizations to apply for a wide range of grants and accept tax-deductible donations. This form also has the benefits of limiting personal liability and having a tax-free status.</p> <p>Cons: The non-profit formation process can take time and resources. A board leads the organization so the founder has less direct control.</p> <p>Examples: A community group that is formed for a socially beneficial purpose could file as a non-profit, allowing it to raise funds for its activities through charitable donations. A community kitchen that is formed as a charitable rather than profit-seeking organization could also adopt this structure.</p>					
Cooperative	More work to form; Can incorporate or not	Equal control; share profits	Member capital; debt/equity opportunities; limits on profits distribution	Variable (depends on structure)	Variable (depends on structure)
<p>A business that is owned and operated by its members working together.</p> <p>Pros: The cooperative, with a one-member, one-vote structure, has the advantages of allowing members to join forces to scale up.</p> <p>Cons: A cooperative may struggle to attract traditional investor funding as a result of its structure. It may be challenging to form as it requires agreement among members.</p> <p>Examples: A group of food entrepreneurs could work together to form a cooperative to jointly produce, market, distribute, and sell their products.</p>					

3.0 Permitting Process

After you figure out how you want to structure your business, you will need to learn which permits and licenses you will be required to get. Whether you want to run a community kitchen or use one to cook in, you will need to make sure you have the appropriate ones. It may not always be clear which permit, license, or other approval you will need to get. The best way to find out what you need is to contact your local health department.

3.1 All States

Community kitchens and users of community kitchens need to be aware of the rules and regulations from two United States agencies, the Food and Drug Administration (FDA) and United States Department of Agriculture (USDA). Massachusetts has incorporated FDA and USDA regulations into their laws, which means that the Commonwealth expects people who make and sell food, or who operate production facilities (which may include a community kitchen), to know about and comply with them.

The rules and regulations of these two agencies are vast and beyond the scope of this guide. Nevertheless, community kitchens and their users should be aware of some of them, including but not limited to the following regulations.

Some of the **FDA** and **USDA** rules to be aware of are:

- **Preventive Controls for Human Food (PCHF):** These regulations intend to ensure safe production of food for human consumption. Facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States must develop and implement a Food Safety Plan that (1) identifies food safety hazards that require preventive control and (2) implement preventive controls to “significantly minimize or prevent” the hazard. You can read more about the regulations here: <https://www.fda.gov/downloads/food/guidanceregulation/fsma/ucm584807.pdf>.
- **Current Good Manufacturing Practices (cGMPs):** Massachusetts expressly requires many food businesses to comply with the FDA’s various cGMPs, which were updated under the PCHF regulations. These are rules designed to ensure food is made in a clean environment. The cGMPs cover buildings and facilities, equipment, and production and processing controls and require training for all employees who manufacture, process, pack, or hold food in food hygiene and safety.
- **Food Facility Registration:** Operators of facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States are required to register with the FDA. This is a broad definition. It does not matter whether the food is sold exclusively inside the state. Generally, community kitchens and their users will need to register. The registration is free, but it must be renewed every two years.
- **Acidified and Low-Acid Canned Foods:** Commercial processors who manufacture, process, or pack acidified foods or low-acid canned foods must also register with the FDA and submit certain information. Acidified foods are low-acid foods that have acid added to them, such as pickles. A low-acid food is a food that has a finished equilibrium pH greater than 4.6 and a water activity greater than 0.85. Tomatoes and tomato products are generally not considered low-acid foods. The supervisor of this type of food processing should become certified through a Better Process Control School course.
- **Hazard Analysis and Risk-Based Preventative Controls (HAACP):** Part of making sure that food is safe is being able to control for biological, chemical, and physical hazards while producing it. FDA and USDA’s HAACP rules aim to do that. They are management systems for specific types of products, including seafood, juice, and meat products. Check with your local health department to see if you need to create a HAACP plan.
- **More information:** FDA’s *How to Start a Food Business* webpage provides links to information about these topics and more. See <https://www.fda.gov/Food/ResourcesForYou/Industry/ucm322302.htm>.

Donating food: Additionally, if you want to donate food, Congress has made it easier for you to legally do it without fear of being liable if somebody gets sick from your donated food. Under the **Bill Emerson Good Samaritan Food Donation Act**, if you donate, in good faith, certain kinds of food to a nonprofit organization, which then delivers that food to a needy population, then you will be protected against liability. Generally, if the food was made in compliance with the applicable rules and laws, then it would qualify under the Bill Emerson Act.

This liability protection is not absolute. If you were “grossly negligent” in your donation (e.g., you had a strong suspicion when you donated your food that there was a very good chance someone could get sick from eating it) or if you intentionally donated food you knew would probably make people sick from it, the Bill Emerson Act will not protect you.

3.2 Massachusetts

I want to start a community kitchen. Which permits do I need?

- **Zoning approval:** First, you should make sure you are located in a zone within your city or town that allows you to operate the community kitchen. To see whether you have appropriate zoning for a community kitchen, contact your local zoning authority.

- **Food Establishment**

permits: The Massachusetts State Sanitary Code requires food establishments to obtain a

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Whole Harmony

Growing a healthy business at a shared kitchen incubator:

Whole Harmony is a company that makes hand-crafted artisan teas, tonics, and elixirs. The company uses the Franklin County Community Development Center’s Western Massachusetts Food Processing Center kitchen space to prepare its products for sale. Whole Harmony has been using the kitchen since 2010, and it has allowed the business to grow and flourish.

Organization status: Whole Harmony started as a sole proprietorship because the owners were concerned about high start-up costs. As the business became more successful and grew, they converted first to an LLC to limit liability and protect assets. Most recently, they formed a corporation to seek greater opportunities for funding and financing. They had to obtain a Food Service License from the Department of Consumer Protection and a Qualified Food Operator Training/ServSafe Manager Certification, and register with the FDA, along with obtaining necessary licenses, permits, and appropriate insurance coverage.

Arrangement with kitchen: The company has a written community use agreement with the Franklin County Community Development Center, which is a requirement for any food entrepreneur working from this kitchen.

Lessons learned: The team at Whole Harmony has learned to be flexible and learn as they go, for example transitioning to different types of business entities depending as the business grows.

Learn more: <https://wholeharmony4u.com/>;
<https://www.fccdc.org/food-processing/>

permit. This is a statewide rule, but it is the responsibility of the local health department to issue this permit. A food establishment means “an operation that stores, prepares, packages, serves, vends, or otherwise provides food” for the public. This includes mobile food operations.

I want to use a community kitchen and sell my products that I make in it. Which permits do I need?

Massachusetts requires different sorts of licenses, permits, and other documents that often depend on what your food business does. For example, if you only sell at wholesale, then you do not need to obtain licenses and permits that apply to retail sales.

All Food Businesses:

- **Sales and Use Tax Permit:** The Department of Revenue requires a business that plans to sell food products to register as a sales tax vendor and collect 6.25% Massachusetts sales tax. This applies to both wholesale and retail sellers. Depending on how much you sell, you will need to file these taxes monthly, quarterly, or annually.
- **Food Protection Manager Certification:** Owners of food businesses are usually expected to have the proper food safety training. This person must be a certified food protection manager. The test for this certification needs to be administered by an accredited program. The Department of Public Health maintains a list of these accredited programs, such as **ServSafe**.
- **Written Agreement Between You and the Community Kitchen (if required):** Local health departments in some cities and towns require food businesses using a community kitchen to provide proof of a written agreement between the community kitchen and the business or organization using it. This includes church kitchens, as well.
- **Copy of FDA 2013 Model Food Code:** In September 2018, Massachusetts adopted new regulations incorporating the FDA 2013 Model Food Code. Many of Massachusetts’s food regulations refer to it (e.g., “FC 1-101.10”). The regulations are aimed at limiting the risks of foodborne illnesses. The Commonwealth expects food businesses covered by it to be familiar with its contents. The Model Food Code covers a wide range of activities and types of food. Some localities require food businesses to keep a copy of it on the premises.

Wholesale Sales Only:

- **Food Processing/Distribution at Wholesale License:** If you cook, pack, can, store, or distribute food at the wholesale level, then you must first obtain this license. Applications are processed through the Department of Public Health.

Retail Sales Only:

- **Hawker and Peddler Permit (from Massachusetts Division of Standards):** The Division of Standards requires a person (not the business) who sells goods, including food products, through a “temporary or transient” business anywhere in the Commonwealth, whether at one location or several, to first obtain a Hawker or Peddler Permit. This includes those selling their food products at farmers’ markets or operating food trucks. There are some exceptions to this rule. For example, one of the street-vending laws (M.G.L. c. 101, § 15) allows farmers to sell at

farmers' markets their fruits, vegetables, and other farm products they grew themselves, without needing this license.

- **Hawker and Peddler Permit (from town or city):** In addition to the Hawker and Peddler Permit required by the Division of Standards, some cities and towns require food vendors to obtain a separate similar permit. This might be called a Hawker/Peddler Permit, Transient Vendor Permit, or Solicitor License. They may be charged daily, seasonally, or annually.
- **Temporary Food Establishment Permit:** If you plan to sell or serve prepared food at a pop-up or other temporary event, you must first get this permit, which is available from the Department of Public Health. As part of applying for this permit, the Department of Public Health will inspect your operation and review your plans for preparing and serving your food.
- **Other Specialized Permits:** Other permits may be required if you plan to sell your food product on a public sidewalk or other public property (e.g., **Stationary Vending License** from the Boston Department of Public Works), plan to sell on private property (e.g., **Use of Premises Permit** from the Boston Inspectional Services Department), or plan to sell in a city park (e.g., permit from the Boston Parks and Recreation Department).

Donor vs. Nonprofit Liability in Mass.

Donors: Massachusetts, like the Bill Emerson Act, protects donors against good-faith food donations (including food past the sell-by date) to nonprofits that distribute the food to those who need it. The **Massachusetts Good Samaritan Law** requires two things for this protection: (1) the food cannot be misbranded or adulterated (so must comply with the state's labeling laws), and (2) the donation cannot have been made out of "gross negligence, recklessness, or intentional misconduct."

Nonprofits: When a nonprofit receives the donated food, that food must have come from an inspected establishment, unless it came from a residential kitchen. This means that donated food generally must have been made in compliance with the food permits and licenses required by the Department of Public Health and the local agencies. Additionally, although the food may have come from an inspected "food establishment" or an uninspected residential kitchen, the nonprofit may still be subject to Department of Public Health inspection in the distribution of the food.

Outdoor Cooking:

- **Food Truck permits:** While there is no statewide permit specifically for food trucks, cities and towns have some similar and some unique requirements for them. For example, many localities require a permit for a mobile food operation, including in Boston, Cambridge, Lowell, Northampton, and Springfield. In addition, some cities and towns have specific permits related to food trucks. For example, Worcester has a permit for food trucks operating in "Food Truck Friendly Zones."
- **Outdoor Cooking permit:** Many cities and towns require those cooking outside with propane, such as at farmers' markets or in a food truck, to obtain a permit from the local fire department. Along with this usually come safety requirements and inspections.

I want to use a community kitchen to make food for immediate consumption that I want to donate but not sell. Which permits do I need?

Whether you plan to use a community kitchen only once, such as to prepare food for a single event, or regularly, and you do not intend to sell the food, then you **do not need permits associated with selling** (e.g., the Sales & Use Tax Permit or the Hawker & Peddler Permit).

That said, you may still be required to obtain permits or licenses **associated with food safety** (e.g., Food Protection Manager Certification or the Temporary Food Establishment Permit). It depends on the **type of event** and **type of food** you plan to serve. Generally, the Department of Public Health requires a “temporary food establishment” to (1) comply with the 2013 FDA Food Code and any additional requirements to protect against health hazards related to the event, (2) have a Food Protection Manager Certification, and (3) comply with various other sanitary, equipment, and serving food-safety rules. In addition, there are certain rules related to making you and the public aware of potential food allergens.

Some events will not need to obtain food permits, but the Department of Public Health has said many people are confused about whether their specific event is exempt. It is not always obvious. According to some towns, the following are **exempt events**:

- Bake sales offering only shelf-stable (no refrigeration required) foods for religious organizations,
- Private events for members only that are not advertised,
- Individuals or organizations offering uncut fresh fruit and vegetables, and

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Guiding Star Grange

Growing a healthy business at a shared kitchen incubator:

The Guiding Star Grange, the first grange in Massachusetts, was initially a social organization that supported farmers. The space has evolved over time, and during the grange’s last round of renovations, the kitchen was converted into a state-of-the-art commercial kitchen. The kitchen is now available for rent at low rates that cover only the cost of operating the kitchen. Among those who use the kitchen are food entrepreneurs, community groups, and wedding caterers. A nearby school rents the kitchen for student cooking classes.

Organization status: The Guiding Star Grange Kitchen is a licensed commercial kitchen in Greenfield, MA.

Arrangement with kitchen: Retail businesses or food entrepreneurs renting the kitchen for commercial purposes are required to have ServSafe Manager Certification, be licensed by the Greenfield Board of Health, and have an insurance policy for \$1 million. They must also enter in a formal written community use agreement. Groups that do not use the kitchen commercially, such as school groups, do not need a formal agreement or license.

Lessons learned: The kitchen manager quickly learned it was important to have a clear cleanliness protocol so that kitchen users understood their responsibilities in cleaning the kitchen after use. The kitchen now has a process in place to ensure that everyone cleans up after themselves.

Learn more:

<https://www.guidingstargrange.org/rentals/kitchen>

- Potlucks, but only if: (1) people gather to share food, (2) people do not receive any compensation for bringing food, (3) the event is non-commercial, (4) the event is sponsored by individuals or a nonprofit (including religious and charitable) organization, and (5) people gathering are informed that the food and the place in which it was made was not inspected.

The following events are **not exempt** and thus must get the required food permits:

- Fundraisers, and
- Nonprofit organizations offering food other than for a bake sale (but the fee will be waived if the organization distributes the food for free or at cost).

If you are still unsure about whether you will need to obtain a permit for your event, the best thing to do is call the Department of Public Health and ask.

4.0 Protecting Against Liability: Risk Management and Insurance

4.1 Liability

Liability is legal responsibility for a harm associated with your organization. For example, if a visitor injures herself in the kitchen by slipping on a wet floor or becomes ill eating your food product, and then she sues you for her injuries, your business could be found liable for those injuries and need to pay up. You should take steps to reduce the risks in your kitchen to make it less likely that this kind of accident might happen. In addition, you should obtain insurance to protect your business from the financial burden of this kind of accident.

If you are an existing organization considering opening your kitchen to new users, you may already have a risk management plan and insurance in place for your operations. This section will raise additional steps you may want to take to protect your organization when you open your kitchen to community groups or entrepreneurs.

4.2 Risk Management

What can community kitchens do to manage risk? Obtain all licenses and permits required by state and local health departments as described in Section 3.

- Obtain the appropriate insurance coverage.
- Keep all kitchen equipment in good working order and keep the kitchen area clean and safe.
- Require kitchen users to sign a community use agreement. You can find a sample community use agreement in Section 5. The agreement should include an indemnification clause, which will hold the kitchen harmless in the event of a lawsuit.
 - As part of the community use agreement, require kitchen users to have proof of insurance. Typically, this will be general liability insurance held by the entrepreneur or organization using the kitchen.
 - As part of the community use agreement, require kitchen users to have a Food Protection/Safety Manager Certification accepted in your state.
 - As part of the community use agreement, require food entrepreneurs planning to sell their product commercially to comply with state and local food production licenses.
 - As part of the community use agreement, include a list of the kitchen's Rental and Use policies.

- If possible, have a lawyer review the agreement before you start using it.
 - Provide a kitchen orientation to kitchen users.
- Require an organization’s members who will be using the kitchen to provide contact information in case of emergencies.

What can kitchen users do to manage risk?

- Obtain all required licenses and certifications required by the state and local governments, as described in Section 3.
- Obtain the appropriate insurance coverage.
- Carefully review the community use agreement with the kitchen and the kitchen’s Rental and Use policies.
 - Be sure you understand all your responsibilities as a kitchen user.
 - Address any concerns you have with the kitchen’s policies before you sign the agreement.
 - If possible, find a lawyer to review the agreement before you sign it.
- Ensure that all kitchen equipment that you plan to use is in good working order and notify the kitchen immediately if it is not.
- Be sure that anyone working with you in the kitchen is familiar with the kitchen rules and properly trained to use kitchen equipment.
- Get to know your state’s food donation law if you are planning to donate food that you prepare.
 - If you are planning to donate food, you are protected from liability under the law if your products are donated are “apparently wholesome” or an “apparently fit grocery product” and meet “all quality and labeling standards imposed by Federal, State, and local laws and regulations.” This is a provision of the federal Bill Emerson Good Samaritan Food Donation Act, and there is a similar liability protection in state law in Massachusetts.

Single-Use Kitchen Users

Some kitchen users are looking to use a kitchen for a one-time event, for example a community meal or gathering. The permitting and insurance requirements described in this guide might seem pretty demanding for that kind of user.

What permits and insurance should one-time kitchen users obtain?

- Even if you are using a kitchen one time, you should obtain insurance and name the kitchen as an additional insured party.
- Someone in your group should have Food Protection Manager Certification such as ServSafe.

What should kitchens require from one-time users?

- You should require a one-time user to have appropriate insurance, and ask the user to include your kitchen as an additional insured party on the policy.
- You should require someone in the group to have Food Protection Manager Certification such as ServSafe.

Both parties should carefully review and sign a community use agreement.

You should check with your local health department to see if there are additional requirements in your community.

4.3 Insurance

This section provides a brief overview of types of insurance coverage that may make sense for community kitchens and their users. The appropriate insurance coverage will depend on what exactly your business does. For example, does your community kitchen also have a small retail store? Does your community group produce baked goods for commercial sale? Does your food startup own a motor vehicle in the business's name? These considerations and many more will affect what kind of insurance you need. We recommend that you consult an insurance broker to determine the exact coverage that is right for your business.

What type of insurance should kitchens consider carrying?

- **Business Owner's Policy:** This coverage typically provides both general liability insurance and commercial property insurance.
 - **General liability insurance:** This insurance coverage is designed to protect an organization's assets and cover the cost incurred from lawsuits related to personal injury on the premises or property damage to a third party.
 - **Commercial property insurance:** This insurance coverage is designed to protect business property, including kitchen equipment and tools, from a fire, vandalism, theft, or other losses.
 - Coverage of \$1 million per occurrence and \$2 million general aggregate is industry standard.
- **Other policies to consider:**
 - **Workers compensation:** This is required to cover any employees of the kitchen.
 - **Commercial auto:** This coverage is for any vehicles that owned in the kitchen's name.
 - **Food spoilage coverage:** This coverage can protect a kitchen's food inventory, including the food products stored there by users, from spoilage, for example if a freezer breaks or there is a power outage.

What type of insurance should community groups consider carrying?

- **General liability insurance:** This insurance coverage is designed to protect an organization's assets and cover the cost incurred from lawsuits related to injury of a third party.
- **Other policies to consider:**
 - Depending on the community group's activities, other coverage may be needed.

What type of insurance should entrepreneurs consider carrying?

- **Business Owner's Policy:** This coverage typically provides both general liability insurance and commercial property insurance.
 - **General liability insurance:** This insurance coverage is designed to protect an organization's assets and cover the cost incurred from lawsuits related to personal injury on the premises or property damage to a third party.
 - **Commercial property insurance:** This insurance coverage is designed to protect business property, including kitchen equipment and tools, from a fire, vandalism, theft, or other losses.

- Coverage of \$1 million per occurrence and \$2 million general aggregate is industry standard.
- Other policies to consider:
 - Workers compensation: This coverage is required for anyone with employees.
 - Commercial auto: This coverage is for any vehicles that owned in the business's name.
 - Food product liability insurance: This type of insurance protects will provide protection from financial loss if some of the food product is defective and causes harm, for example if a product is recalled.

What insurance company should my organization use?

Many insurance companies can provide the types of insurance that community kitchens and users will need. Large national insurers, such as Hartford, Liberty Mutual, Aetna, and Nationwide, provide this type of insurance. You could also consider a company that focuses on non-profit insurance, such as Nonprofits Insurance Alliance Group, or food producers, such as Food Liability Insurance Program.

What should I do if...?

Accidents can happen, even when your kitchen or organization has worked hard to create a safe environment. If an injury happens in the kitchen, a foodborne illness comes from your product, or a product is improperly labeled, you may need to take steps to protect your organization financially and legally. After dealing with any immediate safety concerns, like contacting emergency services if needed, you should contact your insurance broker to file a claim and contact an attorney.

5.0 Sample Community Use Agreement

A community kitchen and its users should enter into a written agreement for the use of kitchen space. This sample community use agreement is an example agreement between a community kitchen and a kitchen user. The agreement lays out of the expectations for both the kitchen and the user.

This sample community use agreement is just an example.

Community kitchens should carefully review this sample agreement and adapt it to reflect the characteristics of your own kitchen. You should also include your own rental fees in Appendix A and your own Rental and Use Policy in Appendix B. It is a good idea to have an attorney review your agreement before you start using it with kitchen users.

Community kitchen users should carefully review any agreement that the kitchen asks you to sign and be sure to raise any concerns about the agreement before you sign. Again, it is a good idea to have an attorney review your agreement with the kitchen before you sign it to be sure you are properly protected.

COMMUNITY USE KITCHEN USER SERVICES AGREEMENT

THIS COMMUNITY USE KITCHEN USER SERVICES AGREEMENT (the “Agreement”) is hereby made, entered into, and effective as of this ____ day of _____, 201____, by and between [Community kitchen’s legal entity name], a [type of Organization, state of incorporation and address] (the “Organization”) and _____ [Kitchen user], with a [place of business or residence] at _____, _____ (“User”) (together with the Organization, the “Parties” and each individually a “Party”).

WITNESSETH:

User hereby joins this Agreement as a user of the Organization’s community use kitchen located at _____ (the “Kitchen”).

Full Legal Name of User: _____

Legal Status of User (Check One):

- Individual Partnership Corporation
- Limited Liability Company
- Nonprofit
- Other _____

Authorized Representative

Name: _____

Title: _____

(e.g., Sole Proprietor, Partner, President, Manager)

Mailing Address: _____

Email: _____

Telephone: _____

User and the Organization hereby agree to the following terms and conditions:

1. **SERVICES.** The Organization will provide User with nonexclusive access to and use of the Organization’s shared use kitchen facility (the “Kitchen”), subject to the terms of this Agreement. User acknowledges that this Agreement does not constitute a lease.
 - a. **FACILITY.** The Kitchen is a shared-use facility equipped with stoves, ovens, sinks, refrigerators, tables and/or other food preparation equipment. The specific equipment available in the Kitchen is subject to change from time to time. The User agrees to promptly notify the Organization of any damage, malfunction or unsafe condition

relating to any such equipment of which User becomes aware, and shall take all reasonable care in its use of such equipment.

- b. USER PREREQUISITES.** User shall complete the following activities and provide the documentation listed below to the Organization before User may enter and use the Kitchen:

 - 1. Complete the application form.
 - 2. Pay the application fee and deposit.
 - 3. Successfully complete the Kitchen Orientation & Training provided by Organization.
 - 4. Provide proof of liability insurance, as detailed in Section 4.C, below.
 - 5. Provide copies of all permits, documents, certificates and licenses set forth in Section 3.D, below
 - c. FOOD PRODUCTS.** User must obtain all applicable authorizations from the applicable local and state regulatory agency(ies) prior to preparing and distributing food products through its use of the Kitchen.
 - d. SCHEDULING OF USE.** Because the Kitchen is a shared use facility, the Organization has sole control over the times and manner of all users' access to and use of the Kitchen. User shall request each desired use of the Kitchen in advance in accordance with the Organization's scheduling practices and policies applicable to the Kitchen from time to time. The Organization will make reasonable efforts to create a schedule for User's use of the Kitchen that accommodates all users' reasonable requests
 - e. CANCELLATION.** The Organization reserves the right to cancel User's use or access to the Kitchen at any time, even when such use is in progress, should User or any of User's guests or invitees violate the terms of this Agreement. This cancellation shall be at the Organization's sole discretion, which decision shall be binding and final. In such cases, the Organization shall retain all payments and shall not be liable for any charges incurred as a result of such cancellation.
- 2. PAYMENT TERMS.** User shall pay the Organization rent for each hour User occupies the Kitchen and uses the services according to the following terms:
- a. FEE SCHEDULE.** The fees for various uses of the Kitchen and/or equipment are set forth in the Fee Schedule, attached to this Agreement as Exhibit A. The Organization may change this fee schedule at any time and will notify users of changes with at least five (5) days prior notice. The updated fees will apply to all use of the Kitchen following such notice period, included use that was scheduled prior to the fee change becoming effective.
 - b. PAYMENT TERMS.** All checks shall be made payable to the Organization. All fees, except the hourly rate, must be paid before the Kitchen may be used. The hourly rates must be paid within fifteen (15) days of the billing date. The Organization reserves the right to add a 5% late fee to any accounts that are thirty (30) days overdue. After thirty (30) days of non-payment, User will be suspended from the Kitchen until User's account is paid in

full. After forty-five (45) days of non-payment, this Agreement will be terminated and User's security deposit will be applied to User's outstanding account balance.

3. USER DUTIES. User agrees to assume the following duties in its use of the Kitchen under this Agreement:

- a. RENTAL AND USE POLICIES.** User acknowledges that User has received and read the Organization's policies, which include the Organization's Rental and Use Policies which are attached to this Agreement as Exhibit B. The Organization reserves the right to amend the Rental and Use Policies at any time upon written notice to User. If User violates these Policies, the Organization may impose a fine upon User, and upon repeated violation, the Organization may in its discretion terminate this Agreement. User agrees to comply with all of the rules and obligations set forth in the Rental and Use Policies as currently stated and as modified at any time in the future.
- b. CONTACT INFORMATION.** User promises that the identification, address and contact information stated at the beginning of this document is current and correct. User agrees to keep the Organization informed of any changes in User's legal identity, address or other contact information.
- c. FOOD EQUIPMENT SAFETY AND SANITATION.** User shall ensure that all of its personnel have successfully completed ServSafe or equivalent training before they may use the Kitchen. User must also maintain a clean work space before, during and after food production.
- d. PERMITS.** User is responsible for adhering to and operating in accordance with all federal, state and local rules and regulations as they apply to their use of the Kitchen. User shall acquire, maintain and submit copies of all permits, documents, certificates and licenses set forth in Exhibit C.
- e. HOUSEKEEPING RESPONSIBILITIES.** User agrees to comply with the following:
 1. Users will provide their own cleaning towels, cooking items, ingredients, small wares and other special items necessary to their specific production needs.
 2. No equipment or items owned by the Organization shall ever leave the premises.
 3. Users will strictly follow the Rental and Use Policies provided by the Organization before, during and after each use of the Kitchen.
 4. If User fails to leave the Kitchen in the proper condition, User will receive a warning and be responsible to pay the actual cost of cleaning the Kitchen as determined by the Organization. Upon a second such failure, User shall pay a fine (set out in the Rental and Use Policies) and actual cleaning costs. Upon a third such failure, this Agreement shall be terminated.
- f. ASSIGNMENT.** Except for User's properly trained and authorized employees, User may not transfer or assign User's privileges under this Agreement to any third party. This includes the disclosure of the User's security entrance code. User shall not grant access or allow a third party to operate in the kitchen any time. Violation of this duty is grounds for immediate termination of this Agreement and the immediate discharge of that User

from the kitchen. The Organization may assign or otherwise transfer its rights and obligations under this Agreement without the prior consent of User. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns.

- g. SIGNS AND ADVERTISING.** No signs or advertising matter shall be painted or attached in any way on the Organization's premises.
 - h. FACILITY ACCESS.** User may have access to the building during User's reserved times only. User will have access to the building front door to access the Kitchen and the designated bathroom(s) associated with the Kitchen. User will not have access to any other parts of the building. All users are required to sign in when they arrive at the facility and sign out when they are finished cleaning the facility. Failure to accurately sign in and out may result in User being denied use of the facility.
- 4. HEALTH AND SAFETY RESPONSIBILITIES.** To ensure the safety of all persons associated with the Kitchen, User shall also comply with the following:
- a. WORKER SAFETY.** User is exclusively responsible to ensure that User and its employees and volunteers observe proper safety procedures while using the Kitchen. All User employees and employees must have registered with the Organization and provided contact information in case of emergencies before being authorized to work on the Organization's premises.
 - b. RIGHT OF INSPECTION.** The staff of the Organization retains the right to enter and inspect operations at any time during use. The applicable local, state and federal regulatory agencies, including the Food and Drug Administration, shall have the right to inspect the Kitchen without prior notice at any time.
 - c. LIABILITY INSURANCE.** Prior to entering or using the facility, User shall provide the Organization with proof of general liability insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 general aggregate, which names the Organization as an additional insured party and which provides that the Organization shall receive at least seventy-two (72) hours prior written notice of any cancellation, termination or material amendment of such general liability insurance. A certificate of insurance must be supplied by User's insurance company. Original insurance policies or certified copies of policies may be required by the local county government at any time. Current and valid insurance policies meeting the minimum requirements set forth in this Section shall be maintained by User for the duration of their use of the Kitchen.
- 5. LIMITATION OF LIABILITY.** User agrees that any and all claims involving the Organization are strictly subject to the following:
- a. INDEMNITY.** User will indemnify, defend and hold harmless the Organization and its officers, directors, employees, and agents from and against any and all liabilities, claims, demands, suits, losses, damages, costs, attorneys' fees and expenses (collectively "Damages"), arising out of or relating to the use of the Kitchen by User or any individual accessing the Kitchen with User's authorization or a key issued to User, including

without limitation any Damages arising out of or relating to (i) any negligent or intentional act or omission on the part of User or its officers, employees, former employees, agents, representatives, guests or invitees or (ii) the sale, distribution, or consumption of any product made by User on the Organization's premises.

b. LIABILITY. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE ORGANIZATION SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND (INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE) SUSTAINED BY USER OR BY ANY THIRD PARTY ARISING IN ANY WAY OUT OF THIS AGREEMENT, USER'S USE, OPERATION OR OCCUPANCY OF THE KITCHEN OR ORGANIZATION'S PREMISES, OR SALE, DISTRIBUTION OR CONSUMPTION OF ANY PRODUCT MANUFACTURED ON THE PREMISES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, USER ACKNOWLEDGES THAT THE ORGANIZATION DOES NOT CONTROL THE ACTIONS OR OMISSIONS OF OTHER USERS OF THE KITCHEN AND SHALL HAVE NO LIABILITY IN CONNECTION THEREWITH. THE ORGANIZATION ASSUMES NO RESPONSIBILITY FOR THE SECURITY OF USER'S EQUIPMENT, SUPPLIES OR INVENTORY NOT OWNED OR MAINTAINED BY THE ORGANIZATION. USER SHALL BE RESPONSIBLE FOR, AND REIMBURSE THE ORGANIZATION FOR ANY LOSS, DAMAGE OR INJURY TO THE BUILDING, ITS CONTENTS, THE GROUNDS, THE EQUIPMENT OR TO ANY PERSON, ARISING OUT OF OR IN CONNECTION WITH USER'S USE OF THE KITCHEN. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL ORGANIZATION'S LIABILITY TO USER IN CONNECTION WITH THIS AGREEMENT, USER'S USE, OPERATION OR OCCUPANCY OF THE KITCHEN OR ORGANIZATION'S PREMISES, OR SALE, DISTRIBUTION OR CONSUMPTION OF ANY PRODUCT MANUFACTURED ON THE PREMISES EXCEED THE AMOUNTS PAID BY USER FOR THE USE OF THE KITCHEN THAT RELATES TO THE CLAIM.

c. NO WARRANTIES. TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE ORGANIZATION DOES NOT MAKE ANY WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE KITCHEN, ANY EQUIPMENT AVAILABLE FOR USE IN THE KITCHEN OR THE RESULTS OF ANY USER'S USE OF THE KITCHEN OR ANY SUCH EQUIPMENT. USE OF THE KITCHEN IS PROVIDED SOLELY ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND NO WARRANTY IS MADE THAT THE KITCHEN OR ANY PARTICULAR EQUIPMENT WILL BE AVAILABLE FOR USER'S USE AT ANY PARTICULAR TIME, THAT REPAIRS WILL BE MADE OR THAT EQUIPMENT WILL NOT MALFUNCTION.

6. CONFIDENTIALITY. User agrees and acknowledges that the Kitchen is a shared-use facility, and may be occupied and used simultaneously by other third-party users ("Other Users"). The Parties further acknowledge and agree that the conduct of User's business and the production of User's food products may involve the use of recipes, techniques, sources of ingredients, financial and business records and other information that is owned and used exclusively by User which constitute trade secrets or proprietary knowledge that must remain confidential for the protection of User's business ("Confidential Information"). User acknowledges and agrees that

Other Users may also have Confidential Information applicable to the conduct of their own business.

7. TERMINATION.

- a. **TERM.** This Agreement shall continue indefinitely unless amended or terminated as provided hereunder.
- b. **SURVIVAL.** The rights and obligations of the Parties pursuant to Sections 5, 6, 7.B and 8 of this Agreement, and any financial obligation of User to the Organization, shall survive the termination of this Agreement.
- c. **VOLUNTARY TERMINATION.** This Agreement may be terminated by either Party at any time, for any reason or for no reason, upon notice to the other Party.
- d. **BREACH OR DEFAULT.** User must correct any violation, breach or failure to keep or perform any conditions of this Agreement or the Rental and Use Policies within three (3) days after receiving written notice of such from the Organization. If more than three (3) days pass without any corrective action taken by User, the Organization may, in its sole discretion, terminate this Agreement. This Agreement may also be terminated by the Organization as otherwise provided in this Agreement.
- e. **USER PROPERTY.** Upon termination, User shall remove all of User's property from the Kitchen. The Organization may dispose of any of User's property that is not removed upon termination as Organization sees fit.

8. MISCELLANEOUS PROVISIONS.

- a. **JURISDICTION AND VENUE.** The Parties agree that this Agreement shall be governed by and construed in accordance with, and any judicial or arbitral proceeding relating hereto shall apply, the internal laws of [insert state of organization], excluding its conflicts of laws principles. Any litigation relating to this Agreement shall be initiated and conducted in the state or federal courts of [insert state and county of organization], and the parties irrevocably and unconditionally consent to the exclusive jurisdiction of such court.
- b. **RELATIONSHIP OF PARTIES.** User shall operate as an independent contractor for all purposes. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Organization and either the User or any employee or agent of User. User is an independent contractor and not an employee, agent, joint venture or partner of the Organization.
- c. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement, including the Exhibits, sets forth the entire agreement between the Parties. All prior conversations or writings between the Parties hereto or their representatives are merged within and extinguished. No amendment or modification may be made to this Agreement except by a writing signed by an authorized representative of each Party.
- d. **COMPLIANCE WITH LAWS.** Each Party to this Agreement shall comply with all applicable federal, state, local and foreign laws, rules and regulations and shall obtain all necessary permits or licenses that may be required to perform the obligations set forth in this Agreement.

- e. **SEVERABILITY.** If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and shall be interpreted so as best to reasonably effect the intent of the Parties.
- f. **NO WAIVER.** No waiver or failure to exercise any option, right or privilege under the terms of this Agreement by either of the Parties hereto on any occasion or occasions shall be construed to be a waiver of the same on any other occasion or of any other option, right or privilege.
- g. **HEADINGS.** The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- h. **ENJOYMENT.** The Kitchen has been furnished to accommodate a wide variety of community groups and entrepreneurs. User agrees to work cooperatively and collectively to make this shared-use space work for all.

IN WITNESS WHEREOF, the Parties hereto have executed this Community Use Kitchen User Services Agreement as of the Effective Date.

ORGANIZATION

By: _____

Name: _____

Title: _____

USER

By: _____

Name: _____

Title: _____

Exhibit A

Fee Schedule

[This is sample language only. Add the kitchen's rental rates in this section.]

A. Standard Hourly Rates

The Kitchen's standard rental rates are [\$xx.xx] per hour Monday-Friday and [\$xx.xx] per hour Saturday and Sunday. Standard rates are based on hours reserved in advance.

B. Additional Hours

User may submit a written request to the Organization to request additional hours. Under no circumstances is User permitted to access the Kitchen without approval by the Organization.

C. Security Deposit

User will provide half of their first month's estimated rent, or minimum charge if greater, as a security deposit prior to their start date. This deposit will be held by the Organization for up to thirty (30) days following termination of this Agreement, during which time it will be applied to any outstanding bills and/or repairs to, or replacements of, Kitchen equipment or properties damaged by User. Any remaining amount of the security deposit will be returned to User at the end of such period provided that User has returned any and all keys and keycards issued to User hereunder.

D. Storage Charges

Users meeting the ten (10) hour minimum usage requirement will be provided one (1) shelf for dry storage and one (1) shelf for cold storage, based on availability, at no charge. These users may request extra storage space, if available, at a rate of [\$xx.xx] per month, per storage shelf. User will be provided a locking device for each dry storage unit. Lost or stolen locking devices and/or lock keys must be brought to the Organization's attention immediately for replacement. A replacement fee of [\$xx.xx] per lock/key will be billed to User with the following month's rent.

E. Cancellations

Cancellations of reserved kitchen times must be submitted, in writing, to the Organization, at least seven (7) business days prior to the requested cancellation, to be credited the full amount of the cancelled times. If User submits a written cancellation within 168-48 hours' notice, User will be credited half of the amount of the cancelled times. Cancellations received with less than 48 hours' notice will not receive credit for hours lost, unless cancellation is due to an illness. User is only allowed three (3) cancellation credits due to illness during the contract period. Any additional cancellations will require 48 hours' notice to receive credit.

Exhibit B

Rental and Use Policies

[Add the kitchen's specific rental and use policies here. This section could include, for example, rules for using certain equipment in the kitchen.]

Exhibit C

Required Permits

[Ask kitchen user to provide copies of required permits.]

6.0 Useful Resources

- Farm to Institution New England Food Processing Resources:
<https://www.farmtoinstitution.org/new-england-local-food-processing-white-papers>
- New England Food Entrepreneurs: <https://nefoodproducers.org/>
- Change Lab Solutions Checklist for Joint Use Agreements:
http://changelabsolutions.org/sites/default/files/CLS_JointUse_checklist_FINAL_20120517_1.pdf
- Vermont Food Venture Center Kitchen Rates:
https://hardwickagriculture.org/sites/default/files/documents/vfvc_kitchen_rates_2015.pdf
- CLF's How to Choose a Business Structure: A Decision Guide:
http://action.clf.org/site/Survey?ACTION_REQUIRED=URI_ACTION_USER_REQUESTS&SURVEY_ID=4620
- FDA's How to Start a Food Business:
<https://www.fda.gov/Food/ResourcesForYou/Industry/ucm322302.htm>
- FDA's Guidance for Small Entities on Current Good Manufacturing Practices, Hazard Analysis, and Risk-Based Preventive Controls for Human Food:
<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm525201.htm>
- FDA's Guidance for Small Entities on Food Facility Registration:
<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm331957.htm>
- Harvard Law School Food Law & Policy Clinic's Bill Emerson Act Summary:
<https://www.chlpi.org/wp-content/uploads/2013/12/Emerson-Act-Legal-Fact-Sheet.pdf>
- Massachusetts Community Use Tool Kit: https://www.chlpi.org/wp-content/uploads/2013/12/MA-Community-Use-Toolkit-March_2016.pdf
- Massachusetts Dept. of Agriculture Food Processors Resource Manual:
<http://www.mass.gov/eea/docs/agr/markets/culinary-tourism/massachusetts-department-of-agricultural-resources.pdf>
- Food Safety Guidance from University of Massachusetts: <https://ag.umass.edu/food-science/entrepreneur/food-safety-plan>
- Food Donation Guide: http://www.recyclingworksma.com/wp-content/uploads/2015/07/Legal_Fact_Sheet_-MA_Liability_Protectons-FINAL_RWF.pdf

- Starting a Wholesale Food Business: <https://www.mass.gov/guides/starting-a-wholesale-food-business>
- Massachusetts Dept. of Public Health Temporary Food Establishment Packet: https://massdocs-digital-mass-gov.s3.amazonaws.com/s3fs-public/2018/temp-food-operation-all-files.pdf?yIb15UYjxBGEPyf7b2OgKHJRX57_16ZT

This document is a compilation of various topics, is intended as a general discussion of the topics covered, and does not constitute the rendering of legal advice or other professional advice by its authors. If any reader of this guide has questions about the topics addressed in the document or other legal topics, s/he should seek the advice and counsel of their own attorney.

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