



What Legal Risks Do Farmers Markets Face?

Farmers markets face legal risks from a wide variety of sources. Knowing the source and general nature of those risks is the first step to successfully managing them. The Farmers Market Legal Toolkit identifies many of the most relevant legal concerns facing markets and describes how appropriate risk management tools can address them.

Common Sources of Legal Risk for Farmers Markets

- Injuries to People & Damage to Property
- Food-Related Illness
- Vendor Relationships
- Relationship to Host Site
- Employment & Labor Law Risks
- ADA Compliance

How Do Farmers Markets Manage Risks?

Once risks are identified, the question is how to best manage these risks. This section highlights how a range of legal risks that farmers markets experience can be managed with four primary tools: governance, insurance, market rules and procedures, and recordkeeping. Considering each of these strategies will help your market become more resilient.

Risk Management Tools

- Governance
- Insurance
- Market Rules & Procedures
- Recordkeeping

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farmersmarketlegaltoolkit.org

RISK

Injuries to People & Damage to Property



Injuries to people and damage to property may be the two greatest risks any farmers market faces. These risks are likely to materialize at some point, and when they do, they are likely to be expensive. Fortunately, farmers markets have many options to reduce the likelihood that a personal injury or property damage claim will have a significant negative impact on the farmers market. The following are the most common ways injury and property damage can happen at a farmers market.

Slip & Fall One of a farmers market’s most common risks is having a customer slip or trip over an obstruction, fall, and become injured. Slipping hazards can include wet grass, ice, snow, spilled liquids, electrical cords, potholes, or cracks in concrete.

Tents, Canopies & Umbrellas Despite their many uses, tents, canopies, and umbrellas can create hazards at a farmers market. Customers may trip or harm themselves on stakes, lines, or weights used to secure a tent. Tents can become dislodged by wind and injure people or damage property or products for sale. Umbrellas that extend out into the market hallway can injure passersby.

Vehicle Traffic With many people and vehicles in close proximity, it’s easy to see how accidents can occur. Vendors and customers may cause accidents that hurt someone, damage customers’ cars, or damage vendors’ vehicles and products. If a traffic collision occurs and a customer is injured, generally the vendor, the farmers market, and potentially the landowner can become targets of a lawsuit.

HOW TO MANAGE THIS RISK

<p>Market Rules & Procedures</p>	<p>Markets can reduce the likelihood of personal injury and property damage by establishing and enforcing market rules regarding vendors’ responsibilities for their spaces. Rules should include measures to reduce slipping and tripping hazards, standards for tents and canopy equipment, and measures to keep pedestrian and vehicular traffic separate. Using a market day safety checklist can make risk prevention a standard market procedure.</p>
<p>Insurance</p>	<p>First, insure the market. Commercial general liability (CGL) insurance can protect a market from costs arising from the majority of personal injury and property damage claims. Second, encourage or require vendors to have CGL insurance. If a vendor is at fault for a personal injury or property damage claim and carries their own insurance, the vendor’s insurance will likely pay on any claims or judgments, reducing the market’s liability.</p>
<p>Recordkeeping</p>	<p>The primary recordkeeping tool to manage risks from personal injury or property damage is an <i>incident report</i>. Some markets may be required to keep incident reports as part of their insurance policy; markets should be sure they understand any recordkeeping requirements from their insurer that could affect their insurance coverage. Even if a market’s insurance company does not require an incident report, it’s a best practice to fill one out each time an injury or property damage occurs at the market. Incident reports can help farmers markets identify where accidents are occurring so rules or procedures can be revised accordingly. They can also help the market in case a legal claim is not covered by the insurance company and the market must defend itself on its own.</p>
<p>Governance</p>	<p>An LLC, corporation, nonprofit, or cooperative can insulate market owners’ personal assets from business liabilities. However, assets belonging to the business itself are always available to satisfy business liabilities.</p>



Food-Related Illness

Thousands of Americans are hospitalized by food-borne illnesses every year. Others are harmed by food allergens or by impurities in food, such as tiny pieces of metal, glass, or plastic. Some people shop at farmers markets to find safer, more wholesome food. But food-related illnesses are a risk anywhere food is sold.

This topic includes two risk areas: **food contamination** and **regulatory noncompliance**. Contamination can occur at various points along the food production chain, from a growing field to a food-sampling table. It's also important to remember that vendors and markets serving food must comply with local health department regulations and follow practices intended to keep food safe.

HOW TO MANAGE THIS RISK

<p>Market Rules & Procedures</p>	<p>Market rules should state that the vendor is responsible for knowing and complying with all laws, regulations, and permitting or license requirements at federal, state, and local levels. Some farmers markets go beyond that by learning the laws and applicable license and permit requirements themselves. Then they require vendors to show the market that they have any required licenses before allowing those vendors to sell. This is a labor-intensive approach, but it creates more assurance that the rules are being followed. This can help the farmers market avoid liability for vendors' actions.</p>
<p>Insurance</p>	<p>Farmers markets can protect themselves from liability for injuries from food safety incidents by purchasing commercial general liability (CGL) policies. In many cases, this will cover the farmers market if someone claims the market is responsible for an incident.</p>
<p>Recordkeeping</p>	<p>Collecting copies of vendor licenses and permits may be useful in showing the market didn't negligently allow vendors to sell without required licenses, should an insurance claim or a lawsuit arise. Some farmers markets like to collect other records such as proof of specific food safety trainings. These records could be useful in the unlikely event someone claims the farmers market was negligent in its selection or vetting of vendors.</p>
<p>Governance</p>	<p>A business structure is one of the most basic tools to limit liability. An LLC, corporation, nonprofit, or cooperative can insulate market owners' personal assets from business liabilities. However, assets belonging to the business itself are always available to satisfy business liabilities</p>



RISK

Vendor Relationships

Vendors are central to the life and viability of a farmers market. At the same time, conflicts involving vendors are a real possibility. For example, a vendor might:

- Become disgruntled with a decision by the market management
- Violate market rules
- Be displeased with a booth/stall assignment
- Use tactics to market product and attract customers that are disagreeable to customers or other vendors
- Start a conflict with another vendor over pricing or product selection

These conflicts can lead to an array of undesirable outcomes, from unpleasant interactions to a lawsuit. Although vendor lawsuits against markets are uncommon and usually unsuccessful, the stress and bad publicity alone can negatively impact a farmers market.

Discrimination and eviction are two uncommon but serious legal claims a vendor could bring against a market.

Discrimination

Private businesses are given a wide berth to develop their enterprise in the manner they see fit. However, businesses are not allowed to discriminate against specific protected classes, which includes making decisions on the basis of race, gender, and other factors. Specific protected classes vary from state to state. Making decisions based on these characteristics is a potential discrimination problem. Making solid business choices based on other factors is not discrimination.

Eviction

Wrongful eviction is a possible legal claim when someone is removed from a space they are entitled to occupy. Choosing vendors to participate in a market and prohibiting others is not a legal matter of eviction. Eviction can only happen where a person or business has a legal right to occupy a space. Rarely would farmers market vendors have a legal right to occupy a space at a farmers market.

HOW TO MANAGE THIS RISK

<p>Market Rules & Procedures</p>	<p>Strong rules and procedures are perhaps the most important risk management tool for managing vendor relationships. Clear rules and procedures create predictability and accountability, both of which minimize the chance of conflict and the chance that any conflict will escalate into a legal matter. These procedures should include a process for addressing vendor complaints.</p>
<p>Insurance</p>	<p>Insurance has a limited role to play in managing vendor risks. It's possible that a vendor disagreement could escalate into an issue related to whether a business owner or nonprofit director performed his or her responsibilities to the entity, and in this case, directors and officers (D&O) insurance may be useful. The most likely legal claims that could be made by vendors are discrimination and eviction, which are not generally managed by insurance.</p>
<p>Recordkeeping</p>	<p>Keeping good records can reinforce a market's rules and procedures. For example, if a farmers market creates a vendor complaint process, it should document and record that process. Notes should be kept of interviews with vendors or site tours the manager may perform as part of the process. Farmers markets should keep vendor applications on file and make a written note of how each applicant stacks up against decision-making criteria.</p>
<p>Governance</p>	<p>Any business structure should have a procedure for reviewing the performance of managers and executive directors. Reviewing a manager or executive director's performance may help the farmers market in identifying and ending behavior that might lead to poor vendor management or a lawsuit for discrimination, eviction, etc.</p> <p>An LLC, corporation, nonprofit, or cooperative can insulate market owners' personal assets from business liabilities. However, assets belonging to the business itself are always available to satisfy business liabilities.</p>



Relationship to Host Site

Chances are that a farmers market doesn't own the property where it operates. More likely, it rents or leases space from a business, individual, or government entity. Some farmers markets have formal written agreements or leases in place and others rely on a verbal understanding.

Either way, using rented or leased property can present risks for the farmers market:

- ▶ Farmers markets and landowners may disagree about responsibility for cleanup, safety, traffic, or other concerns.
- ▶ The landowner may decide to make the property available to someone else, start construction, change the layout, or otherwise make it difficult for the farmers market to operate.
- ▶ The farmers market and landowner may disagree about when the market may operate, for how long, and on what days.

HOW TO MANAGE THIS RISK

<p>Market Rules & Procedures</p>	<p>Market rules are an important way to ensure the farmers market's obligations to landowners are met. For example, the landowner may prohibit animals or parking in certain areas. In almost all circumstances, if a vendor breaks those rules, the result is the same as if the farmers market itself broke the rules. Farmers markets should make sure that vendors and customers know what acts are prohibited and the market should enforce those rules. Otherwise, the farmers market risks violating its agreement with the landowner.</p>
<p>Insurance</p>	<p>Commercial general liability (CGL) insurance is an essential risk management strategy for markets. In all likelihood, the market's agreement with the landowner will require that the farmers market carry insurance for both liability and property damage that could occur as a result of the farmers market's use of the property.</p>
<p>Recordkeeping</p>	<p>When it comes to relationships with host sites, the most important record to keep is the one that gives permission to be on the site. This record can be a lease, a rental agreement, or a license. Each of these are ways to receive permission to be on someone else's property. Market leaders should ensure that they understand what permissions are included in their agreement and work to make sure that the document clearly outlines when and how the market will be able to use the premises.</p>
<p>Governance</p>	<p>In terms of internal governance, any business structure should have a procedure for reviewing and approving leases, rental agreements, and licenses. These agreements are vital to the stability and continuity of a farmers market.</p> <p>An LLC, corporation, nonprofit corporation, or cooperative can insulate market owners' personal assets from business liabilities. However, assets belonging to the business itself are always available to satisfy business liabilities.</p>



Employment & Labor Law Risks

Farmers markets need to be aware of how employment laws affect their business or organization. Many markets do not sufficiently understand the complexity of employment law. Confusing though it may be, not knowing the law is not an excuse for violating it. Further, employment law focuses on the facts of a situation, not on titles. For example, a farmers market might use “intern” as a job title and operate on the assumption that that person is not an employee. Yet under the law, an intern might be an employee and in that case employment laws would apply, regardless of the job title.

The bottom line is that every farmers market must research and understand employment laws. These rules are detailed, and enforcement by workers, state regulators, and federal regulators is not uncommon. The following are different kinds of employment and labor law risks that farmers markets should consider.

Employment Classification Risks Workers must be properly classified as volunteers, interns or apprentices, independent contractors, or employees. This can be very complex. The following are brief explanations of the legal definitions of these categories.

Volunteers

For-profit businesses cannot have volunteers because, under the law, a volunteer is a person who gives their time to government or charitable purposes. There are legal limits on how nonprofits can use volunteers.

Interns & Apprentices

When farmers markets hire interns or apprentices, they are offering an educational experience in exchange for lower wages or benefits.

Independent Contractors

An independent contractor is a small business owner who provides his or her own tools and resources, is paid a flat fee, and is in control of when and how the work is accomplished. Businesses and nonprofits that hire independent contractors do not need to cover payroll taxes, workers’ compensation insurance, or unemployment insurance for them. However, there are strict rules defining who is and is not an independent contractor.

Employment Classification Obligations Many farmers markets discover at some point that their volunteers, interns, or independent contractors are actually employees under the law. This means the market is obligated to follow all employment laws. Below is a brief discussion about the requirements of three aspects of employment law.

Minimum Wage

Generally speaking, every employee must be paid at least the minimum hourly wage under state law. This applies to nonprofits just as it does to for-profit businesses.

Workers’ Compensation

Workers’ compensation is a program that provides coverage for individuals injured in the course of employment. It works much like an insurance policy. The employer pays the premiums and injured workers are eligible to make claims for coverage. Workers’ compensation programs are established by state law, and the procedures for purchasing and using workers’ compensation are set by statutes and regulations.

Nearly every business is required to carry workers’ compensation coverage. Some states have limited

exceptions for small businesses or nonprofit businesses. Workers’ compensation is different in each state, and each farmers market will need to investigate obligations in their own state. State departments of labor and private insurance agents are good sources of more information.

Unemployment Insurance

Unemployment insurance is a tax collected from employers through the payroll process. The business is responsible for paying this tax, not the employee. The money collected goes into a fund to compensate workers who have lost their jobs through no fault of their own. Generally, all businesses including nonprofits must pay unemployment insurance tax. Small farms are not required to pay for unemployment insurance, but this exception does not extend to farmers markets.



Employment & Labor Law Risks (Continued)

HOW TO MANAGE THIS RISK

<p>Market Rules & Procedures</p>	<p>Solid internal procedures that ensure board members or staff are hiring and classifying workers properly can be useful to avoid accidental violation of employment laws. However, in most businesses and organizations, it's assumed that the person in charge will research and follow the laws relevant to hiring workers. So, it can be difficult to find templates or model internal procedures that directly require it.</p>
<p>Insurance</p>	<p>Insurance is not available to manage the risks of noncompliance with employment laws. Insurance is available to cover the costs of defense or liability in an employment practice dispute, such as discrimination or wrongful termination of an employee. But such policies do not cover back wages, back taxes, or penalties levied by governments for minimum wage, payroll tax, or misclassification noncompliance or mistakes.</p>
<p>Recordkeeping</p>	<p>Most employment-related laws have very specific recordkeeping obligations, and failure to keep mandatory records is a separate non-compliance issue by itself. For example, minimum wage laws require that timesheets be kept, and the timesheets generally must state the date and exact hours worked, including any lunch breaks. State departments of labor, attorneys, and local Small Business Administration offices are excellent sources of more information on employment recordkeeping.</p>
<p>Governance</p>	<p>An LLC, corporation, nonprofit corporation, or cooperative can insulate market owners' personal assets from business liabilities. But in many states, business owners or directors can be held personally responsible for the failure to secure workers' compensation or comply with other employment laws, even if the business is incorporated. Assets belonging to the business itself are always available to satisfy business liabilities.</p>





Americans with Disabilities Act Compliance

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination and ensures that people with a range of abilities can participate fully in American life. This law affects farmers markets too.

No Discrimination

At its base, the ADA prohibits discrimination. This means that, first and foremost, farmers markets should not prohibit people with disabilities from attending. This part of the law is typically the easiest to understand and follow.

Reasonable Accommodations

Generally speaking, the law requires that reasonable accommodations be made for people with disabilities. For example, if a market is renting portable bathrooms, it's very reasonable to simply order a wheelchair-accessible unit. If the market offers free water or a handwashing station, for example, it might be easy to lower the height of the unit so it's accessible.

Exactly what a farmers market should do to satisfy the ADA depends on when the market began operations, the specific layout and circumstances, and the cost of retrofitting facilities. At a minimum, farmers markets should see that wheelchair users are not prevented from attending an event or using a restroom. In some situations, however, even these basic steps won't be possible. In that situation, or to go beyond the basics, many farmers markets will need further support to comply with the ADA. Markets can learn more about ADA compliance requirements by reading the Department of Justice's [ADA Guide for Small Businesses](#), calling the Department of Justice's hotline at 800-514-0301, or contacting their local Small Business Administration office (www.sba.gov has contact information for local offices).

HOW TO MANAGE THIS RISK

Market Rules & Procedures	Market-day safety checklists can help manage the risk of an ADA violation. In addition to ensuring the site is safe at the start of the market day, the checklist can assist in making sure any temporary accommodations are in place. The farmers market can also use market rules to remind vendors that accommodating persons with disabilities is the law. Farmers markets should prohibit discrimination, including against those with disabilities, in their market rules as well.
Insurance	Insurance is not available to cover issues of noncompliance with the ADA.
Recordkeeping	Farmers markets that actively take steps to create accommodations should document the accommodation, such as taking a photo of a wheelchair-accessible portable restroom facility or handwashing station. From there, a market-day checklist indicating the accessibility feature was present and properly set up will likely suffice. Just as important: if an accommodation is requested that the farmers market is unable to provide, it's helpful to document the request and the reasons that the market was not able to meet the request.
Governance	An LLC, corporation, nonprofit corporation, or cooperative can insulate market owners' personal assets from business liabilities. However, assets belonging to the business itself are always available to satisfy business liabilities.



Governance

“Governance,” as used in this Toolkit, refers to both a farmers market’s business entity (nonprofit, corporation, etc.) and the documents that control how that business entity operates.

Choosing the most appropriate business entity for a farmers market can be a simple risk management tool because some business structures provide personal liability protection. Further, governing documents encourage strong business practices and clarity in decision-making processes. Depending on your business structure, these can take the form of a partnership agreement, an operating agreement, a shareholder agreement, or bylaws. These documents are especially important for farmers markets that have more than one owner, an advisory board, a board of directors, officers, and/or any other team of decision makers.

Business Structure Selection	Importance of Governance Documents	Writing Governance Documents
<ul style="list-style-type: none"> Farmers market business owners and nonprofit directors can protect their personal assets from the farmers market’s liabilities by organizing as something other than a sole proprietorship or partnership. 	<ul style="list-style-type: none"> Organizing documents clarify how the business operates on a fundamental level: how people join the business, how people leave, how the business makes decisions on things such as debt, and many other important processes. When these processes are clearly stated up front, the business or organization can avoid disagreements down the road and is more prepared to meet its legal obligations. 	<ul style="list-style-type: none"> First, discuss with all owners, partners, members, or directors how the farmers market should be governed. This is key to writing clear governance documents. Many markets will choose to have these documents reviewed by an attorney to make sure they are internally consistent, don’t violate any laws, and are legally enforceable. Generally, after drafting and review, all parties approve the documents in a formal action. Governance documents aren’t filed with a court, unless a legal action occurs.

Organizing documents for for-profit businesses generally address the following issues:

- What is everyone contributing to the business, financially?
- How does the business make big decisions? For example, if the business wants to take on debt, does everyone have to agree, or just a majority? Does one person have the ability to make that decision?
- What does the business do with profits or losses? Are they split down ownership lines?
- What if someone decides to leave the business? How will that ownership be bought out? When?
- Is there a process for bringing new owners into the business?

Organizing documents for nonprofit organizations focus on how boards of directors are elected or appointed plus the board members’ terms, responsibilities, and other structural matters. Cooperative business bylaws have more issues to deal with in terms of equity payments, dividends, and other financial matters.

Business Entity Type	Name of Government Document
Partnership	Partnership Agreement
LLC	Operating Agreement
Corporation	Bylaws & Shareholder Agreement
Nonprofit	Bylaws
Cooperative	Bylaws



Insurance

When an accident occurs at a farmers market there is the potential for the issue to escalate into a lawsuit. If this happens, attorney fees and judgment or settlement costs can threaten a market's stability. Insurance can help manage these risks by providing:

- ▶ An attorney in the event the market is sued
- ▶ A source of funds to pay covered legal liabilities
- ▶ A partner in identifying and managing sources of risk at the market

There are different types of insurance, including options for markets and for vendors. It is important to choose the proper insurance to protect your market from the most relevant risks.

Insurance Basics At its heart, an insurance policy is an agreement between the insured person or business and the insurance company. Like any contract, the words in that document are of the utmost importance. A full insurance policy is often between 30 and 50 pages long. Customers almost always receive a copy of this full policy, but they often don't read it or even know that they've received this important document in the first place. (It might be delivered by email or stored in the customer's online profile.)

What Does an Insurance Policy Contain?

An insurance policy lays out all the terms of coverage—what it covers and what it doesn't. It often begins with covered risks—these are the events for which the farmers market would be eligible for compensation. Coverage for these risks is attached to specific covered items, activities, or persons. For example, lightning may be a covered risk, but coverage for lightning may attach only to a specific building or piece of equipment. Covered structures and items may be described in broad categories or listed individually, such as a "declarations" page listing specific vehicles or equipment.

How Does Insurance Work?

If a covered risk materializes, a farmers market generally has to make a claim to draw on its coverage. Claims need to be made according to a specific procedure that often requires reporting certain information within a certain timeframe.

When people think about insurance, the benefits are usually the second thing on their mind. Cost is usually the first. The right insurance policy can be expensive. The cost of an insurance policy is based on the risks, which insurance companies take great effort to accurately analyze using the tools of actuarial science. A sound insurance company will make sure they charge enough so that they can pay out on good claims. A strong business plan for a farmers market will make sure the budget allows for adequate insurance.

Insurance Options

Both markets and vendors can benefit from carrying appropriate insurance policies. Common options for insurance coverage include:

Market Insurance Options

- Commercial general liability (CGL) insurance*
- Directors and officers (D&O) liability insurance*
- Workers' compensation insurance*
- Auto insurance*
- Property insurance*
- Employment practices liability (EPL) insurance*

Vendor Insurance Options

- Commercial general liability (CGL) insurance*
- Product liability insurance*

Two of the most common types of insurance for farmers markets are Commercial General Liability (CGL) insurance and Directors and Officers (D&O) insurance.

Commercial General Liability Insurance

A CGL policy covers the farmers market itself when the farmers market is the subject of the lawsuit.

CGL insurance covers claims of personal injury or property damage that might occur to guests, vendors, and others at the market. CGL policies generally provide an attorney to defend the market and funds to pay any resulting liability.

A CGL policy is required to list specifically what the policy will not cover, so markets should carefully review their CGL policy for more information on exemptions from coverage.

Directors & Officers Insurance

D&O insurance covers legal claims relating to decisions made by the market's board (collectively or individually). Boards are unique in that they do bear some personal responsibility for their decisions.

D&O insurance will protect all individuals who are named as a director or officer by the market. Directors and officers are individuals who make decisions about the market, specifically those who determine market policies and appropriate funds.



Insurance (Continued)

**Questions to Ask About
Market Insurance Options**

- What types of incidents are covered by my commercial general liability (CGL) insurance policy?
- What type of incidents are covered by my directors and officers (D&O) insurance?
- Who is covered by my CGL insurance? Who is covered by my D&O insurance?
- Are there limits to the number of claims that can be made in a given time period?
- How much does CGL insurance cover per incident?
- How much does CGL insurance cover in a policy period?
- How much does D&O insurance cover per incident?
- How much does D&O insurance cover in a policy period?
- What is the annual premium?
- Is there a deductible?
- Is the insurance company admitted or non-admitted?
- What is the company's A.M. Best rating?

**Questions to Ask About
Vendor Insurance Options**

- What types of incidents are covered by my commercial general liability (CGL) insurance? What incidents are not covered?
- What products are covered by my product liability insurance?
- Who is covered by my CGL insurance? Who is covered by my product liability insurance?
- Are there limits to the number of claims that can be made in a given time period?
- How much does CGL insurance cover per incident?
- How much does CGL insurance cover in a policy period?
- How much does product liability insurance cover per incident?
- How much does product liability insurance cover in a policy period?
- What is the annual premium?
- Is there a deductible?
- Does my liability coverage extend to only one market, or to all of the markets where I vend?
- Is there a cost to name a market as an additional insured?
- Can I add a market to be a certificate holder?
- Is the insurance company admitted or non-admitted?

No Guarantee

Insurance can be critical to a market's resilience. That said, it's difficult to say with certainty, in advance, whether a certain kind of insurance policy will cover a specific kind of claim. Coverage depends on several factors, including:

- ▶ The unique facts surrounding a specific incident that gives rise to the claim
- ▶ Whether the insurance company deems that the policy covers the claim
- ▶ Whether a court finds that the policy covers the incident, if the insurance company declines coverage and the insured sues for a determination otherwise

These factors shouldn't dissuade a market from purchasing insurance. Rather, they are a simple caution that insurance doesn't address all concerns.



Market Rules & Procedures

Market rules and procedures are most effective at preventing issues that put the market at risk. Further, they put the market in a strong legal position. When the market can show that good safety procedures are in place and are being followed, and clear rules and procedures are established to keep the market in compliance with the law, the market is better able to defend itself in a lawsuit. Last, when a farmers market can demonstrate their standards they may qualify for better insurance rates; have more bargaining power with landlords, vendors, or site hosts; and more easily maintain good working relationships with hosts and partners.

Best Practices

Transparency

One of the best practices markets can employ is being transparent in advance about how vendor selection is made, when it is made, and how the results are communicated. Even if everyone doesn't agree on the criteria for a decision, knowing the criteria can prevent problems before they start.

Consistency

Consistency is essential if rules and procedures are to be effective as a legal risk management strategy. Inconsistent enforcement is an open invitation to a discrimination lawsuit. If a rule or criterion is enforced for one person but not for another, people begin looking for reasons for that treatment, such as discrimination.

Discretion

Farmers markets also need to preserve their ability to make decisions without being forced through an overly rigid process that may not account for extenuating factors and circumstances. This is often called "preserving discretion." In any list of criteria and in any application, farmers markets should include a statement that clarifies who has the discretion to make the ultimate decision.

Vendor Eligibility

When a farmers market is clear about the eligibility criteria it uses, it's in a better position to defend decisions made on that basis. Further, when the application materials reflect the eligibility criteria (no more, no less), the market's position is even stronger. In addition, solid criteria and a concise application help prospective vendors anticipate whether a market is a good fit for them. This helps save time for applicants and markets, as ineligible vendors are less likely to apply.

Vendor Applications

A legally resilient vendor application will collect the information necessary to assess the applicant according to vendor eligibility criteria. A vendor application can also create efficiency and improve communication by including a few other elements:

- Vendor selection criteria
- Vendor rules
- Statement about vendor selection appeals processes
- Additional information about fees or other required supplemental materials



Vendor Rules

Rules for market vendors often clarify expectations and allowed or disallowed actions. For example, vendor rules can set out:

- Insurance recommendations or requirements
- Recommended or required tables, tents, supports, and other set-up considerations
- Prohibited or encouraged vendor marketing and communication tactics
- Products and items allowed or disallowed for sale
- Discipline and termination processes if a rule is violated
- Safety and emergency procedures

Indemnification Agreements

Farmers markets may consider requiring vendors to indemnify the farmers market. If a vendor indemnifies the farmers market, the vendor agrees to pay the farmers market back for any damage the vendor causes for the farmers market. A simple indemnification agreement is not hard to write, but it can be difficult to understand exactly what it does and does not do for both parties. Farmers markets should work with an attorney to write such a clause.

Vendor-Vendor Dispute Resolution By and large, when vendors run into problems with each other, it's because one vendor feels another is not complying with the farmers market's rules. Managing these vendor disputes is primarily a matter of creating a system to verify if a vendor is in fact complying with the rule. This is often called a dispute resolution process. In the occasional case where a vendor is upset with another vendor and there is no rule defining the appropriate course of action, a dispute resolution process can be adapted to address the questionable behavior. Many markets' dispute resolution processes consist of the following general steps:

1. **Submission of a written complaint**
2. **Evaluation of the complaint and action steps proposed**
3. **An opportunity for a vendor to appeal an outcome**
4. **Transparency of the overall dispute resolution process, and the opportunity for vendors to participate in improving it**

Market-Vendor Dispute Resolution Occasionally, vendors may have problems with the market decision maker. The first and most important way to handle these issues is to prevent them. Clear rules and procedures alongside clear processes for determining vendor compliance with rules can prevent complaints about stall assignments or ejection from the market, for example. But where the complaint is about the manager's interpretation or consistency enforcing the rules, clear rules and procedures won't necessarily help. When vendors have a grievance with the decision maker, they will generally want a third party to review it. To meet this need, farmers markets may choose to emphasize the market's discretionary power, or delegate resolution to a third party.

TOOL

Recordkeeping

Good recordkeeping helps other risk management tools to be the most effective. It provides the paper trail and evidence a farmers market needs to prove its actions should that proof ever be needed. Farmers markets should consider keeping the following records:

Legacy Binders

Files and documents, both current and historical, about the farmers market, including, but not limited to:

- Incorporation documents
- Bylaws
- Current and past staff and board member contracts and job descriptions
- Market insurance policies
- Host site agreements
- Market rules and policies
- Copies of annual tax returns

Vendor Records

- Vendor agreements
- Records showing vendor compliance

Host Site Agreements

Records that give you permission to be on the site, including:

- Lease
- Rental Agreement
- License

Records of Safety Procedures

It's not always enough to follow safety procedures—there must be records that prove these procedures were followed. These records can include:

- Market day safety checklists
- Market day safety procedures performed by individual vendors
- Incident report forms and any documentation of accidents or emergencies

Business Records

Documents establishing business or administrative information. Using online providers that archive emails, storage services to save versions of documents, and phone services that record calls can alleviate some of the burden of recordkeeping.

