



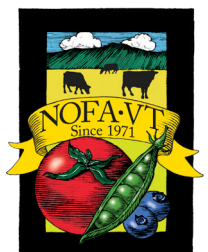
# Farmers Market LEGAL TOOLKIT

## Resource Companion

Legal resources for building  
resilient & accessible markets



United States Department of Agriculture  
National Institute of Food and Agriculture



# Farmers Market LEGAL TOOLKIT



## Project Partners

The **Center for Agriculture and Food Systems at Vermont Law School (CAFS)** partnered with the **Farmers Market Coalition (FMC)** and the **Northeast Organic Farming Association of Vermont (NOFA-VT)** to create this Toolkit. Special thanks to Jen O'Brien Cheek (FMC), Darlene Wolnik (FMC), and Erin Buckwalter (NOFA-VT) for their extensive contributions to this resource.

## Funding

This Toolkit was created with support from the **United States Department of Agriculture National Institute of Food and Agriculture (USDA/NIFA)** and support from the **USDA National Agricultural Library** for additional topics, outreach, and dissemination.

## Acknowledgements

This Toolkit was created with the combined time and talents of many people. In particular, we would like to recognize:

**The Project Team:** Claire Child, Lihlani Skipper Nelson, Laurie Ristino, and Emily Spiegel (**CAFS**); Jen O'Brien Cheek and Darlene Wolnik (**FMC**); Erin Buckwalter (**NOFA-VT**)

**The Project Advisory Board:** Sophia Kruszewski, Jeffrey O'Hara, Charlotte Roozkrans, Gus Schumacher, and Andrew Knafel

**Jamie Renner** for his years of leading the project, as well as legal review and content development

**Former CAFS Staff:** Sarah Danly, Rebecca Valentine, and Delilah Griswold

**CAFS Students** (in the **Food & Agriculture Clinic** and Research Assistants): Elizabeth Bootz, Natalie Colao, Kaitlyn Kachmarik, Emily Kenyon, Nico Lustig, Katie Michel, Lauren Moore, Sarah Munger, Carly Orozco, Michael Pottetti, Gabrielle Regney, Emilie Schwartz, Melissa Shapiro, Alison Uhrlass, Madelyn Vitale, Sera Yoon

**Rachel Armstrong** at **Farm Commons** for legal review and content development

**Gabe Halberg** at **Dadra Design** for web design & development

**Mike Custode** for custom, hand-drawn illustrations

**Andrea DiMattina** for designing the print resources and this Toolkit companion.

**Farmers Market Managers and Leaders** who shared their experiences, questions, and perspectives with the project team. Special thanks to the following market representatives who provided input and feedback: Suzanne Briggs, Diane Eggert at the Farmers Market Federation of New York, Sheryl Maher at Brattleboro Winter Market, Jeff Cole at Mass Farmers Markets, Corey Chatman at Experimental Station, Kevin Thompson at Capital City Farmers Market, Angelina Harrison at Market Umbrella, Eileen Nichols at Webb City Farmers Market, and Mary Yost at Durham Farmers Market.

Center for Agriculture and Food Systems. *Farmers Market Legal Toolkit Resource Companion*. South Royalton, VT, 2018.

# Farmers Market LEGAL TOOLKIT

## Contents

### Introduction

The Farmers Market Legal Toolkit Resource Companion includes legal resources for market leaders on selecting and enhancing business structures, accepting SNAP benefits, and managing common risks. The additional resources include useful tools such as a Market Day Safety Checklist, Incident Report Form, and Legacy Binder Components. All of the resources in this booklet, along with more detailed information on these topics, are available on the Farmers Market Legal Toolkit website at [www.farmersmarketlegaltoolkit.org](http://www.farmersmarketlegaltoolkit.org).

### Why a Legal Toolkit?

Across the country, farmers markets are supporting farms and other small businesses, increasing access to fresh foods, and meeting a host of other community needs.

Farmers markets are collections of relationships within a community—between markets and host sites, managers and vendors, farmers and customers, and many more. Legal tools can help clarify responsibilities and expectations within those relationships.

This toolkit is designed and developed for market leaders who, together with their vendors, are looking for legal tools and resources to help them build resilient farmers markets in their communities.

### About the Toolkit

Farmers markets play an important role in building resilient local food systems and vibrant communities. This Toolkit was developed to support farmers markets throughout the U.S. with open-source legal tools to inform farmers market leaders as they make decisions to build and grow their markets. The specific topics covered in the Toolkit were selected in response to recurring questions from farmers market managers—about how business structure would affect their organizations, what types of legal risks exist and how to manage them, and how to follow SNAP program requirements to make market products accessible for all community members.



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Business Structures



Implementing SNAP



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Additional Resources



## Picking a Business Structure

### Why Your Choice Matters

*Whether you're starting a new farmers market or leading a long-established one, you face the same important question: how should the business be structured? Should the market operate as a sole proprietorship, partnership, limited liability company (LLC), corporation (for profit or nonprofit), cooperative, or some other form of business?*

### Personal Liability

One of the key legal differences among business structures is that they offer different levels of protection from personal liability. Without personal liability protection, an individual's personal assets (stocks, car, vacation residence, etc.) can be used to satisfy legal claims against the market. This matters if the market incurs a debt it cannot repay, or if an accident occurs at the market and an injured person sues. Some business structures will protect personal assets from being at risk if the market loses the suit, and some will not. The business structures that provide personal liability protection need to be actively adopted, usually by filing certain paperwork with your state and adopting formal bylaws.

### Taxation

Different business structures are taxed differently. Some are considered part of the owner's personal income tax obligations, some are taxed as corporations under a separate part of the tax code, and some are eligible for tax-exempt status or other special treatment. It is important to understand the tax-filing obligations for your market's business structure.



### Decision-Making Powers

Some business structures allow for one owner who holds all of the decision-making power. Other business structures allow or require the business to have multiple owners with decision-making authority. Some have specific governing structures in place with defined positions, such as a board of directors, officers, and members. It's important to be clear about who will make decisions for your market and to choose a business structure that sets up the kind of governing structure you want your market to have.

### State law will assign you a default business structure

If your farmers market does not proactively adopt a specific business structure, it will nevertheless fall into a business structure category as defined by state law. This will most likely be a sole proprietorship, a partnership, or in some cases an unincorporated nonprofit association. These three business structures do not provide personal liability protection, which is often why people choose a different structure. **If you want your market to be something other than a sole proprietorship or a partnership, you need to actively adopt a different business structure.**



### Sole Proprietorships

This is the easiest, fastest structure choice. Sole proprietorships have a single owner, the “sole proprietor,” who is responsible for making all decisions and satisfying tax obligations. Farmers markets organized as sole proprietorships can be large or small, have many employees or none, and make a large profit or none at all. Sole proprietorships are default business structures, meaning that they are the business structure that state law will generally assign a business if it is started by one person who hasn’t taken any formal action to create a different business structure.

- ▶ An owner need only start market operations to launch a business under this structure—no paperwork or formal action is required to start a sole proprietorship.
- ▶ **The biggest drawback** to a sole proprietorship is that sole proprietors are not shielded from personal liability. This means that if any accidents happen that result in a lawsuit, the owner’s personal assets are at risk should the owner lose the lawsuit. Personal assets are also available to settle business debts.
- ▶ The sole proprietor has full control of the business and holds all decision-making responsibilities.
- ▶ This is a for-profit business. Taxes are owed on any profits generated.
- ▶ Business profits and losses are reported on the sole proprietor’s personal tax returns, and taxed at personal income tax rates.

### Partnerships

This is another fast, easy business structure to create. Partnerships have two or more owners, who are jointly responsible for making all decisions and satisfying tax obligations. Farmers markets organized as partnerships can be large or small, have many employees or none, and make a large profit or none at all. Partnerships are created without any formal action. Like sole proprietorships, they are a default business structure assigned by state law if two or more partners start a business without taking additional steps to adopt a different business structure.

- ▶ Owners need only start market operations to launch a business under this structure.
- ▶ **The biggest drawback** to a partnership is that owners are not shielded from personal liability. This means that if any accidents happen that result in a lawsuit, the owners’ personal assets are at risk should the owners lose the lawsuit. Personal assets are also available to settle business debts.
- ▶ Owners have joint liability, meaning each partner can be held liable for any decisions and commitments the other makes, and can be held liable for all of the market’s legal obligations, not just their share.
- ▶ Owners have joint authority, meaning each partner can bind the whole market to a contract or business deal.
- ▶ This is a for-profit business. Taxes are owed on any profits generated.
- ▶ Business profits and losses are reported on each owner’s personal tax returns.

## Nonprofit Organizations

Nonprofits operate with the purpose of serving the public interest. Nonprofits must use their profits to further their mission and may not distribute net earnings to any individuals. A nonprofit can exist in two forms: an unincorporated nonprofit association (UNA) or a nonprofit corporation.

- ▶ If a group takes no formal action, no one intends to generate profit, and the vendors act for their mutual benefit they are likely a UNA. To start a nonprofit corporation, the owners must file paperwork with the state, create corporate bylaws, and appoint directors. The process is very similar to forming a regular corporation, except that nonprofits can choose to apply for tax-exempt status with the Internal Revenue Service (IRS) and state tax authorities.
- ▶ A UNA does not protect owners from personal liability. A nonprofit corporation does. This means that if any accidents result in a lawsuit, the owner's personal assets are only protected in a nonprofit corporation. If the structure is a UNA, personal assets can be claimed as compensation should the owner lose a lawsuit.
- ▶ In a UNA the members themselves are responsible for the decision-making and control. Nonprofit corporations must have a board of directors who make the “big” decisions and delegate “day-to-day” decision making to officers and employees.
- ▶ Nonprofits must file a tax return and may apply to the IRS for tax-exempt status. If approved, they complete a special tax form for organizations with tax-exempt status (Form 990) annually. Otherwise, nonprofit corporations file taxes as a corporation. A UNA making less than \$5,000 a year may complete Form 990-N, even without tax-exempt status. Otherwise, UNA owners file taxes for the UNA as part of their personal tax returns.

## Cooperatives

Cooperatives are formed by a group of people coming together around a shared goal. There is no single entity controlling the decision-making process, as this structure is known for its democratic, “one member-one vote” decision-making process.

- ▶ To start a cooperative the group must file paperwork with the state and usually pay a fee, which makes it an “incorporated cooperative.” Most states also require cooperatives to create bylaws. This is always recommended because the bylaws set forth your market's strategy for operation. Further, if no bylaws are in place, the cooperative must abide by its state's default statutes, which may or may not be in the best interest of the farmers market.
- ▶ An incorporated cooperative protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owners lose a lawsuit.
- ▶ Members own and operate the cooperative and are responsible for its governance in a democratic “one member-one vote” structure. Most states also require a board of directors—the main governing body—and officers elected by the members.
- ▶ Taxation for cooperatives can be complex but can present opportunities for special treatment. Cooperatives can give patronage dividends to members and deduct them from its gross income when filing taxes. Further, if the business can qualify as a farmers' cooperative, it can qualify for additional favorable tax treatment.



### LLCs

A limited liability company (LLC) is beneficial in that it protects owners' personal assets from business liabilities. An LLC can have one or many owners, called "members."

- ▶ Owners file paperwork with the state and pay a fee to create this business structure. The LLC is official once the paperwork is approved.
- ▶ An LLC protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owner lose a lawsuit. Only business assets are at risk.
- ▶ A multiple-member LLC may be member-managed or manager-managed. A member-managed LLC gives all members the authority to take actions on behalf of the company. In a manager-managed LLC, one or more managers are chosen to have this authority.
- ▶ Owners may choose to file taxes with personal tax returns or as an "S Corporation."

### Corporations

A corporation is another popular choice for farmers market owners. It provides personal liability protection like an LLC but requires more formalities to start than an LLC. However, in many states a corporation is the less expensive option, and may be more familiar to local service providers.

- ▶ Owners file paperwork with the state and pay a fee to create this business structure. A corporation is also required to draft and adopt bylaws dividing up responsibility and setting the rules for its governance.
- ▶ Like an LLC, a corporation protects the owners' personal assets from liability. This means that if any accidents happen that result in a lawsuit, the owners' personal assets are protected and cannot be claimed as compensation should the owner lose the lawsuit. Only business assets are at risk.
- ▶ A corporation's three main decision-makers are shareholders, directors, and officers. Shareholders are the "owners" who elect the board of directors. The board of directors make the "big" decisions that impact the financial affairs of the company. Officers make the regular "day-to-day" management decisions. A single person can be all three.
- ▶ Owners may choose to file taxes as a "C Corporation" or an "S Corporation."

*Find more legal resources for farmers markets at  
[farmersmarketlegaltoolkit.org](http://farmersmarketlegaltoolkit.org)*

# Farmers Market LEGAL TOOLKIT

## Implement SNAP/EBT

### What is SNAP?

“SNAP” stands for Supplemental Nutrition Assistance Program, formerly called “food stamps.” The purpose of this program is to supplement the income of low-income families and individuals so they can better afford nutritious food.

The United States Department of Agriculture’s Food and Nutrition Service (FNS) manages this program in collaboration with state agencies. The federal government funds the program and sets eligibility requirements. State agencies administer the program.



**SNAP:** Supplemental Nutrition Assistance Program

**USDA:** United States Department of Agriculture

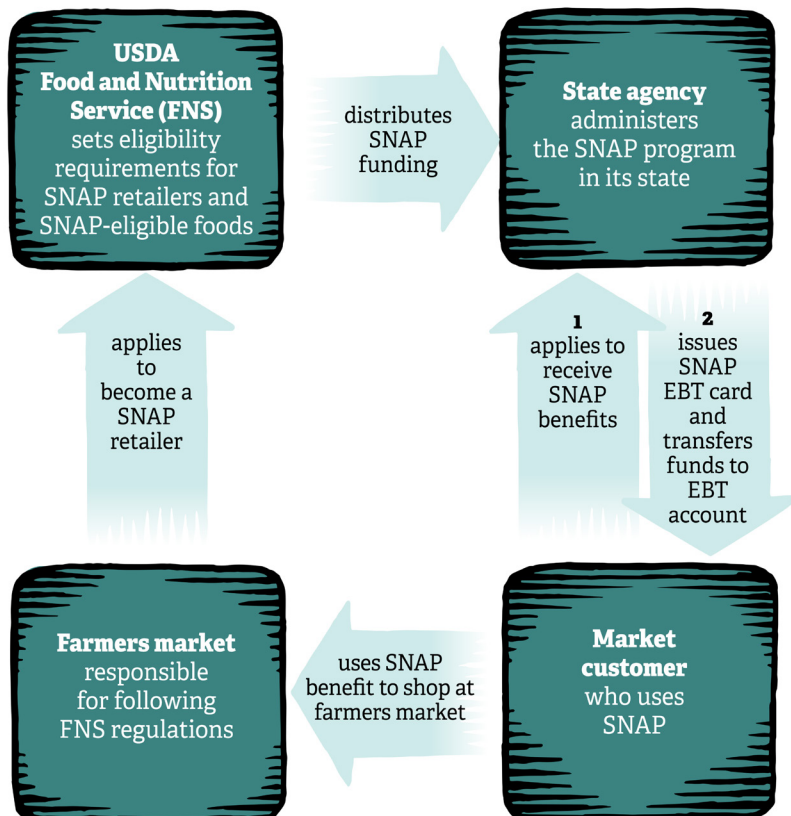
**FNS:** Food and Nutrition Service

**POS:** Point-of-sale

**EBT:** Electronic Benefit Transfer

**Scrip:** A form of market currency

### How SNAP Works



### What is EBT?

“EBT” stands for electronic benefit transfer. This is the state agency’s method of distributing SNAP benefits to families and individuals. Each recipient has an EBT card that looks like a credit or debit card and works in a similar way.

Each month, individuals or households that participate in SNAP receive a deposit of SNAP benefit dollars into their SNAP account. This account is linked to their EBT card, which they can then use like a debit card to spend on SNAP-eligible food items at SNAP-authorized retailers.

# Who administers SNAP—markets or vendors?

Farmers markets interested in accepting SNAP benefits must decide who should become a SNAP-authorized retailer and administer the point-of-sale (POS) device that accepts SNAP EBT payments. This can be the market as a whole, individual vendors, or both.

## Market Operated

Currently, the most common way that farmers markets accept SNAP benefits is through a market-operated system. This means the farmers market applies to become a SNAP-authorized retailer, rather than vendors. Once approved, the market purchases or rents a POS device to be operated at a central location which accepts SNAP EBT on behalf of all its vendors.

## Vendor Operated

Another option is for the market to encourage vendors to apply individually to become SNAP-authorized retailers. In this system, a vendor elects to purchase or rent their own POS device and use it to accept SNAP benefits at their individual booth.

|  |  |
|--|--|
| <b>Centralized POS Device</b> <ul style="list-style-type: none"><li>• Device is operated on behalf of all vendors</li><li>• Market pays all relevant equipment costs and fees</li><li>• Vendors may contribute to these costs through vendor fees</li><li>• Free SNAP EBT POS equipment may be available in your state</li></ul> | <b>Separate POS Device</b> <ul style="list-style-type: none"><li>• Vendors operate their own POS device and cover all relevant equipment costs and fees</li><li>• Free SNAP EBT POS equipment may be available in your state</li></ul> |
| <b>Market Currency/Receipt System Required</b> <ul style="list-style-type: none"><li>• A market currency (scrip) or receipt system is used to facilitate SNAP transactions in a centralized, market-operated system</li><li>• Customers receive market currency or a receipt to purchase items from vendors</li></ul>            | <b>No Scrip</b> <ul style="list-style-type: none"><li>• In a vendor-operated system customers make payments directly to the vendor and no scrip is required</li></ul>  |
| <b>Delayed Reimbursement</b> <ul style="list-style-type: none"><li>• The market sets up a schedule to reimburse vendors for their SNAP sales. Vendors may wait a week or more for the market to reimburse them</li></ul>   | <b>Immediate Payment</b> <ul style="list-style-type: none"><li>• Payments are made directly to the vendor, so there is no need for reimbursement</li></ul>   |

## Market Currency Systems

Market-operated SNAP systems that use a centralized POS device often use some form of market currency to facilitate transactions. This currency is also called “scrip.” This can be in the form of wooden or plastic tokens, paper currency, or even electronic tokens.

|                                 |   |  |  |
|---------------------------------|---|--|--|
| <b>Tokens &amp; Paper Scrip</b> | <b>1. A CUSTOMER VISITS THE MARKET’S CENTRALIZED SNAP POS DEVICE AND INFORMS THE OPERATOR HOW MANY SNAP DOLLARS THEY WOULD LIKE TO SPEND AT THE MARKET.</b> | <b>2. THE POS DEVICE OPERATOR PROCESSES THE CUSTOMER’S SNAP EBT CARD AND CHARGES THE REQUESTED AMOUNT, THEN PROVIDES THE CUSTOMER WITH TOKENS OF EQUIVALENT VALUE AND A PAPER RECEIPT.</b> | <b>3. THE CUSTOMER SHOPS AT THE MARKET, PURCHASING SNAP-ELIGIBLE PRODUCTS FROM VENDORS USING THE TOKENS.</b> |
|---------------------------------|---|--|--|

*SNAP Tokens and paper scrip must be visually distinct from legal tender and from any other kind of currency used by the market (e.g., scrip used as market gift certificates) and must be non-replicable.*

# Am I Eligible to Accept SNAP Benefits?

- 1 To be eligible, you must meet the definition of a *farmers market* or a *direct marketing farmer*

## Farmers Markets Definition

The USDA FNS defines a “farmers market” as “two or more farmer-producers that sell their own agricultural products directly to the general public at a fixed location [meaning one location].”

## Direct Marketing Farmers Definition

The USDA defines “direct marketing farmers” as “farmer-producers that sell their own agricultural products directly to the general public.”

The agricultural products described in both definitions include fruits and vegetables, meat, fish, poultry, dairy products, and grain.”

- 2 You must meet one of the two food stocking rules below: the 50% Rule or the Staple Food Groups Rule

### Rule 1: 50% Rule

- ▶ More than 50% of the total dollar amount of your gross retail sales must come from the sale of eligible staple foods

#### Farmers Markets:

50% is taken from the total gross retail sales from all your vendors

#### Direct Marketing Farmers:

50% of the total dollar amount of your own total gross retail sales.

### Rule 2: Staple Food Groups Rule

- ▶ You must continually sell at least seven (7) varieties of foods within each of the four “staple food groups” which includes perishable foods in at least three (3) of these categories:
  1. Meat, poultry, or fish
  2. Bread or cereal
  3. Vegetables or fruits
  4. Dairy products
- ▶ “Continually” means the food is offered for sale and normally on display in a public area on any given day.
- ▶ “Variety of foods” means different types of foods.

## How Do I Apply?

- 1 Select a “responsible official”

- ▶ This person, along with the market, is liable for the market’s compliance with SNAP rules and regulations

- 2 Gather the relevant information and documents

- 3 Complete the online application

- ▶ Register for a USDA “eAuthentication” account
- ▶ Create, complete, and submit an online application

- 4 Once your application is complete

- ▶ A decision will be made within 45 days of your application being received
- ▶ FNS may require that the market be visited by an FNS employee to confirm eligibility
- ▶ If you are approved you will receive a SNAP license
- ▶ You may not accept SNAP benefits until you receive this license





# What's Next Once I'm Authorized to Administer SNAP?

As a SNAP-authorized retailer, you have certain ongoing compliance obligations related to equipment, selling SNAP-eligible foods, and training.

## 1 Equipment

*Farmers markets and direct marketing farmers are both eligible to apply to the Food and Nutrition Service (FNS) for authorization to accept SNAP benefits.*

### Obtaining a POS device

There are typically fees for equipment purchase or rental and for setup. Some markets may be eligible for free or reduced-cost equipment.

### Using a POS device

- ▶ A transaction fee is charged for every transaction through electronic transfers. Vendors may not charge any additional fee to SNAP customers to pay for POS device fees.
- ▶ If your market operates at multiple locations during the same season, you likely need more than one POS device.
- ▶ You may choose an EBT-only POS device or a POS device that accepts SNAP EBT, credit cards, and debit cards.
- ▶ You must provide a transaction receipt to SNAP customers, which usually must be a paper receipt.

## 2 Foods

### SNAP-eligible foods:

- Fruits and vegetables
- Breads and cereals
- Meats, fish, and poultry
- Dairy products
- Seeds and plants that produce food

### Ineligible items:

- Alcoholic beverages
- Tobacco
- Hot food or food products prepared for immediate consumption (with limited exceptions)
- Vitamins or medicines
- Other non-food items

Selling ineligible items to someone paying with SNAP benefits can open the vendor or the market to penalties ranging from monetary fees to disqualification from participating in SNAP to criminal sanctions.

## 3 Training

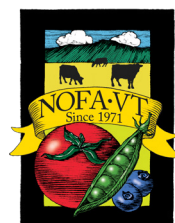
### Requirements

- ▶ There is no direct requirement for retailers like farmers markets and direct marketing farmers to train their personnel regarding SNAP rules. However, FNS expects that farmers markets ensure their personnel are trained, because when farmers markets apply for SNAP authorization, they are required to certify that they understand their “responsibility to ensure that training be completed for all of the owners and employees working in their store.”

### Liability

- ▶ In market-operated SNAP systems, the farmers market can be penalized for violations by vendors, like selling ineligible items to customers who are paying with SNAP benefits. It is therefore in the farmers market's best interest to train their vendors well.
- ▶ Having a training program in place can reduce penalties. If a violation is found, a showing that the retailer had policies in place to prevent SNAP violation allows the retailer to request a monetary penalty as opposed to being disqualified from accepting SNAP benefits.

Find more legal resources for farmers markets at [farmersmarketlegaltoolkit.org](http://farmersmarketlegaltoolkit.org)





## 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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## 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

|                                      |   |
|--------------------------------------|---|
| <b>Market Rules &amp; Procedures</b> | 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.  |
| <b>Insurance</b>                     | <b>First</b> , 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. <b>Second</b> , 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.   |
| <b>Recordkeeping</b>                 | 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. |
| <b>Governance</b>                    | 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.  |



## **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**

|                                      |   |
|--------------------------------------|---|
| <b>Market Rules &amp; Procedures</b> | 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. |
| <b>Insurance</b>                     | 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.   |
| <b>Recordkeeping</b>                 | 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.  |
| <b>Governance</b>                    | 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.  |





**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

|                                      |  |
|--------------------------------------|--|
| <b>Market Rules &amp; Procedures</b> | 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.  |
| <b>Insurance</b>                     | 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.  |
| <b>Recordkeeping</b>                 | 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.   |
| <b>Governance</b>                    | 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.<br><br>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. |



## **Risk 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**

|                                      |  |
|--------------------------------------|--|
| <b>Market Rules &amp; Procedures</b> | 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. |
| <b>Insurance</b>                     | 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.  |
| <b>Recordkeeping</b>                 | 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.                                   |
| <b>Governance</b>                    | <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.

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.

### **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

### **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

|                                      |   |
|--------------------------------------|---|
| <b>Market Rules &amp; Procedures</b> | 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.   |
| <b>Insurance</b>                     | 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.  |
| <b>Recordkeeping</b>                 | 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. |
| <b>Governance</b>                    | 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.   |







## **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](http://www.sba.gov) has contact information for local offices).

### **HOW TO MANAGE THIS RISK**

|                                      |   |
|--------------------------------------|---|
| <b>Market Rules &amp; Procedures</b> | 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.  |
| <b>Insurance</b>                     | Insurance is not available to cover issues of noncompliance with the ADA.   |
| <b>Recordkeeping</b>                 | <p>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.</p> <p>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.</p> |
| <b>Governance</b>                    | 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"> <li>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.</li> </ul> | <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul> | <ul style="list-style-type: none"> <li>First, discuss with all owners, partners, members, or directors how the farmers market should be governed. This is key to writing clear governance documents.</li> <li>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.</li> <li>Generally, after drafting and review, all parties approve the documents in a formal action.</li> <li>Governance documents aren’t filed with a court, unless a legal action occurs.</li> </ul> |

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.*





**TOOL**

## 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.



## 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.





## Additional Resources

*Using checklists and other standardized documentation can make it easier for farmers markets to follow best practices in risk management. The following resources are examples of five types of documents that can strengthen risk management practices at markets, and serve as a record that a market followed its protocols. These are general examples—customizing them to your market’s individual needs is always a good idea.*

### Annual Legal Check-up

An annual legal check-up provides a checklist of tasks for your market to do every year to make sure practices and records are all up to date before the new season starts.

### Annual Market-Vendor Communication Checklist

A market-vendor communication checklist helps ensure that your market informs new vendors and reminds returning vendors of critical information. Good communication with vendors is an important risk management strategy and a way to ensure that each market day runs smoothly.

### Market Day Safety Checklist

Market personnel can follow a market day safety checklist to do a routine, pre-market walkthrough to ensure a safe environment and to provide your market with documentation that it followed appropriate procedures to reduce risks should a legal issue arise.

### Incident Report Form

An incident report form is a standardized form used in the event of an accident or emergency. It records what happened and what actions market personnel took in response.

### Legacy Binder Components

A legacy binder is a collection of files and documents, both current and historical, about the farmers market. Keeping files organized can help ensure continuity during market transitions and make sure that important market information is easy to find when it is needed.





## Annual Legal Check-Up for Markets

Checklists are one way that markets can actively address legal risks while also providing your market with a record that you have done your due diligence, should an issue ever arise.

Your annual legal check-up provides a checklist of tasks to make sure your market's practices and records are all up to date. The list below isn't exhaustive, but is meant to give you ideas of tasks

you might include. Note: If your market shifts locations with the season, you might consider having more than one check-up each year or completing the tasks on your list for each location.

Once you have a checklist written for your annual legal checkup, pick a specific date to complete the checklist and assign a person to be responsible for completing it.

### 1 Business Filings

- ☐ Make sure you file any annual paperwork or pay any fees required for your market's business structure:

#### Business Structure & Annual Maintenance Obligation

**Sole Proprietorship:** Few to no annual maintenance obligations. Sole proprietorships generally have no annual maintenance obligations in terms of business meetings or reports to the state, aside from taxes.

**Partnership:** Few to no annual maintenance obligations. General partnerships generally have no annual maintenance obligations in terms of business meetings or reports to the state, aside from taxes.

**LLC:** Annual paperwork, which usually involves an annual fee, is required to maintain the LLC.

**Corporation:** Annual paperwork, meetings, and meeting notes are required to maintain the corporation. Filing annual paperwork with the state may involve a fee.

**Nonprofit:** Annual paperwork, meetings, and meeting notes are required to maintain the nonprofit corporation. Annual audits and federal reporting are required by the IRS to retain the tax exempt status. Annual filings with the state may be required.

**Cooperative:** Annual paperwork, which usually involves an annual fee, is required to maintain the cooperative.

### 2 Insurance Updates

- ☐ Revisit your market's insurance terms. Has anything changed at your market that would warrant a change in terms (e.g., addition of new property)?
- ☐ If market contacts or board members have changed, update your insurance policy.
- ☐ Make or update an inventory of market property (tents, tables, signage, A/V equipment, etc.).
- ☐ If your market requires vendors to list the market as an additional insured on the vendors' insurance policies, make sure you have proper documentation showing that each vendor has done so.
- ☐ If your market has changed or is planning to change location, update your address with your insurance company.



### 3 Host Site

- ☐ If the market doesn't own the property, contact the landowner to keep the lease/rental agreement up to date. If your lease/rental agreement needs to be reviewed annually, ensure that the land can be used for the upcoming season.
- ☐ If possible, walk the space with the landowner to review its current condition. Otherwise, take photographs and share them with the landowner. If there are certain changes the landowner agrees to make, try to get confirmation of the change and the timeline in writing.

### 4 Internal Market Documents & Practices

- ☐ Review and update your market rules, including vendor regulations, rules for visitor behavior, etc. Markets can solicit feedback on these rules, such as whether pets should be allowed at the market, but incorporating that feedback should be tempered by the real need to control risks.
- ☐ Review and update other market materials (e.g., vendor applications, participation agreements, etc.) to maintain consistency with any updates to the market rules
- ☐ Review and update your Market Day Checklist.
- ☐ Ensure that market staff are trained in emergency procedures (including first aid, emergency response, extreme weather, bomb threat, etc.) and that the market is coordinating with local authorities on emergency planning.
- ☐ Inform or remind vendors of disciplinary procedure for failing to correct unsafe conditions in a timely manner.
- ☐ Add new or file updated documents in your market's legacy binder.

*If your market accepts SNAP benefits:*

### 5 SNAP Compliance

- ☐ Make sure your responsible official's information is up to date with FNS.
- ☐ If your market uses a market currency system, review your practices for tracking and accounting for market currency.
- ☐ If your market uses a market currency system, reconcile outstanding market currency liabilities in consultation with an accountant.
- ☐ If your market uses a market currency system, provide updates about your system to all vendors and train new vendors on how your system works.
- ☐ If your market's bank account information has changed, update FNS.
- ☐ If your market has changed or is planning to change location, update your address with FNS.



*Find more legal resources for farmers markets at  
[farmersmarketlegaltoolkit.org](http://farmersmarketlegaltoolkit.org)*



## Annual Market - Vendor Communication Checklist

Communicating the major details of the market season with your vendors is not only key to making sure your market runs smoothly on opening day, it is also an important **risk management strategy**. One way to communicate important details for a smooth operation is by developing a market – vendor communication checklist. The following list is useful for informing new vendors and reminding returning vendors of critical information that will help your market be a success. Make a plan for when you'll communicate this information. Sharing it before the start of your season(s) is a best practice, either as an email/letter or as a hand-out at an all-vendor meeting.

### Remind your vendors of:

#### 1 Rules and Expectations

- ☐ **Key dates and times for the season** - E.g., opening and closing days, regular market hours, any weeks with unusual schedules, what time vendors can arrive to set up, how long vendors must stay at the market, etc.
- ☐ **Updated market rules** - Draw attention to any changes from the previous season's rules. Inform or remind vendors of disciplinary procedures for failing to correct unsafe conditions in a timely manner.
- ☐ **Request for vendors' paperwork** - E.g., proof of insurance, certifications, etc.

#### 2 Market Season Communications

- ☐ **Important contact information and when to use it** - Some markets have different contacts on market day or prefer to be contacted via email for certain issues and phone for others. Being specific about how and when vendors contact the market will help streamline these communications.
- ☐ **Planned communications** - If your market plans to communicate regularly with your vendors, let them know when and how they can expect to hear from you so they know to look out for it.
- ☐ **Plans for emergencies or extreme weather events** - Explain how and when decisions will be made about whether a market day will be canceled.

#### 3 Vendor Set-up

- ☐ **Set-up and packing-up details** - Let vendors know where they are expected to park, what times they are allowed to drive into the market to unload, etc.
- ☐ **What vendors are expected to bring** - E.g. canopy weights (if you have specific requirements, it's important to note them), tables, etc.

#### 4 For markets with SNAP benefits

- ☐ **Review the details of your market's system** to ensure that your vendors are complying with FNS regulations about the program. Details to include are how customers can use SNAP at your market (market operated vs. vendor operated); if you have a market currency or receipt system, how it works; and a reminder of what products are eligible for purchase with SNAP benefits.



Find more legal resources for farmers markets at [farmersmarketlegaltoolkit.org](http://farmersmarketlegaltoolkit.org)



## Market Day Checklist Guidance

Market day checklists are lists that market personnel can follow during a routine, pre-market walkthrough to provide your market with documentation that you did your due diligence to ensure a safe environment should a legal risk arise. These lists primarily focus on creating a safe environment, helping avoid common risks of injury and damage so your market is in a strong legal position. Good safety procedures and evidence that those procedures are followed can help the farmers market defend against claims of negligence, should that become necessary.

### 1 Parking & Vehicle Use

- ☐ Motor vehicles are properly parked, not obstructing access to fire hydrants, fire lanes, and other emergency vehicle access points.
- ☐ Unloading and loading times for vendors are observed and enforced.
- ☐ Parking spaces are free of potholes and other obstructions, or any obstructions are clearly marked and cordoned off.
- ☐ Curb bumps/parking blocks are properly secured and highlighted.
- ☐ Speed bumps are well marked.
- ☐ Vendor vehicles such as large trucks, vans, etc. have wheel chocks or blocks to help prevent movement.
- ☐ Parking areas are well lit.



### 2 Walkways & Pedestrian Safety

- ☐ Walkways are even and clear of obstructions. Any remaining tripping hazards are clearly marked (e.g., potholes, changes in elevation, lawn sprinklers, and abrupt surface edges).
- ☐ Any cords are clearly marked and secured (e.g., taped down) to prevent them from becoming a tripping hazard.
- ☐ Debris is removed from walking surfaces.
- ☐ Handicapped access is provided, including ramps where necessary.
- ☐ Sidewalk and customer area boundary lines are properly identified and enforced.
- ☐ Policy on use of bicycles, scooters, skateboards, etc. is established and posted.
- ☐ Vegetation, including tree branches, shrubs, etc., are kept from obstructing sidewalks, parking lots and common areas.
- ☐ Areas under construction, repair, or modification are properly fenced off, with appropriate warning signage, lights, etc.
- ☐ Customers and employees are restricted from fenced/barricaded construction areas.
- ☐ Walkways are well lit.



### 3 Equipment Safety

- ☐ Display tables are properly arranged and filled within reasonable load capacity.
- ☐ Electrical equipment, including extension cords, wiring, etc., are properly rated for outdoor use.
- ☐ Electrical outlets are equipped with ground fault circuit interrupters to reduce shock hazard.
- ☐ Tarps, tents/canopies, table legs, etc., are properly installed and secured to reduce tripping hazards and risk of collapse.
- ☐ Vendors' equipment (e.g., display tables, supports, awnings, umbrellas) comply with the market's rules for vendor booths.

### 4 Food Safety

- ☐ Containers of food for sale are managed per state health and safety codes.
- ☐ Hand-wash stations are available, where required.

### 5 Emergency Preparedness

- ☐ Emergency barricades, orange warning cones, etc. are available in case of emergency.
- ☐ Fully stocked first aid kit and fire extinguisher are available at market manager's booth.

### 6 Other

- ☐ Market's pet policy is posted.
- ☐ Appropriate "NO SMOKING" and "OPEN FLAME" signs are clearly displayed, as necessary.
- ☐ Appropriate licenses (e.g., State Department of Agriculture, Health Department, etc.) are clearly displayed, as necessary.
- ☐ Trash containers are available for public use, as appropriate.



**In addition to the substantive checklist items above, consider the following design features when developing a market day checklist:**

Add space on the checklist for the market personnel conducting the walkthrough to fill in his/her name, the date and time, and a checkbox for each inspection item to be checked as it's inspected (or another way to indicate that the standard is satisfied/not satisfied).

Organize the safety checklist in logical order with regard to your market's layout, for the convenience of the individual conducting the safety walkthrough.

Add a column to one side of the list and/or provide a space below the checklist (and checkboxes) for notes or needed follow up regarding specific items.

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### Call for Help

Keep the following phone numbers readily available on market days. They should be added to the incident report form before printing or sharing copies to use on market days.

**Emergency: 911**

**Local Law Enforcement:** \_\_\_\_\_

**Market Manager Cell:** \_\_\_\_\_

**Poison Control:** \_\_\_\_\_

**Market Security:** \_\_\_\_\_

**Market Insurance Provider:** \_\_\_\_\_

### Market Information

**Market name & location:**

*Person completing incident report:*

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Market day(s) & hours:**

### Contact Information for People Involved:

*Injured party*

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

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

*Witnesses:*

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

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

*Witnesses:*

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

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

*Witnesses:*

**Name:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

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

### Incident Details

**Date & time:** \_\_\_\_\_

**Incident location:** \_\_\_\_\_

**Pictures taken? Y / N**

**Describe area if needed:** \_\_\_\_\_

*Emergency responders contacted:*

- |  |   |                                       |
|--|---|---------------------------------------|
| <input type="checkbox"/> 911             | <input type="checkbox"/> Emergency contacts | <input type="checkbox"/> Landlord     |
| <input type="checkbox"/> Fire department | <input type="checkbox"/> Market personnel   | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Police          | <input type="checkbox"/> Insurance company  | _____                                 |

### Description of incident & injuries:

*For descriptions from witnesses, note which witness made the statement and indicate when when using direct quotations.*

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**Market personnel involved:** \_\_\_\_\_

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**Action taken by market personnel:** \_\_\_\_\_

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**Medical attention requested and/or provided:** \_\_\_\_\_

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**Property damage:** \_\_\_\_\_

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# Legacy Binder Components

## Farmers Market LEGAL TOOLKIT

A legacy binder is a collection of files and documents, both current and historical, about a farmers market organization. It creates a simple way to build and share institutional knowledge. New vendors, management, or board members might have ideas or suggestions for changes to market practices, and being able to learn what has been done before (and why) can help provide important context for market decisions.

For some markets, having a physical binder of these documents is sufficient, but consider also creating a digital copy of the documents (using Dropbox, Google Drive, or another online storage service) so that they can be easily shared, stored, and updated.

When updating important documents, file new copies with old ones and include the “last updated” date on a top corner (for example, *updated November 2017*) to help with historical reference. Below is a sample list of documents to keep in a legacy binder. This list isn’t exhaustive, nor will each item apply to every market, so feel free to adapt it to your market’s needs.



### What to include in your legacy binder:

#### Governance Documents

- Incorporation documents
- Bylaws
- Staff and board member contact information, including past staff and board
- Staff and board member job descriptions

#### Other Important Documents

- Market insurance policies
- Insurance and registration for market-owned vehicles
- Warranties for equipment with copy of purchase receipt
- Lease agreements
- Copies of annual tax returns
- Market metrics tracked on an annual basis (e.g., customer counts, revenue, etc.)
- SNAP authorization paperwork (for markets accepting SNAP benefits)

#### Market Rules & Policies

- Market rules
- Vendor applications
- Other market policies (dog policy, severe weather policy, emergency protocols, etc.) and any notes from the meetings that established those policies

#### Everyday Market Management Documents

- Passwords for websites, email accounts, social media accounts, etc.
- Event promotion contacts: who to get in touch with, where, and when
- Membership and/or sponsorship materials
- Special event details/promotions
- Thumb drive or folder of pictures of market space(s) and events
- Market Day Safety Checklist
- Annual Legal Check-Up form
- Past incident reports