



# Home Grown:

*Legal Guide to Starting a Nonprofit Farmers' Market in Texas — 2006 Edition*

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## About Texas C-BAR

Texas Community Building with Attorney Resources (“Texas C-BAR”) is the only project in Texas with a focus on providing free legal assistance to Texas nonprofits working to improve the quality of life in low-income communities. Texas C-BAR was founded with the support of the Texas Bar Foundation and continues as a successful program today due to the support we receive from more than 45 law firms, hundreds of volunteer attorneys, the Texas State Bar and numerous other funders and participants. This manual is funded in part by the Department of Housing and Urban Development.

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You can contact us at:

**Texas C-BAR**  
4920 N. IH-35  
Austin, Texas 78751  
phone: 512-374-2760 or (800) 369-9270, ext. 2760  
fax: 512-447-3940  
email: [info@texasbar.org](mailto:info@texasbar.org)  
website: [www.texasbar.org](http://www.texasbar.org)

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## Table Of Contents

<b>I. Considerations in Starting a Farmers' Market</b> .....	<b>5</b>
Introduction .....	7
Why Form a Farmers' Market? .....	7
Initial Considerations .....	9
Getting Started .....	10
Corporate Structure .....	10
Choice of Entity .....	11
Formation of the Non-Profit Corporation .....	12
Tax-Exempt Status .....	14
<b>II. Operating a Farmers' Market</b> .....	<b>19</b>
The Market Manager .....	21
Rules, Regulations and Potential Problems .....	22
Drafting Marketplace Rules .....	23
Being Certified to Operate a Farmers' Market in Texas .....	24
Overview of Licenses and Permits Required of Vendors .....	25
Packaging Requirements .....	28
Site Selection .....	28
Zoning and Deed Restrictions .....	29
Building, Fire and Safety Regulations .....	29
Safety and Security .....	30
Restricting Firearms .....	30
Insurance and Risk Managemen. ....	31
Mitigating Accidents .....	31
Emergencies .....	32
Employees, Volunteers and Vendors .....	32
Insurance .....	33
<b>III. Permits and Regulations</b> .....	<b>37</b>
Health Permits and Regulations for Retail Food Establishment .....	39
What Is a Retail Food Establishment? .....	39
What Permits Are Required of a "Retail Food Establishment"? .....	39
What Regulations Apply to Retail Food Establishments? .....	40
What Are Mobile and Temporary Food Establishments? .....	40
How Can I Learn More about the Regulations for Food Establishments? . . .	40

“Organic Products” and Similar Terms . . . . .	41
Certification Requirements for Producers and Handlers . . . . .	42
Retailer Standards . . . . .	42
Texas Registration Requirements for Exempt Growers and Growers Certified Elsewhere . . . . .	44
Using “Natural,” “Free Range,” and Other Descriptive Words . . . . .	44
Manufactured Foods . . . . .	45
Selling Alcoholic Beverages . . . . .	46
Selling Fireworks . . . . .	47
<b>IV. Sales Taxes . . . . .</b>	<b>49</b>
What’s Taxable and What’s Not? . . . . .	51
Who’s Taxable and Who’s Not? . . . . .	52
What Is the Sales Tax Rate in Texas? . . . . .	52
What Are a Vendor’s Responsibilities When Collecting Sales Taxes? . . . . .	52
What Are a Vendor’s Responsibilities After Collecting Sales Taxes? . . . . .	53
<b>V. Selling Food to Participants in Government Assistance Programs . . . . .</b>	<b>55</b>
WIC Farmers’ Market Nutrition Program . . . . .	57
Senior Farmers’ Market Nutrition Program . . . . .	58
Food Stamps . . . . .	58
<b>VI. Appendix . . . . .</b>	<b>59</b>
Annex A: Considerations for Market Rules . . . . .	61
Annex B: Regulatory Checklist for Market Managers . . . . .	63
Annex C: Vendor Compliance Checklist . . . . .	64
Annex D: Model Association Rules and Regulations . . . . .	65
Annex E: Model Vendor Application . . . . .	72
Annex F: Vendor Permit Worksheet. . . . .	74
Annex G: Form of Certificate of Formation . . . . .	76
Annex H: Form of Bylaws . . . . .	82
Annex I: Form of Initial Resolutions of the Board of Directors . . . . .	97
Annex J: Key Contacts . . . . .	102
Annex K: ERS Group: Growing Economic Development with Farmers’ Markets in Texas . . . . .	105
Annex L: Endnotes . . . . .	110

# I. Considerations in Starting a Farmers' Market



# I. Considerations in Starting a Farmers' Market

## Introduction

Farmers' markets have blossomed during the past decade, more than doubling in number since 1994 according to the U.S. Department of Agriculture. It's not hard to see why. The prospect of buying local farm-fresh food straight from the producer on a sunny weekend afternoon has a simplicity and purity that is a welcome break from the world of mass production. On top of that, markets can serve as meaningful economic opportunities for communities and as catalysts for community redevelopment.

Starting a farmers' market involves more than just finding a vacant lot and opening the door to vendors. Without planning, here are some of the questions that will keep the board of a non-profit farmers' market association up at night. How can the community benefits of the market be maximized? Where should the market be located? What permits are needed? What happens if a vendor sells rotten food? Or someone trips and falls because a vendor didn't sweep in front of his stall? Or a vendor represents something as 'organic' that isn't? What are the requirements for collecting sales taxes, weighing food, accepting food stamps? But as any entrepreneur knows, careful planning is the key to success, even if the risks cannot be completely eliminated.

This manual is designed to give you an overview of the process and issues that you must consider when starting a non-profit farmers' market in your own community and, hopefully, to accelerate the time it takes you to get your farmers' market up-and-running. While some of the requirements may seem daunting, it is important to realize that the government agencies involved in the process want to help you succeed. Also, there are many other organizers around Texas who have successfully started and operated their markets. Because this manual cannot be all-encompassing and laws are always evolving, it is also important that you contact the various regulatory agencies to determine the application of the laws to your specific situation. In Annex J, we have included a list of contact information for many of the relevant agencies, as well as an Internet link to a page maintained by the Texas Department of Agriculture that will lead you to the websites for other farmers' markets located in Texas. Contacting the Texas Department of Agriculture and the organizers of other farmers' markets can be invaluable in helping to get your own market started. Of course, Texas C-BAR and its volunteers are always available to help you navigate the process.

Finally, we would appreciate any feedback you may have about this manual and would like to hear about your experiences as you go through the exciting process of creating a farmers' market in your own community.

## Why Form a Farmers' Market?

There are many different reasons for starting a market and numerous benefits that can be provided to the community. Because you are reading this manual, it is highly likely that you have already decided upon the reasons why a farmers' market may be good for your community. By exploring the rea-

sons that other farmers' markets have been started and the benefits other communities have experienced, you may find other reasons to support your creation of a farmers' market in your community. These factors can further impact how (and where) you organize and operate your market.

Primarily, farmers' markets offer an economic development tool in the community in which they are located. Depending on the types of products permitted to be sold, the markets offer a new customer base to farmers and a new business opportunity to craftsman, cooks, bakers and merchants.

According to one study, the economic development offered by farmers' markets occurs through the creation and capture of value:<sup>1</sup>

- Value is *created* by bringing food to the community that is fresher than food otherwise available.
- Value is *captured* by allowing farmers to sell directly to consumers in their community, thereby eliminating processing and transportation costs. As a result, consumers may pay about the same price for higher quality food purchased at a farmers' market than they would for lower quality food at a supermarket and the farmers' profit margins on items sold at the farmers' market will be higher than food sold by the farmer to processors. The additional profits will also stay in the community, furthering the positive economic impact generated by the farmers' market.

Many markets find it beneficial to enlist the support of local restaurants, and increasingly college food services providers, particularly during the formation of the market. Chefs generally prefer to use the freshest foods available and often are keen to purchase direct from farmers. The market and restaurant customers may even be able to cross-promote one another. The value created by buying local will benefit both the producers and the customers through a "multiplier" effect on local businesses. At a minimum, this approach should create an initial customer base and further help to create value within the community.

In addition, farmers' markets tend to become a social event in their community, providing customers with a chance to interact with each other and farmers and merchants to interact with their customers, an opportunity that usually does not exist for farmers. As a result, farmers and merchants have the opportunity to learn what their customers are looking for and to develop products to meet those needs.<sup>2</sup>

Some markets also list other goals among their purposes, including:

- environmental goals, such as promoting farming techniques that are environmentally sound or producing organic foods;
- social goals, such as increasing the availability of nutritious food for low income families; and
- educational goals, such as teaching children in the community about the source and nutritional value of their food or the benefits of locally grown food.

For example, the location of the market can be chosen to attract customers into areas of the city where, or on days when, they otherwise may not shop. This is especially true with respect to downtown markets. In this manner, the market may also serve as a catalyst to other businesses, especially restaurants and cafés located within the vicinity of the market.<sup>3</sup> The location will also influence the market's ability to accomplish environmental and educational goals that you may have.

While all of these factors should be considered, their importance to your market will also depend upon the type of market that is created, including the market rules adopted, the types of items sold and its hours of operation.

### Initial Considerations

The first question with which you may be struggling is whether you should form a farmers' market in the first place. You recognize that the success of farmers' markets involves careful planning and are willing to take the time and effort necessary to commit yourself to this challenging endeavor. Nevertheless, the ultimate success of the market will depend upon whether the community, as a whole, is receptive to the establishment and operation of a farmers' market.

As you work through this question, you may want to consider the following items:

- Have enough producers and vendors expressed a commitment to sell products at the market? Are the producers and vendors in a position to sell adequate quantities of products at the market at reasonable prices? Are these producers and vendors able to provide a variety of goods that will attract customers? You must keep in mind that the main driver of the market's viability is the ability of the producers to make a profit while providing quality goods at reasonable prices.
- Have you estimated the number of consumers that will go to the market? Is there a targeted socio-economic mix of potential consumers? Will this number (and their expected spending habits) support the market's operations?
- Who will be your competitors? Are there nearby farmers' markets? How do the quality and prices at local retail food stores compare?
- What financial support will be required? Will the government officials, philanthropists, commercial business people and the agricultural community provide the necessary financial support?
- Where would you like to locate the market and how will you lease, purchase or have donated the desired land?

While you may not yet have all the answers to these questions, we hope that this manual will help you think through these issues and guide you to other resources that allow you to make an informed decision as to whether a farmers' market is the best way to accomplish your goals.

## Getting Started

There are many “first steps” to be taken once you have decided to start a market – from obtaining necessary start-up funds to site selection to forming a non-profit corporation (and obtaining “tax exempt” status from the IRS and Texas). This manual attempts to highlight those areas and seeks to give you sufficient information to make some preliminary determinations and to be able to ask appropriate questions to government agencies and other market organizers. Many of these decisions, though, are dependent on each other. For example, where you locate the market may effect what types of products you permit to be sold at the market, while at the same time determining the interest of potential farmers and vendors in participating at your market may effect where you choose to locate the market. Similarly, the types of vendors may also impact the governance structure of your non-profit corporation. Again, early planning (including market research) can be invaluable. Nevertheless, creating some flexibility in your early planning will also help you to adapt your market better to your community as the market is organized and grows.

## Corporate Structure

One of the first questions for you will be to decide upon the structure of your market. While you could simply choose a place for your market and find vendors to fill it, without creating a separate entity, it likely will be better for you for legal and tax reasons to use a corporation or other structure that will be responsible for the market.

Many organizers of farmers' markets come to the task from an existing non-profit entity. Other markets are organized initially at a governmental level or by an economic development agency. For many, the question will be whether to have a new market operated under the auspices of one of those entities. The answer is that it depends.

Farmers' markets can carry more risks than groups typically undertake with other projects. Risks can include everything from the potential accidents and violence in a public space to the health concerns implicated by the selling of food products. Risks can be compounded by the complicated regulatory schemes that govern farmers' markets at the federal, state and local levels. Operating a market also could trigger tax consequences for a non-profit organization if not structured and operated correctly. While these risks should not deter you, they do mean that you should seek legal and tax advice before deciding how to establish and operate your market to minimize risk to your other undertakings.

In many cases, organizers have concluded that the goals of a market are best served by organizing the market as a separate standalone entity where growers are members in the market. In fact, there can be a number of advantages to operating a market using this type of structure in Texas and many other states.

One of the principal benefits with this standalone structure is that the association may become a “certified farmers' market” and participate in federal food assistance such as the Farmers' Market Nutrition Program. Certified farmers' markets also enjoy certain promotional benefits provided by

the Texas Department of Agriculture and may be eligible for financial and other assistance from the U.S. Department of Agriculture through its Farmers' Market Promotion Program.

Finally, most farmers' markets are also established as "non-profit," or charitable, organizations. A non-profit organization is one that does not seek profit; rather, it seeks to serve a charitable or benevolent purpose. As a non-profit organization, your market would not be subject to income taxes and donations made to the market may be deductible as "charitable contributions" from the income taxes of the donor. Because of these benefits, it is highly likely that you should apply for your market to be granted non-profit status.

We will explore all of these concepts in greater detail below.

### **Choice of Entity**

When seeking legal and tax advice, you should expect the conversation with your advisors initially to focus on the type of entity that will be formed. The primary choices include a corporation, a limited liability company, an unincorporated association, a charitable trust and a cooperative marketing association.

One of the primary reasons for choosing to conduct business through an entity such as a corporation is to reduce the personal liability of the organizing persons. If properly structured and maintained, the entity itself, and not the directors, officers, employees or volunteers of the entity, are liable for the business. For example, if you choose to operate through a corporation, then generally the corporation alone will be liable for the debts of the business and for any problems, such as if a customer falls at the market site. If you choose to operate without an entity, then the organizers run the risk of being held personally liable for such debts or injuries.

The corporation is the entity with which you are likely most familiar. Many for-profit businesses are organized as corporations - even the local dry cleaner, hardware store or boutique, typically use this type of entity. The board of directors in a for-profit corporation govern the affairs of the corporation and have a duty to take actions that are in the best interests of the shareholders. The shareholders have the right to vote on certain major actions, including the election of the directors.

Similarly, non-profit corporations in Texas may be governed by board of directors, members, or combination of the two. Non-profit corporations do not have shareholders. Many non-profit corporations choose simply to have a board and permit the board to govern the company and to appoint the officers (such as the market manager) to handle day-to-day affairs. Other non-profit corporations also have members. Under Texas law, the members may serve a variety of roles, from choosing to have no board and allowing the corporation to be governed by the members, to permitting members to have control over certain issues (i.e. electing directors or voting on changes to market rules) or any other role that the organizers can envision.

In Texas, the limited liability company, or LLC, is extremely popular in the for-profit business world because of tax and corporate governance advantages. The tax advantages do not apply to charitable organizations. On the governance side and as compared to for-profit corporations, LLCs allow for a much more flexible governance structure and provide much greater flexibility with how to structure management of the entity than what is permitted in a for-profit corporation. Due to this flexibility, though, it is necessary to spell out the governance structure in great detail, a process that can be quite cumbersome for the organizers. Texas law, though, permits non-profit corporations to be governed by “members” or a “board of directors” and, accordingly, provides much of the flexibility offered by an LLC. In addition, Texas law does not provide clear guidance as to the applicability of the LLC regulations in a non-profit setting, increasing the requirement that all details be spelled out in the organizing documents of the LLC. As a result, few (if any) non-profit organizers in Texas elect to use the LLC as their entity.

An unincorporated non-profit association is created under Texas Law when three or more people jointly pursue a common, non-profit purpose. An unincorporated association is not subject to many of the strict, organization, reporting and registration requirements imposed upon nonprofit corporations. As a result, it is the easiest entity to form as it simply requires at least three people to act together for a common, non-profit purpose without even having any written documents. The major drawback to this option, however, is that many states do not view the unincorporated association as an entity, meaning that the persons acting together may have personal liability for the debts and other liabilities of the business when dealing with suppliers, vendors or other companies outside of Texas. Even in Texas, there is some ambiguity as to the liability of the members of a non-profit association. Accordingly, you are strongly cautioned to consult with your own legal counsel to discuss whether this form is appropriate for your farmers' market. In addition, you should also recognize that any actions that you take with others before formally creating your farmers' market could also create an unincorporated association and, as a result, unexpectedly expose yourself and your fellow organizers to liability.

The final option, a charitable trust, is formed by a donor placing funds under the control of a trustee who is then charged with using the funds for a specified purpose. Due to the complexities of creating this type of entity, you should work closely with legal counsel to establish a trust if you believe that this type of entity would be the most appropriate for your situation.

As most organizers will choose to use the non-profit corporation, this manual does not further discuss the other entities.

### **Formation of the Non-Profit Corporation**

In order to actually create a non-profit corporation in Texas, you must file a Certificate of Formation with the Texas Secretary of State and pay the requisite filing fee. When filing, a duplicate copy of the Certificate of Formation should be provided in order that the Texas Secretary of State can return a file stamped copy to the organizer as further evidence of the filing, serving as a “birth certificate” for your company.

The Certificate of Formation sets forth some basic rules regarding the governance of the corporation. Additional rules are set forth in another document called the Bylaws. The board of directors of the non-profit corporation should also adopt some initial resolutions setting forth certain key items, such as the initial officers. Sample forms of a Certificate of Formation, Bylaws and initial resolutions have been included in this manual at Annexes G, H and I, respectively. These forms also include footnotes to highlight certain issues that you should specifically consider when forming your corporation.

Serious consideration should be given as to whether it is appropriate to have members at the outset of the market and, if so, what their role should be.<sup>4</sup> You should consider that there will be many decisions that must be made as the market is formed and begins operations. Some of those decisions may need to be revised. You should consider whether it will be more difficult to make the necessary adjustments to get the market running smoothly due to the involvement of the members. Should you choose not to have members (or to have members that have no governance role) initially, you could implement a membership structure, such as the one used by University Place Farmers' Market described below, once the market is operating. Adding members at a later date requires a simple amendment to the Certificate of Formation and the Bylaws of the corporation. This approach would allow you and your fellow organizers to focus on the initial issues and later engage the community giving vendors additional stake in the market, providing an additional source of revenue from sponsors and (hopefully) allowing you to share the workload with the members. For example, the University Place Farmers' Market in Washington elected to have a board and several levels of membership as described in their bylaws:

- Regular member: Must submit a completed membership application along with dues on or before the first meeting of the new market season. A regular member is eligible to vote at general meetings and may serve on the market's governing body and committees.
- Supporting members: These would be community members who would like to participate in the market as a non-vendor. Supporting members will pay an annual membership fee and may serve on the board of directors.
- Lifetime member: Regular and supporting members may amend their membership to lifetime status by paying a one time, non-refundable fee of \$250. The member/farm/family who holds the membership will no longer have to pay annual dues. Weekly stall rent will still apply.
- Youth member: Youth members (18 years or under) must submit an application to the market manager at least one week in advance of first market attended. The application must be signed by both the youth member and their legal guardian. The fee for a youth table will be 5% of their daily sales. Youth members must grow their own products or make their own crafts. Youth membership is a non-voting membership and youth members may not serve on the governing body.
- Sponsor: A business or other entity that wishes to support, financially or otherwise, the advancement of the market. This is a non-voting membership. Public recognition will be given to sponsors.<sup>5</sup>

## Tax-Exempt Status

Simply because your corporation is organized as a “non-profit corporation” does not make it a tax-exempt organization for federal and state tax purposes. Like individuals, corporations must pay federal income tax and, in Texas, the corporate franchise tax. The Texas franchise tax effectively is a state income tax on businesses. Organizations that are charitable in nature, however, can be exempt from these taxes if they follow the proper procedures to be declared “tax-exempt” by the relevant taxing authorities. In addition, donations made to certain tax-exempt organizations may be deducted by the donor from his or her income tax as a “charitable contribution.”

### Selecting the Type of Tax-Exempt Status to Pursue

In order to obtain tax-exempt status for your non-profit corporation at the federal level, your organization must file an application with the IRS demonstrating that it meets certain requirements. Once you have established your tax-exempt status at the federal level, it will be relatively easy for your corporation to obtain tax-exempt status in Texas.

The first step in the process is to determine the type of tax-exempt status for which you believe your organization will qualify. There are many different types of tax-exempt organizations. The types are defined in Section 501(c) of the Internal Revenue Code (or tax code).

You may have noticed references on materials from charities soliciting donations that they are “a 501(c)(3) nonprofit organization.” This reference is to the section of the tax code under which the organization has been declared tax-exempt. The exemption offered by Section 501(c)(3) is the most common exemption claimed by non-profits. Many farmers’ markets have also been declared tax-exempt under this section, while others have sought tax-exempt status as a “chamber of commerce/business league” under Section 501(c)(6). Notably, donations to Section 501(c)(6) organizations generally may *not* be deducted by the donor as a “charitable contribution.” To the extent that the Section 501(c)(6) benefits the donor, such as a local business donating (or paying dues) to its local chamber of commerce, the donation may be deducted as a business expense. While this deduction is beneficial to certain specific groups, it makes it difficult for Section 501(c)(6) organizations to raise money from the community at large. As such, it is likely to be of greater benefit to you to structure your market so that it can obtain Section 501(c)(3) status; accordingly, the remainder of the discussion will focus on the 501(c)(3) exemption.

In order to qualify for tax-exempt status under Section 501(c)(3) of the tax code as a charitable organization, “a non-profit organization must be *organized* and *operated* exclusively for one or more *exempt purposes*:

- *Organized*: A 501(c)(3) organization must be organized as a corporation, trust or unincorporated association. An organization’s organizing documents ([certificate of formation], trust documents, articles of association) must: limit its purpose to those described in section 501(c)(3) of the [tax code]; not expressly permit activities that do not further its exempt purposes, i.e., unrelated activities; and permanently dedicate its assets to exempt purposes.
- *Operated*: Because a substantial portion of an organization’s activities must further its exempt

purpose(s), certain other activities are prohibited or restricted including, but not limited to, the following activities. A 501(c)(3) organization:

- \* must absolutely refrain from participating in the political campaigns of candidates for local, state or federal office
  - \* must restrict its lobbying activities to an insubstantial part of its total activities
  - \* must ensure that its earnings do not inure to the benefit of any private shareholder or individual
  - \* must not operate for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests
  - \* must not operate for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory
  - \* may not have purposes or activities that are illegal or violate fundamental public policy.
- *Exempt Purpose:* To be tax exempt, an organization must have one or more exempt purposes, stated in its organizing document. Section 501(c)(3) of the [tax code] lists the following exempt purposes: charitable, educational, religious, scientific, literary, fostering national or international sports competition, preventing cruelty to children or animals and testing for public safety.”<sup>6</sup>

### **Sample Language:**

The mission of the \_\_\_\_ Farmers' Market is to provide children and adults in the \_\_\_\_ area with locally-grown foods and farm products. This will be accomplished by improving access to local, healthy, affordable food through a direct farm-to-consumer marketing venue that will serve diverse population. Other goals that the \_\_\_\_ Farmers' Market strives to achieve are increased education and support of \_\_\_\_ area agriculture. \_\_\_\_ Farmers' Market believes that small, local farms are essential to the local economy, and is committed to making economic and educational connections between \_\_\_\_ area residents and local farmers.

The sample Certificate of Formation included as Annex G to this manual contains provisions designed to comply with the tax code's requirements for Section 501(c)(3) status. Nevertheless, it will be important for you to properly explain your organization's purpose and method of operation in order to successfully obtain this status. Furthermore, if you do not believe that your organization would meet the above standards for Section 501(c)(3) status, as mentioned above, there are many other types of organizations under the tax code that may qualify as tax exempt. Your legal or tax advisors can help you to select the exemption that best meets your organization's goals. Further information is available at [www.texasbar.org](http://www.texasbar.org).

### **Public Charity or Private Foundation?**

The IRS further divides all tax-exempt organizations into one of two groups: public charities and private foundations. The difference between the two categories is the source of their funding. Public charities generally receive their funding from broad public support, the government or other publicly

supported organizations. Private foundations, in comparison, generally receive their funding from one or a few individuals. Different rules apply to each category, the principal purpose of which is to ensure that private foundations are not using their funds primarily to benefit their few donors for, in that case, the organization would not be considered a charity.

You will have to demonstrate to the IRS your sources of funds in order to support the basis for your request to be classified as a public charity or a private foundation. Many times, non-profit organizations are started with the financial backing of a few individuals with the ultimate goal of becoming broadly supported. If this situation applies to your organization, you may still seek to have your organization classified as a public charity and, assuming approval by the IRS, your organization will need to demonstrate at the end of a five year period that you have received sufficient public funds to sustain your classification. Even if you fall short of the requisite public support, you may still have your organization reclassified as a private foundation at the end of the period. It will be important, however, to work closely with your legal or tax advisors to ensure that you have taken the necessary steps to demonstrate your classification before the end of the five year period.

### **The Application Process**

To apply for Section 501(c)(3) tax-exempt status, you will need to obtain an employer ID number, or EIN, for your organization. An EIN is the equivalent of a Social Security number but for a corporation or other legal entity. You can obtain this number for no cost from the IRS. Information about the EIN can be found at the IRS web site (<http://www.irs.gov/businesses/small/>).

Once you have obtained the EIN, you must complete IRS Form 1023 in order to apply for Section 501(c)(3) tax-exempt status. The application should be submitted within 27 months of the formation of your organization. Once submitted, the IRS will review your application and, typically, ask you additional questions and request supplemental information. It typically takes between three months and one year for the IRS to complete its review and issue a determination.

During the period between the formation of your organization until the receipt of your IRS determination of your tax exempt status, your donors may deduct any contributions that they make to your organization as a "charitable contribution" with the understanding, however, that if some reason the IRS were to deny your request for tax exempt status, then they would have to amend their tax returns to remove those donations. Many people though are not willing to make donations to an organization until they know that it has received tax-exempt status. While many non-profit organizations do not seek broad solicitations for donations until after Section 501(c)(3) status has been received, other new organizations establish a fiscal sponsor agreement with nonprofit that has already received its Section 501(c)(3) status. For information about fiscal sponsors, go to the Texas C-BAR Legal Resource Library/Corporation & Corporate Structures/Pre-incorporation at [www.texasbar.org](http://www.texasbar.org).

## **Tax-exempt in Texas**

Obtaining tax-exempt status from the IRS is an important step, but not the only step that you will need in order to secure tax-exempt status for your organization. As mentioned above, you must also obtain tax-exempt status under the laws of Texas – and in any other state in which your organization operates.

Organizations that have obtained their Section 501(c)(3) status from the IRS, must file a Form AP-205 with the Texas Comptroller of Public Accounts. The form is available from the Texas Comptroller by visiting <http://www.window.state.tx.us/taxinfo/taxforms/ap-205.pdf> or contacting the Texas Comptroller at (800) 252-5555.

Once the Texas Comptroller has granted your organization tax-exempt status, your organization will be exempt from Texas sales and franchise taxes. Your organization may also qualify for exemptions from property taxes, but you will need to contact your local property tax authority to determine available exemptions and the exemption procedures.

### **After Tax-exempt Status Has Been Obtained**

Once your organization is tax-exempt, you will be required to file certain annual forms with the IRS, the Texas Comptroller and, potentially, local tax authorities. You should discuss these requirements with your legal and tax advisors. For more information, see Texas C-BAR's publication, "Nonprofit Legal Toolkit" at [www.texasbar.org](http://www.texasbar.org).



# II. Operating a Farmers' Market



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### The Market Manager

The day-to-day challenges of running a market are considerable and, regardless of the form of corporate structure adopted, most markets delegate day-to-day operations to a designated agent, who is commonly referred to as the “market manager” or “market master.” If the organization hires a market manager, the nonprofit must comply with laws applicable to employers. If the manager is hired as an independent contractor, the organization should enter into a signed agreement outlining the relationship and responsibilities.

The market manager is a key player in a market's success. Generally, the market manager supervises the market's operations both before and during market hours and is readily accessible to answer inquiries and/or respond to complaints submitted by customers and vendors. In many cases, market organizers have found that the position of market manager is one that cannot be filled on a volunteer basis and requires at least a part-time paid employee, a possibility that you should consider when creating the financial plan for your market.

Market organizers may want to define the scope of the market manager's responsibilities in the market rules and make a general job description available to applicants to attract people with proper qualifications. Careful thought should be given to the person who brings the right mix of management, supervisory, business and people skills to the task. In making this assessment, market organizers may want to consider some of the following questions when defining the scope of the market manager's responsibilities:

- Will the market manager select vendors that will be allowed to sell goods at the market or will he or she be involved in the selection process?
- Will the market manager be responsible for approving the goods that are to be sold at the market?
- Will the market manager assign vendor spaces?
- Will the market manager monitor vendor compliance with the market rules, enforce applicable regulations and administer penalties?
- Will the market manager handle administrative issues, including maintaining all the appropriate books and records, distributing market rules, monitoring insurance certificates, tracking sales, updating vendor contact lists and similar activities?
- Will the market manager coordinate and monitor the financial affairs of the market? Will he or she be responsible to collect applicable rents, fees, fines, etc. from each vendor?
- Will the market manager monitor compliance with applicable local, state and federal regulations?
- Will the market manager mediate vendor disputes or will some other committee be responsible for the resolution of disputes?

Ultimately, the market manager should provide the guidance needed to help each vendor and the

market as a whole to succeed. The accomplishment of this goal will require more skills than the administrative skills outlined by the questions above. As a result, having a market manager (or other involved employee or volunteer) that is also a good business person can be critical, particularly as vendors and the market needs guidance on marketing, pricing and merchandising strategies.

When choosing the right market manager for your market, you should carefully review a potential candidate's application and resumé and contact the applicant's references. You may also want to conduct a background check, especially if the market manager will be exercising significant responsibilities.

## Rules, Regulations and Potential Problems

Once you have made some preliminary decisions about structure, the next step is to ask some basic questions about the market, its goals and potential problems. The answers to these questions will help to shape the market rules that your organization adopts. These rules will be one of your organization's most important documents and will govern its relationship with vendors.

- Who can participate in the market? Some markets require that vendors be from within a certain geographic area; others are more concerned with having the right mix of vendors rather than with where they come from. Many markets require that vendors join the market association as members in order to sell at the market.<sup>7</sup>
- What may vendors sell? Some farmers' markets allow vendors to sell only produce or certain types of produce (such as organic or locally grown products). Many limit vendors to selling goods grown by them. Others allow vendors to sell prepared foods such as cakes and cookies, meat and even crafts or used items, such as furniture and clothing. Very different laws will apply to different types of items, so it is important to consider the scope of what your market will permit. At a minimum in order to become a Texas Certified Farmers' Market, you will need to require that some products sold at your market were grown in Texas.
- How will the market be laid out? Markets have rules to allocate the vendor booths, including the "prime locations." Will a first come, first served basis be used to assign stalls? Or will there be preference given to returning farmers to choose their sites before new participants? Will you use a lottery drawing? You may encourage farmers to occupy the same site from the previous season if customers prefer consistency. Also, will the vendors be required to provide cover for their area? Trash cans?
- What mix of items do you want? Many markets also have rules designed to ensure the right mix of vendors. For example, some markets provide that no more than 25% of a market's product mix can be non-food items. Similar to rules limiting what vendors may sell, these restrictions are designed to help ensure the market has a desired character.
- What time commitment will be required of vendors? Many markets require vendors to commit to be present for fixed hours on each day the market is open. Others have more flexible policies for rental of space, allowing vendors to lease space for as short as a single day or weekend.
- What "look and feel" rules do you want? Markets often impose restrictions on the appearance of stalls, proper attire for vendors, use of signs and matters things such as whether a ven-

dor can have a TV or radio present or bring pets into the market area. These rules can be very important in helping to maintain the type of market that the organizers envisioned.

- What pre- and post-market responsibilities will vendors have? Most markets find it helpful to detail what responsibilities and limitations vendors will have in setting up his or her stall or cleaning up afterwards?
- What kind of financial assurances do you want from vendors? Some markets require that vendors provide proof of insurance naming the market association as a beneficiary; others require that a vendor post a bond or provide other financial assurances. Almost all markets require that a vendor agree to indemnify and hold the market and its operators harmless for any loss caused by the vendor's negligence or misconduct. Without insurance, however, an indemnity of this nature may be of little practical benefit if the vendor does not have adequate financial resources to pay for any damages that he or she may cause.
- How do you get rid of a problem vendor? Even the best markets have vendors who just will not cooperate or are disruptive. Markets often find that clear rules on the standards and procedures that will be followed in terminating a vendor are helpful in making sure the process goes as smoothly and quickly as possible.
- Can I give away produce that is left-over? An individual vendor or the nonprofit farmers' market can donate food and will not be held liable as long as the food later goes bad if, the food appeared to be wholesome and the food was donated to a nonprofit organization for distribution to the needy.

Vendors often will have questions about market operations that may be worth anticipating to avoid arguments down the road. Some of the more common questions of vendors include:

- Bad Weather. What happens if the weather is bad? Do I still need to come even if no one will be there?
- Early Exit. Can I end my participation in the market earlier than the end of the season if my goods just are not selling?
- Missed Days. What happens if I am unable to make a day because of illness, death in the family, conflicting obligation, any other reason that a vendor may think of? Is there a penalty? Can I let my cousin use my booth on a weekend that I am going to be out of town?
- Changes in Product Mix. Because my peaches are not selling well, may I start selling tomatoes instead?
- Transferability. May I sell my spot? May I give my spot to someone else?
- Intellectual Property. May I use the market's name and logo in my advertising?

Annex A contains a checklist designed to help you to think further about these issues.

## Drafting Marketplace Rules

To help get you started with drafting your market's rules, a set of model rules are attached as Annex D. Variations of these rules have proven workable with other markets and address many of the key

issues that market operators are likely to face. However, they are not absolute requirements, and it is important that you adopt rules that you believe are appropriate for the community being served.

It is not necessary that rules anticipate every problem that may arise, and, in fact, many market organizers find that it is best to keep the rules simple and flexible and provide the maximum discretion possible for the market manager. In these cases, it is even more critical to select a market manager who can apply the rules and the principals that they reflect in a fair and consistent manner. As market organizers, you know your community best and, together with your legal counsel, are in the best position to identify unique problems or issues that may arise.

### **Being Certified to Operate a Farmers' Market in Texas**

In Texas, farmers' markets are certified by the Texas Department of Agriculture.<sup>8</sup> While not required, being certified allows your market to participate in the WIC and food stamp programs and makes your market more accessible to helpful agencies, including the Texas Department of Agriculture and the USDA.

To operate a certified farmers' market in Texas, an association (or your corporation) will need to obtain an operating certificate from the Texas Department of Agriculture. This certificate must be renewed *annually* and will be valid from June 1 to May 31 of the following year. Each April, the Texas Department of Agriculture will mail a renewal form to all current market associations, who must complete and return the form to the department within 30 days of receipt. (If you do not receive your renewal form, you should contact the Texas Department of Agriculture to inquire about its status.) At present, there is no charge for the certificate or for renewal. You must contact the Texas Department of Agriculture directly to obtain an application for an operating certificate.

In addition to the annual application, a farmers' market must also file the following documents with the Department of Agriculture in Austin:

- a copy of the association's bylaws;
- a list of the members of the association's governing body;
- a list of association members who are also farmers who will be selling their own produce at the market;
- a description of the market's location; and
- a description of the market's seasons, days and hours of operation.

It is important that amended versions of these documents be filed if any of the information changes. Failure to do so could result in loss of the market's certification.

Texas law requires that bylaws of an operator of a certified farmers' market provide that:

- at least some of the agricultural products sold at the market be of Texas origin (the actual percentage is not specified by law),

- at least some of its members (or vendors)<sup>9</sup> are farmers who are selling their own produce at the market and
- all of the agricultural products sold at the market be of merchantable quality.

Failure to enforce these provisions also could result in certification being withdrawn.

## Overview of Licenses and Permits Required of Vendors

One of the more daunting areas for vendors and operators is determining what permits and licenses a vendor will need to sell the vendor's products. The answer will vary greatly depending on the nature of the goods being sold. A vendor who sells only fresh, uncut non-organic fruits and vegetables will need very few, if any, permits. Vendors who sell other types of products could need many more.

It is important to understand that if one type of permit is not required, another permit may very well be required. The best example is that while producers may sell eggs produced by their own poultry without an egg dealer license from the Texas Department of Agriculture, a manufacturer's food license is still required from the Texas Department of State Health Services. In all cases, vendors and operators should also contact their local government agencies to determine whether any additional local rules and regulations apply.

Your market association's rules and regulations should make clear that each vendor is responsible for obtaining all required licenses and permits and for furnishing copies to the market manager. Market organizers must take steps to ensure that their vendors are complying with all applicable regulations. It is possible that the market itself could face fines and penalties for a vendor's non-compliance, particularly if there are repeated or numerous violations by one or more vendors. In Texas, permits and licenses that may be required include:

Sales and Use Tax Permit: All vendors who plan on selling taxable items (such as ready-to-eat foods and non-food merchandise) must obtain a sales tax permit from the Texas Comptroller of Public Accounts. Permits are issued at no cost. See "Sales Taxes" for more information on which products are subject to sales tax in Texas and vendor obligations in collecting and reporting sales taxes.

Food Manufacturer's License: Vendors that produce and package a food product for self-serve or to sell to another business, or have someone else produce a food product with the vendors' label, must have a food manufacturer's license from the Manufactured Foods Division of the Bureau of Food and Drug Safety of the Texas Department of State Health Services. Additional licenses may also be required by the local health department. The manufactured food rules prohibit manufacturing or holding food for distribution in any areas used as living or sleeping quarters, which effectively prohibits the preparation of foods for resale in the kitchen of one's own home. There are other requirements for food preparation facilities and labeling with which a vendor must also

comply. In addition, it is important to note that selling foods that one does not normally think of as having been “manufactured” are covered by this rule, including, for example, eggs produced by a vendor’s own poultry. The application fee for this permit, which starts at \$104 per place of business, depends on the gross annual food sales of the applicant.

Retail Food Establishment Permit: Vendors who sell food products (other than uncut fruits and vegetables and certain prepackaged foods) must obtain a Retail Food Establishment Permit from the local authorities responsible for health and safety inspections. If there is no such body in the area where the market operates, then the vendor must obtain a permit from the Texas Department of State Health Services in Austin. Notably, while vendors who are licensed as food manufacturers often do not need a separate retail food establishment permit, they should still verify requirements with the appropriate agencies. The base application fee for a retail food establishment permit is \$258 plus an additional amount if food sales are \$50,000 or more per year.

Scale and Balance Permit: Vendors using scales, balances and other measuring devices as part of their business must register and obtain a permit for such devices from the Texas Department of Agriculture. This requirement also extends to scales and similar devices used to measure pre-packaged products. With respect to scales needed at the market site (such as to weigh fresh produce), the market could purchase and obtain permits for the scales itself and make them available for use by the vendors. Permits for most retail scales (scales capable of weighing from 1 - 4,999 lbs.) will cost \$15.00 per scale in 2006 and are valid for one year. Weights and measures are subject to inspection by Department of Agriculture examiners.

Perishable Commodities License: Retailers and shippers generally may not handle perishable fruits or vegetables grown in Texas without a license issued by the Texas Department of Agriculture. In 2006, the fee for the license is \$340 per year (including a mandatory \$250 contribution to the state’s Produce Recovery Fund), plus a \$30 registration fee required for cash dealers and a \$90 fee for other handlers. A producer who handles or deals exclusively in the producer’s own products, however is not subject to this licensing requirement.

Egg Dealer License: A vendor who buys eggs from a producer for resale to the public must have an egg dealer license from the Texas Department of Agriculture. The fee for the license is based on the size of the dealer’s operations and can range from \$20 to \$2,400. Eggs sold by the holder of an egg dealer license are subject to inspection to insure compliance with federal standards on quality, grade and size. Producers selling eggs raised by the producer, however, are not subject to this licensing requirement but would be required to have a food manufacturer’s license from the Texas Department of State Health Services, which is discussed above.

Floral and Nursery License: The Department of Agriculture is responsible for periodic inspections of floral and nursery vendor’s facilities and prohibit the sale of items determined to be diseased or pest infested. As part of its inspection efforts, the Department of Agriculture requires

growers and sellers of plants, nursery items and/or floral products to obtain licenses. The type of license or licenses needed depends on the vendor's specific situation. If the vendor is growing nursery products or floral items, then the vendor needs a growing permit. The annual cost for the growing permit varies depending on the vendor's acreage, ranging from \$110 to \$180 per year in 2006. While the growing permit will permit the vendor to sell plants that he or she grew at the growing site, a separate permit is needed to sell the plants or flowers at other locations. Similarly, if the vendor is reselling plants or flowers grown by someone else, then the vendor will also need a selling permit. If the vendor will only be selling the plants and flowers at your market, then the vendor will need a Class 1 license, which costs \$75 per year. If the vendor will be selling the plants and flowers at multiple sites, then the vendor will need a Class M permit. The Class M permit allows the vendor to sell plants and flowers at 30 events per year. Each market day at which the vendor participates would count as one event. In 2006, the annual fee for a Class M permits is \$180.

Vegetable Seed License: All sellers of vegetable seed in Texas must obtain a vegetable seed license from the Texas Department of Agriculture. The fee for the license is \$120 per year.

Aquaculture or Fish Farm License: Businesses that market cultured fish, shellfish or other aquatic species in a private facility, such as a tank or a pond, must have an aquaculture license or fish farm vehicle license from the Texas Department of Agriculture. The fee for the license is \$120 per year.

Organic Certification: Federal and state law require that many growers and processors of organic products obtain organic certification before selling products represented to be organic. See "Organic Products" for more information on rules relating to the labeling of organic products.

Manufacturer's License or Brewer's Permit: Fees and surcharges for a Manufacturer's License must be renewed every 12 months and vary by the number of establishments: from \$1,027 for one establishment to \$8,677.00 for more than five establishments. Fees and surcharges for a Brewer's Permit is \$1,745.00 and must be renewed every 12 months. Surcharges are subject to annual change.

Alcohol Retailer License: The sale or resale of alcoholic beverages in Texas requires a license from the Texas Alcoholic Beverage Commission. Separate licenses are required for the possession, storage, transportation and delivery of such beverages for sale or resale. See "Selling Alcoholic Beverages" for further discussion regarding the sale of alcoholic beverages in Texas.

A sample vendor permit worksheet is included as Annex F.

In addition, it is important to note that there are many other requirements for handling foods (such as shelled nuts and seafood that is caught) but the list is too extensive to include all requirements. As

a result, you and your vendors should work closely with the Texas Department of Agriculture and the appropriate health authorities to ensure that all procedures are being followed.

### **Packaging Requirements**

Vendors who offer pre-packaged commodities for sale, such as fruits and vegetables, must comply with the standards of the National Institute of Standards and Technology (NIST), which have been adopted by the Texas Department of Agriculture. NIST's handbooks no. 130 and 133 contain recommended procedures that the vendor may use to verify the amount of commodities that are included in each package sold by weight, measure (including volume and dimensions) or count. Copies of the handbooks can be located online at <http://ts.nist.gov/ts/hdocs/230/235/pubs.htm> or questions can be directed to the Texas Department of Agriculture. An additional discussion of some packaging requirements can be found under "Manufactured Foods" below.

### **Site Selection**

Another critical decision that you will make regarding your market is the selection of the location. The location can greatly affect the look-and-feel of the market to the primary customer base. It can impact whether the market is a convenience stop for the customers (such as if it is located near main thoroughfares or public transportation routes) or an event to which you want customers to commit to attending (such as if it is located near an area needing economic revitalization or an area with many other shops and restaurants where customers can spend the day). There will also be some basic questions about the area that you will need to research, such as whether there is heavy traffic in the area, the availability of adequate parking for customers and vendors (and the cost of parking), whether the selected land drains quickly after a rain storm, whether the land is adequate to permit the market to grow, among other questions. In addition to the marketing impact that the location will have, it will also have business ramifications, such as how will the site be secured – leased, donated by local businesses or government, purchased? If not purchased, how long may the market use that land and will the market be able to make improvements to the land (such as building stalls) and to risk losing those improvements if the market must relocate. All of these decisions must also be made within the framework of the legal requirements impacting how the land may be used, as further described below.

One resource that you should consider in your site selection process is the Project for Public Spaces ([www.pps.org](http://www.pps.org)). The PPS is a non-profit organization that works with communities to develop their public spaces into "vital community places," including public markets. The PPS provides various services to communities seeking to better utilize their public spaces. Those services include planning and design, technical assistance, training, workshops and research. The PPS has assisted over 200 public market projects and, through their grant program, has provided direct financial assistance to many of these markets.

In addition, you could also contact local government officials and inquire about the city's or county's willingness to provide the necessary land. Alternatively, you could contact churches or even owners of

vacant lots in desirable locations about being able to set up the market on their land. (You can find the contact information for property owners in the local property records.) Certain strip malls may even permit you to start your market in a corner of their parking lot if they believe that the market will help drive customers to their existing tenants. While these choices will reduce initial costs, they may not be a permanent solution if the landowner should later decide to use the land for a different purpose. As a result, you would not be in a position to create permanent structures and could run the risk of developing a successful market, only to be required to relocate at a later date. These negatives should be weighed against the lower cost of donated land and the benefit of having at least the initial support of the owner supplying you with the land.

### **Zoning and Deed Restrictions**

When selecting a location for your farmers' market, it is important to ensure that the local government will permit you to establish the market at your selected location. Cities and counties have the power to enact "zoning ordinances." Zoning ordinances are laws that restrict the use of land in certain areas. (Notably, the City of Houston does not have general zoning ordinances; however, much of its property is covered by deed restrictions, which are discussed below.) For example, the city may "zone" a certain area as usable only for "single-family housing," another area for "multi-family housing," another area for "commercial buildings," and still another for "industrial use." The zoning ordinances allow counties and cities to plan their layout and protect their citizens and property values by preventing one type of use from forcing out another type, i.e. preventing your neighbor from putting a gas station in his front yard. As a result, however, it is necessary to discuss with city and county officials the zoning regulations and determine whether they will permit you to operate a farmers' market at your chosen site. If your selected area lacks proper zoning, you could petition the appropriate local government officials (generally, the city council or zoning board) to change the zoning for that area or to grant you an exemption.

Similarly, some areas also have "deed restrictions." Deed restrictions are found in the title to the property and also limit the use of the land. Frequently, deed restrictions serve to limit the use of the land to residential purposes. In such a case, operating a farmers' market at such a location is unlikely to be permissible. Changing deed restrictions is a complex process that involves the consent of other property owners in the area and typically owners will not remove the restrictions. As a result, you likely should avoid attempting to establish your market in an area with unfavorable deed restrictions.

### **Building, Fire and Safety Regulations**

You must also discuss applicable building regulations and standards with local city and county officials. Any structures that are built on the market site will need to conform to local building codes. Even if you do not plan to build any permanent structures, it is important to determine exactly what type of facilities may be constructed, even on a temporary or daily basis. Supplying electricity or water to the market will also require compliance with the building codes - and both electricity and water may be required under local health laws depending on the types of items being sold. (Please see "Health Permits and Regulation" below for a discussion of those laws.) Furthermore, at a minimum, you should expect local fire and safety codes to apply to your marketplace. These codes may limit the

number of people that can be onsite at one time, specify the size of the parking area (and fire lanes) and require fire extinguishers and other emergency equipment to be kept onsite.

### **Safety and Security**

Because of the merchandise and cash present at the market, thieves and shoplifters, unfortunately, may also attend. It is important to help educate vendors regarding precautions that they can take to mitigate theft. The local police are generally eager to host training seminars to teach the vendors what to look for and steps that they can take to reduce the opportunities for thieves to steal.

As a gathering place, it is also possible that there could be some disputes between vendors, between customers or between vendors and customers. Having a phone nearby to call the police if needed is crucial. Also, when hosting special events at the market, the city may require you to have security guards on site.

Traveling to and from the market also introduces many risks – from customers crossing the street to vendors returning to cars after dark. If traffic is particularly heavy, you could talk to the local police about arranging for officers to be stationed at nearby streets to help direct traffic during busy times. Also, it is important to ensure that the lighting is adequate if persons will be traveling to and from the market at night – both to avoid the risk of injury from unseen objects on the sidewalk and from criminals lurking nearby.

### **Restricting Firearms**

Texas law permits holders of concealed weapons permits to carry weapons on their person on most public business premises unless specific notices are provided to the holders of such permits.

To restrict the right of holders of concealed weapons to bring their weapons onto a business premise, Section 30.06 of the Texas Penal Code requires a business operator to post notices in English and Spanish stating:

“PURSUANT TO SECTION 30.06, PENAL CODE (TRESPASS BY HOLDER OF A LICENSE TO CARRY A CONCEALED HANDGUN) A PERSON LICENSED UNDER SUBCHAPTER H, CHAPTER 411, GOVERNMENT CODE (CONCEALED HANDGUN LAW), MAY NOT ENTER THIS PROPERTY WITH A CONCEALED HANDGUN.”

“CONFORME A LA SECCIÓN 30.06 DEL CÓDIGO PENAL (TRASPASAR PORTANDO ARMAS DE FUEGO) PERSONAS CON LICENCIA BAJO DEL SUB-CAPITULO H, CAPITULO 411, CODIGO DE GOBIERNO (LEY DE PORTAR ARMAS), NO DEBEN ENTRAR A ESTA PROPIEDAD PORTANDO UN ARMA DE FUEGO.”

To be valid, the wording of the notice must conform exactly to the above and the text of the notice must be in contrasting colors with block letters of at least one inch (1") in height. Notices must be posted in a conspicuous manner clearly visible to the public, ideally at all entrances to the market. If such notices are posted, violators will be considered to have committed a trespass to private property.

Further information on restricting firearms on business premises can be obtained from the Texas Department of Public Safety in Austin by calling 512-424-7293 or 800-224-5744 or on the web at [www.txdps.state.tx.us/administration/crime\\_records/chl/chlsindex.htm](http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm).

## **Insurance and Risk Management**

Though your market will be a non-profit organization, it will still be a business. As a result, it will be subject to all the risks generally associated with businesses, including:

- employee claims,
- vendor disputes,
- injuries at the marketplace, and
- theft.

Your market manager and your board of directors should expect to devote a substantial amount of time to these matters. Many problems can be prevented by keen observance of the marketplace and enforcement of the rules. As such, your first (and best defense) is to try to avoid incidents altogether, a task that is best accomplished through the enforcement of policies and procedures that are monitored and updated to properly address risks observed at your market. Nevertheless, no matter how careful everyone is, accidents will still happen and your market should have liability insurance as a second line of defense against these problems.

### **Mitigating Accidents**

A primary focus of the market manager and any other employees or volunteers during market days should be to identify and rectify hazards, such as by:

- maintaining clear aisles and walkways;
- marking and reporting problems with ground hazards, such as uneven sidewalks, potholes, etc.;
- preventing cars (including those of the vendors) from entering the marketplace, especially during business hours;
- watching for unsafe booths (such as poorly supported canopies and counters) that the vendors may set up; and
- removing all trash and debris from the ground, including spilled drinks.

Eliminating hazards will go a long way towards avoiding injuries. In fact, even if someone is injured, being able to demonstrate that your market closely follows procedures designed to identify and promptly remove hazards will be an important part of reducing liability for your market by being able to demonstrate that the market was not negligent.

## **Emergencies**

You should have a first aid kit on site at your market and its location should be made known to all employees, volunteers and vendors. It can also be helpful to use a first aid sign or flag so that any customers with problems will know where to go. Many markets also require their market manager (or another volunteer or employee who will be at the market) to hold first aid and CPR certifications. Many businesses now also keep a defibrillator with their first aid kit that can be used by non-medical personnel. As this is a relatively new invention, you should discuss with your legal counsel whether it is appropriate to have such a device at your market. When properly used, this device can undoubtedly save lives; however, its improper use can cause great injury and there is a substantial amount of concern that the average person will not use a defibrillator correctly or in the right circumstances, which could lead to liability for the market.

Having a phone onsite and properly marked is also important to be able to call emergency personnel when needed. While you may choose to rely on a cellular phone for your market, you should consider whether that will be sufficient if there are problems with the cellular network or with respect to finding the market. When a 911 call is placed through a traditional landline, the emergency operator knows the address of the person calling; however, this information is not always known if a 911 call is made through a cellular phone. The phone companies in your area can answer these questions.

Access to the market by emergency vehicles is also key. City ordinances likely will set the requirements for the size of the aisles and the access routes that must be kept clear for emergency vehicles. Understanding these requirements is an important part of your site selection process because the emergency access requirements will affect the amount of usable space (for vendors or parking) that your chosen site actually offers.

## **Employees, Volunteers and Vendors**

You should also consider the precautions need to be taken to protect your customers from unscrupulous employees, volunteers and vendors. Many organizations (both profit and non-profit) now run background checks as part of the screening process for applicants for employees and volunteers. Given the relationship of the market to its vendors, it may also be appropriate for you to run such checks on your vendors. In this manner, organizations can help to screen out persons that pose hazards before permitting them to become involved in the market – such as a potential volunteer with a violent criminal background or a potential vendor with a history of stealing checks or other identity theft.

Before implementing such background checks, however, careful steps must be followed. You must get

the proper authorization from each person on whom you are conducting checks. You should also have internal guidelines as to how the background checks will be handled – from notifying the applicant in accordance with law to giving him or her a chance to respond to maintaining the privacy of the background checks. For these reasons, you should consult with your legal counsel to properly structure such a plan.

It is also recommended that you have employee and volunteer handbooks. These books will set forth your market's policies with respect to these categories of workers, the expectations that you have for them and methods of handling disputes, including a sexual harassment policy. Having these policies in place and enforcing them will go a long way towards reducing liability to employees and volunteers – as well as lead to happier volunteer and employees who know their rights and expectations.

## Insurance

There are many different types of insurance coverages that are available to your market. It generally is advisable to work with a reputable commercial insurance broker who can help you to understand the various types of policies available, their limitations and, for budgetary purposes, their costs. While having insurance for your market certainly requires a commitment of funds, it greatly reduces the chances of an accident or other incident devastating the financial health of the market and that of your directors, officers, employees and volunteers. Even if your organization is not at fault, the cost of defending against any lawsuits could be substantial. Also, your donors may be pleased to learn that their donations are “protected” by insurance – meaning that in the event of a problem, your insurance should handle the claim instead of you having to use their donations to pay the injured party.

### *Insurance Concepts*

One key concept to understand is the difference between the main policy types: “occurrences” and “claims made” policies. To explain, consider the following example. You have a policy with Big Insurance Company. On July 1<sup>st</sup>, a customer slips and falls at your market and is injured. On August 1<sup>st</sup>, you find better insurance rates when your policy with Big Insurance Company expires and you switch your insurance to Mega Insurance Company on that date. Then, on September 1<sup>st</sup>, the customer that fell sues the market. Which insurance policy will cover the claim? The answer depends on the type of policy that you have.

- *Occurrence* policies cover any claims arising from events that occur while the policy is in effect, regardless of when the claim is actually made. In the above example, then, if you had “occurrence” policies, your Big Insurance policy would cover the claim because the event giving rise to the claim *occurred* while that policy was in effect, even though the claim was not made until a later date.
- *Claims made* policies cover any claims made during the policy period relating to incidents that occurred during the policy period. In the above example then, if you had “claims made” policies, neither policy would cover your claim. The Big Insurance Company policy would not be available because the claim was made after the expiration of that policy. The Mega Insurance Company policy would not be available because the event giving rises to the event occurred

before that policy went into effect. To address this type of situation, businesses often add an additional coverage, or a “rider,” to their claims made policies. These riders typically take one of two forms: a prior acts (or retroactive coverage) rider or an extended reporting (or tail coverage) rider. A prior acts rider would extend coverage to claims made during the policy period relating to events that occurred before the policy period. In the above example, then, a prior acts rider on the Mega Insurance Company policy would likely have provided protection for that claim. An extended reporting rider extends coverage to claims made after the policy period relating to events that occurred during the policy period. In the above example, then, an extended reporting rider on the Big Insurance Company policy would likely have provided protection for that claim. In either case, it is will be important to understand how long the riders will extend coverage as, generally, the longer the extension, the greater the cost.

Another important concept is that of the “*deductible*.” You may be familiar with this concept from your own homeowner’s or automobile insurance policies. In essence, the deductible is the amount of a claim that the insurance will not cover. For example, if your policy has a \$1000 deductible and you have a \$1500 claim, then your insurance will cover only the amount that the claim exceeds the deductible, which, in this example, would be \$500. Also, you should understand how the deductible will apply to multiple claims arising from the same event – such as if a mother slips and falls at your site and knocks down her child in the process. The issue would be whether the deductible would apply to the mother’s claim and the child’s claim (in which case the market would need to meet \$2000 of deductibles or \$1000 per claim), or whether their claims would be aggregated and the deductible applied against that amount (in which case the market would need to meet only \$1000 of deductibles). There are also many variations as to how the deductible could apply in such instances and you should work with your agent to understand what would happen in different situations. While a higher deductible will lower your insurance premiums, it will also expose your organization to greater liability.

Finally, it is important to understand how (or if) volunteers are covered under the policies being offered and to take proper steps to insure that your volunteers are covered in the event that they are harmed *or* cause harm to others. Notably, various laws (such as the federal Volunteer Protection Act) provide some insulation to your volunteers for some of their actions; however, there are gaps in this coverage and plaintiffs will be looking to try to recover from anyone associated with the incident.

### ***Types of Insurance***

There are many different types of insurance coverage that protect against different events. Working with a reputable insurance agent will help you to develop the right insurance package. Some basic insurance coverages are:

- *General liability* policies provide basic coverage for damages, such as personal or property injury, caused by the negligence of your organization.
- *Commercial Property* policies provide coverage for buildings and structures, as well as for contents, such as computers and equipment. The policies can also be extended to cover the prop-

erty of others, such as your vendors. It will be important to understand how your property and general liability coverage work together.

- *Commercial Automobile* policies provide coverage while employees and volunteers are using vehicles (even their own) in the course of assisting the market.
- *Directors' and Officers' Liability* policies protect your directors and officers from claims not covered by general liability policies. It is important to understand that if your market is sued, the plaintiffs will typically name your directors and officers as well. These policies help them to cover their costs. Also, it is often possible to supplement these policies with coverage for employment-based claims, such as discrimination or harassment.
- *Business Owners' Policy (or BOP)* provides a mixture of the above coverages in one policy, generally at a lower cost than purchasing each type of coverage separately. Despite its name, BOPs are available for non-profit organizations.
- *Workers' Compensation* policies provide coverage in the event that your employees are injured while on the job. Although workers' compensation insurance is not required in Texas, having this type of coverage provides additional protections to the employer and, as such, is usually recommended. It may also be possible to cover your volunteers under a workers' compensation policy; however, such an approach may not be the most cost-effective solution and your market may be better served with a separate policy covering injuries to your volunteers.



# III. Permits and Regulations



## Permits and Regulations

### Health Permits and Regulations for Retail Food Establishments

All retail food establishments in Texas must meet the minimum standards set out in the Texas Health and Safety Code. In addition, vendors may also be subject to more stringent regulations adopted by municipal and county health agencies and/or public health authorities. It will be important for you to check with each of these agencies to ensure market and vendor compliance with regulatory requirements.

#### What Is a Retail Food Establishment?

A vendor is considered to be operating a retail food establishment in Texas and subject to regulation if the vendor “stores, prepares, serves or otherwise prepares food for human consumption” at any location, including a farmers’ market, *unless* the vendor:

- sells only whole, uncut fresh fruits and vegetables at a produce stand; or
- sells only prepackaged foods that are not potentially hazardous.<sup>10</sup>

Vendors who do not fall into one of these narrow exceptions will need a permit in order to operate.

Because the law requires a retail food establishment to have items such as water, sinks, lavatories, trash cans, concrete or other “non-dust producing” floor and other similar health-related items, the market itself may need to supply some of the amenities required in order for its vendors to be able to obtain the necessary permits.

Farmers’ markets are considered a temporary food establishment as long as they do not operate for more than 14 consecutive days. The Texas Department of State Health Services provides for limited regulation of farmers’ markets if a vendor cuts or alters produce at the time of sale (selling sliced tomatoes instead of whole tomatoes). However, local city and county government, not the state, generally regulate health-related issues and provide the permits for farmers’ markets. It is important to research permit requirements established by local governments.

In addition, it is important to note that “food” is broadly defined to include “a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.” As a result, even a vendor who wishes to sell canned soft drinks with a cup of ice would need to obtain the necessary permits because “ice” is defined as a food.

#### What Permits Are Required of a “Retail Food Establishment”?

All retail food establishments in Texas are required to obtain a retail food establishment permit from the agency responsible for inspecting such establishments.

In areas where county, municipal or public health authorities regulate food establishments, those authorities are responsible for issuing permits. In all other instances, the vendor will need to contact the Texas Department of State Health Services for a permit. The type of permit a vendor will need depends on the type of set up used by a vendor. Vendors who sell food out of mobile food units will need a mobile food unit permit. Vendors who set up or use temporary market stalls will need a temporary food establishment permit, available either for single or multiple events. Mobile and temporary food establishment permits are discussed below.

Non-profit corporations granted Section 501(c)(3) tax-exempt status by the IRS are exempt for paying permit fees but still must complete and submit registration forms.

Questions about permitting process can be answered by the Texas Department of State Health Services in Austin at 512-713-0246.

### **What Regulations Apply to Retail Food Establishments?**

The Texas Food Establishment Rules set out minimum rules that must be followed by all retail food establishments in the state, even if the establishment is also regulated by a county, a municipal, or a public health authority. These rules contain very specific requirements about how food is to be stored and prepared.

### **What Are Mobile and Temporary Food Establishments?**

Some vendors may want to sell prepared food from a mobile restaurant or a vehicle that contains a retail food establishment. These vendors must comply with the health and safety requirements for a “mobile food establishment,” which are similar to the requirements for a typical retail food establishment but with some modifications to take into account the fact that these businesses are operated from a mobile vehicle.

If a vendor only wants to sell food for a brief period, that vendor may be able to qualify as a “temporary food establishment.” A temporary food establishment is one that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.<sup>11</sup> This type of permit would be helpful if you wanted to hold a special event and some of your vendors wanted to afford their customers the chance to sample the products being sold.

### **How Can I Learn More about the Regulations for Food Establishments?**

You should first determine whether the city and county in which your market is located has regulations for food establishments. If not, then the necessary permits may be obtained from the Texas Department of State Health Services. The Field Inspection Manual of the Texas Department of State Health Services provides substantial information that will also help your market and your vendors in determining the requirements for their food establishments. The manual can be found online at <http://www.tdh.state.tx.us/bfds/retail/RFDPDF/FIM.pdf>.

### “Organic Products” and Similar Terms

The Texas Department of Agriculture operates the “Organic Certification Program” for all foods grown in Texas. Under this program, the Texas Department of Agriculture inspects and certifies organic farms and processors, distributors and retailers of organic foods. In order to be certified, farms and vendors must comply with the organic growing and handling standards created by the USDA National Organic Program.<sup>12</sup> Once certified, foods may be labeled as “organic” and the seals of the Texas Department of Agriculture and the USDA may be used for organic products.



The Texas Department of Agriculture certifies a variety of Texas grown crops and products made from grains (wheat, corn and rice), beans (soybeans, mungbeans, pintos and many other peas and beans), sesame, peanuts, fruits (blackberries, blueberries, strawberries, citrus, peaches, apples, melons), vegetables, herbs, aloe vera, mushrooms, sprouts and wildflower and grass seeds. The Texas Department of Agriculture also plans to implement certification for livestock, including beef, pork, poultry, exotic game, aquaculture and dairy.

While certification is required in order to use the Texas Department of Agriculture’s seal, the term “organic” may still be used by farms and vendors who are exempt from certification provided that they still comply with the labeling, storage, and record keeping requirements of the USDA’s rules and are truthful and accurate in the description of their products as organic. Certification is optional for the following:

- a producer, processor or distributor who has a gross agricultural income of less than \$5,000 a year from organic products (or, if no actual organic sales have been made yet, then projected sales should be used);
- a distributor who receives organic food products in packaged form and does not process or repackage them in any way;
- a processor or distributor who handles only products whose organic content is 70% or less by total weight of the finished product;
- a processor or distributor who limits use of the word “organic” to the fine-print ingredient label of its products; or
- a processor who processes organic foods on site for resale to the public (i.e., a vendor who makes ready-to-eat salads at his or her market stall).

In Texas, the certification process begins by submitting an application for organic certification to the Texas Department of Agriculture, along with supporting documentation, an application fee of \$25 and minimum certification fee of \$150.00 that is calculated based on the size of the producer’s acreage. <http://www.agr.state.tx.us/forms/index.htm#organics>. Fees and certification procedures for other certifying agents vary.

These rules apply to all food and agricultural products sold in the United States regardless of whether the products were grown within the United States or elsewhere. Persons who knowingly violate the rules (including retailers and distributors) can be fined up to \$500.00 for each violation and barred from selling organic products for up to five years. Each day a violation continues may be considered a separate violation for penalty assessment. The Enforcement Division of the Texas Department of Agriculture and the USDA will determine this penalty. Once certification is granted, all certified business must submit an updated organic management plan each year. Annual updates for producers are due on March 1 of each year. Annual updates for processors, distributors and retailers are due on August 31 of each year. Annual updates received after the due date may be assessed late fees. The Enforcement Division of the Texas Department of Agriculture and the USDA will determine this penalty.

### **Certification Requirements for Producers and Handlers**

While all sellers of organic products must comply with the standards set by the USDA National Organic Program, some producers, secondary handlers and processors of organic foods must also obtain third-party certification from a USDA approved certifying agent before they can hold their products out as being “organic.” In Texas, the Texas Department of Agriculture is a USDA approved certifying agent.

Producers, processors, or distributors whose gross agricultural sales total \$5,000 or less per year do not have to be certified to hold their products out as being “organic.” However, if agricultural sales are more than \$5,000 per year, then certification with the Texas Department of Agriculture is necessary.

To become certified, a producer or handler must submit a detailed organic production and handling plan for review by an approved certifying body that shows that the producer or handler operates its business in a manner consistent with the land-use and storage and handling requirements of the USDA National Organic Standards. Fraudulent statements to a certifying body are criminal offenses punishable under federal law.

As described above, the Texas Department of Agriculture is the agency responsible for certifying Texas-grown fruits and vegetables products. Organic fruits and vegetables grown outside of Texas and organic products not certified under the Texas program must be certified under a certification program approved by the U.S. Department of Agriculture. There are currently 56 approved domestic certifying agents (including the Texas Department of Agriculture) and 43 approved certifying agents located outside the United States. A list of approved certifying agents can be found on the U.S. Department of Agriculture website at [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop).

### **Retailer Standards**

Under the USDA National Organic Standards, there are five types of products that may be called organic. A summary of the principal standards for these products follows:

Product	Standard
Products claiming to be “100% Organic”	<ul style="list-style-type: none"> <li>• Must be organic or contain 100% organically produced ingredients as defined under the USDA National Organic Standards (excluding salt and water)</li> <li>• May <u>not</u> contain sulfites, nitrates or nitrites</li> <li>• Product label or information statement must identify the approved certifying body granting organic certification</li> </ul>
Products claiming to be “Organic”	<ul style="list-style-type: none"> <li>• Must contain at least 95% organic ingredients as defined under the USDA National Organic Standards (excluding salt and water)</li> <li>• May <u>not</u> contain sulfites, nitrates or nitrites</li> <li>• Product label or information statement must identify the approved certifying body granting organic certification and the percentage of organic ingredients in the product</li> </ul>
Products claiming to be “Made with Organic (Specified Ingredients or Food Groups)”	<ul style="list-style-type: none"> <li>• Must contain at least 70% organic ingredients as defined under the USDA National Organic Standards (excluding salt and water)</li> <li>• May <u>not</u> contain added sulfites (except as allowed in the case of wines)</li> <li>• Product label or information statement must identify the approved certifying body granting organic certification, the percentage of organic ingredients in the product and each ingredient that is organic</li> <li>• May <u>not</u> use the USDA organic seal</li> </ul>
Organic products of exempt producers (i.e. producers selling less than \$5,000 in organic products)	<ul style="list-style-type: none"> <li>• May be labeled and sold as “organic” (so long as the claim is truthful) but may not be called “certified organic”</li> <li>• May not use the USDA organic seal or a certifying agent’s seal or mark</li> </ul>
All other organic products	<ul style="list-style-type: none"> <li>• Must limit use of the word “organic” to the product’s ingredient statement</li> <li>• May not use the USDA organic seal or a certifying agent’s mark</li> </ul>

Retailers of organic products are also responsible under the National Organic Standards for ensuring that organic products:

- are not commingled with non-organic products;
- are prevented from coming into contact with pesticides and other substances prohibited under the USDA National Organic Standards; and
- are not packaged or stored using materials that contain synthetic fungicides, preservatives and fumigants.

The USDA National Organic Standards require that retailers selling organic products maintain records showing compliance with the labeling and storage requirements of the rules. The rules recommend that records be kept for at least three years.

#### **Texas Registration Requirements for Exempt Growers and Growers Certified Elsewhere**

All organic growers who are exempt from certification requirements or who have been certified by another certifying body must register with the Texas Department of Agriculture in order to sell organic products in Texas. There is a \$25 annual fee for registration.

Copies of registration forms and an application packet can be obtained by calling the Texas Department of Agriculture at 512-475-1641 or by emailing the department at: [organic@agr.state.tx.us](mailto:organic@agr.state.tx.us).

#### **Using “Natural,” “Free Range,” and Other Descriptive Words**

The USDA National Organic Standards only restrict the use of the word “organic.” Vendors, growers and merchants may use other words such as “natural” or “free range” to describe their products so long as the claim is truthful. The USDA’s Food Safety and Inspection Service is responsible for ensuring the truthfulness and accuracy in labeling of meat and poultry products and have created a list of definitions for many of these terms. While the complete list can be found at <http://www.fsis.usda.gov/oa/pubs/lablterm.htm>, some of the more notable terms and definitions include:

- “Certified” – The term implies that the USDA’s Food Safety and Inspection Service and the Agriculture Marketing Service have officially evaluated a meat product for class, grade or other quality characteristics (i.e., “Certified Angus Beef”). When used under other circumstances, the term must be closely associated with the name of the organization responsible for the “certification” process, i.e., “XYZ Company’s Certified Beef”.
- “Chemical Free” – The term is not allowed to be used on a label.
- “Free Range” or “Free Roaming” – Producers must demonstrate to the USDA that the poultry has been allowed access to the outside.
- “Fresh Poultry” – Poultry whose internal temperature has never been below 26 °F.
- “Kosher” – The term may be used only on the labels of meat and poultry products prepared under Rabbinical supervision.

- “Natural” – A product containing no artificial ingredient or added color and is only minimally processed (a process that does not fundamentally alter the raw product) may be labeled “natural”. The label must explain the use of the term natural (such as - no added colorings or artificial ingredients; minimally processed.)

A product also may state that it has been certified as “organic” under the laws of another country if that claim is truthful.

Finally, vendors should be wary of making nutritional or other claims (i.e. curative properties of a food) without first discussing those claims with the Food and Drug Administration.

### **Manufactured Foods**

It is likely that some vendors will seek to sell prepared foods – such as their family’s salsa, a pie made with a “secret recipe” or maybe even juice produced from fruit grown on the vendor’s farm. Vendors who want to sell these prepared and packaged foods that are intended for consumption offsite must comply with regulations for manufactured foods. As mentioned above, eggs produced by a vendor’s poultry are also considered to be “manufactured foods.”

The laws governing manufactured foods generally require that the labels for the food sold contain certain required information, including:

- the name of the product;
- the name and address of the manufacturer, which would be the vendor if he or she made the food;
- the list of ingredients in descending order of predominance by net weight,
- the quantity; and
- other information as required for the type of food being sold.

In addition, it may also be necessary to include nutritional information concerning the product being sold.

The facilities in which the manufactured food is prepared must also meet the requirements for a food manufacturing facility. Notably, such a facility may not be connected to “living or sleeping quarters.” As a result, a vendor may not use the kitchen in his or her house to manufacture foods. Some of the other requirements for the kitchen in which food is manufactured includes:

- hand wash and 3-compartment sinks with hot and cold running water;
- easily cleanable surfaces that are impervious to moisture including floors, walls and ceilings;
- tightly sealed windows, doors and other entries to prevent the entrance of rodents, pest, vermin, etc.; and
- sufficient lighting and facility suitable in size, construction and design to facilitate maintenance and sanitary operations.

We strongly encourage vendors who want to manufacture foods to contact the Foods Group of the Environmental and Consumer Safety Section of the Texas Department of State Health Services regarding the requirements that apply to the types of food to be manufactured.

Mailing Address:

Department of State Health Services  
Environmental and Consumer Safety Section  
Foods Group  
1100 West 49<sup>th</sup> St.  
Austin, TX 78756

Phone: 512-834-6670

Fax: 512-834-6681

Web: [www.tdh.state.tx.us/bfds/foods/default.htm](http://www.tdh.state.tx.us/bfds/foods/default.htm)

### **Making Wine or Beer**

The licensing and permitting rules for local wineries and breweries are complex. If making beer (4% alcohol by weight), a Manufacturer's License (BA) is required. If making malt liquor or ale (more than 4% alcohol by weight), a Brewer's Permit (B) is required. If making all three, both a Manufacturer's License and Brewer's Permit are needed. Fees and surcharges for a Manufacturer's License must be renewed every 12 months and vary by the number of establishments: from \$1,027 for one establishment to \$8,677.00 for more than five establishments. Fees and surcharges for a Brewer's Permit are \$1,745.00 and must be renewed every 12 months. Surcharges are subject to annual change.

If a local brewery makes 75,000 barrels or less per year, it can sell the product directly to the retailer (the farmer's market). If the brewery makes more than 75,000 barrels per year, it must go through a distributor to sell the product. The brewery cannot sell directly to the consumer.

A local winery must have a Winery Permit (G). This permit allows for the manufacturing, bottling, labeling, and packaging of wine containing no more than 24% alcohol by volume. Fees and surcharges for a Winery Permit are \$373.00 and must be renewed every 12 months. All Texas wineries can sell directly to the retailer (farmers' market).

Questions about obtaining permits necessary to sell alcoholic beverages can be answered by contacting the Texas Alcoholic Beverage Commission at 512-206-3333. Additional information and materials are also available on the commission's website at: <http://www.tabc.state.tx.us>.

### **Selling Alcoholic Beverages**

Sales of alcoholic beverages in Texas are regulated by the Texas Alcoholic Beverage Commission and often by county and municipal regulations as well.

Alcohol laws in Texas are very complex and can vary greatly even in parts of the same county or city. The process of obtaining approval for alcohol sales also can be highly time-consuming as well as expensive, requiring lengthy notice to residential neighbors and other interested parties in the community and background checks. Once issued, permits closely control the type of alcoholic beverages that may be sold, when they may be sold, to whom they may be sold, and the ways in which beverages may be transported and stored. These restrictions must be closely followed and failure to do so could result in civil damages and criminal penalties for both vendors and market organizers.

It is very important that a market operator consult with the Texas Alcoholic Beverage Commission and county and city authorities before allowing alcoholic beverages of any kind to be sold at a farmers' market. The market manager should not allow a vendor to sell alcohol without proof that the vendor has the appropriate retailer permit, satisfies all of the requirements of the permit and has adequate insurance to cover risks to the market association. Market managers also will want to closely monitor vendors selling alcohol beverages to make sure that the vendor is complying with all applicable alcohol laws.

Temporary wine and beer retail permits are available for the occasional sale of wine and beer at a farmers' market. The cost of a temporary permit is \$210 per use, not to exceed 10 permits per year. Each temporary permit is valid for not more than four days.

For more frequent sale of wine and beer at a farmers' market, an annual wine and beer permit is available for \$410 per year.

Regional and local district Texas Alcoholic Beverage Commission offices can provide both annual or temporary wine and beer licenses. Regional and local district offices locations are available at [www.tabc.state.tx.us/contact/Maps.htm](http://www.tabc.state.tx.us/contact/Maps.htm).

## **Selling Fireworks**

Texas law restricts the sale of firecrackers, bottle rockets, roman candles and other fireworks classified by the U.S. Department of Transportation as 1.4G Explosives (also previously referred to as Class C Common Fireworks). Fireworks in this category may be sold in Texas only from June 24 through July 4 and from December 20 through January 1. Local and municipal law often further restrict sales and, in most urban areas, prohibit such sales outright.

A vendor who wishes to sell fireworks on a retail basis in an area where sales are permitted under local law must obtain a retail permit from the Texas Department of Insurance (or from the vendor's wholesaler or jobber) in addition to the sales and use tax permit required from the Texas Comptroller of Public Accounts. Retail firework sales in Texas are subject to an additional 2% state sales tax that must be reported and paid separately from the general sales tax. Sales may only be made to persons who are at least 12 years old.

Dealers of fireworks must comply with additional safety restrictions imposed by the Texas Fire Marshal. Depending on the size of a vendor's operations, these could include requirements that the business be operated away from other businesses. Furthermore, fireworks may not be sold from tents or motor vehicles. The structures from which fireworks are sold must conform to specific requirements.

Additional information concerning the licenses and other requirements to sell fireworks in Texas can be obtained from the State Fire Marshal's office in Austin by calling 512-305-7900 or on the web at [www.tdi.state.tx.us/fire/fmlifirework.html](http://www.tdi.state.tx.us/fire/fmlifirework.html). Information can also be obtained from local fire authorities.

# IV. Sales Taxes



## IV. Sales Taxes

### What's Taxable and What's Not?

In Texas, vendors must collect sales tax on certain types of food products as well as most non-food items, such as crafts.

Generally, Texas sales tax does not apply to sales of food products. There are, however, important exceptions to this rule. Notably, food is taxable in Texas if sold or packaged for immediate consumption. Food products on which sales tax must be collected include:

- food prepared for consumption on site;
- food prepackaged and sold “to go”;
- ice;
- candy;
- bottled water and soft drinks;
- food sold in a heated state;
- unheated food if facilities for heating food are provided to customers on the premise;
- food sold with eating utensils provided;
- food sold at a concession stand; and
- two or more food ingredients mixed or combined by the vendor for sale as a single item, unless the only action taken by the vendor was to cut, repackage or pasteurize the product.

Food for immediate consumption does not include fresh fruits and vegetables unless some preparation has been taken that makes them immediately edible. The sale of a watermelon, for example, would not be taxable. The sale of sliced watermelon, however, would be taxable because it can be eaten without any further action. Similarly, the sale of apples, flour, eggs, milk and sugar as individual items should not be subject to sales tax. The sale of an apple pie prepared by the vendor, however, would be subject to sales tax.

Most other goods that are capable of being sold are taxable. This would include many goods frequently sold at farmers' markets, including:

- craft items;
- clothing;
- furniture;
- household or garden goods;
- plants and seeds; and
- other property that can be “seen, weighed, measured, felt, touched, or that is perceptible to the senses.”

Only cultural artifacts of an Indian tribe that are made by a member of the tribe and sold within the boundaries of land held by the tribe are exempt from sales taxes. All other sales made on the reservation are taxable.

### **Who's Taxable and Who's Not?**

In general, purchasers of taxable items are subject to Texas and local sales tax. Vendors, however, are responsible for collecting the tax from the purchasers and remitting the taxes to the state. Vendors who are sole proprietors are also responsible for collecting and remitting these taxes.

Charitable, religious and governmental entities, however, are exempt from sales and use taxes in certain instances when purchasing goods related to the purpose of the organization. In order to claim this exemption, the organization must obtain an exemption certificate from the Texas Comptroller of Public Accounts and provide a copy of the certificate to the vendor at the time the purchase is made. It is very important that vendors selling taxable items to exempt organizations maintain copies of the exemption certificates and records relating to the sale for audit and review by the Comptroller. Items sold to tribal councils or businesses owned by a tribal council are exempt from sales tax.

### **What Is the Sales Tax Rate in Texas?**

The state sales tax in Texas currently is set at 6.25%. In addition, cities, counties, special purpose districts and metropolitan transit authorities may levy additional taxes on goods sold in the jurisdiction. At present, these supplemental taxes collectively may not exceed 2% in total (for a total sales tax of no more than 8.25%).

Information on what sales taxes must be collected in a particular location can be obtained from the Texas Comptroller of Public Accounts (phone: 800-252-5555, Internet: <http://cpa.state.tx.us/taxinfo/sales>, email: [tax.help@cpa.state.tx.us](mailto:tax.help@cpa.state.tx.us)).

### **What Are a Vendor's Responsibilities When Collecting Sales Taxes?**

Before collecting sales tax, a vendor must obtain sales and use tax permit from the Texas Comptroller of Public Accounts. Applications for sale and use tax permits can be obtained at the Comptroller's website (<http://cpa.state.tx.us/taxinfo/sales>) or by calling the Comptroller's office at 800-252-5555. There is no fee for a permit, but the Comptroller may require that a vendor post a security bond based upon anticipated sales. The Comptroller's office can provide a vendor with more information about whether a bond will be required. Vendors doing business as sole proprietors must also file Assumed Name or DBAs with the county clerk if operating under a business name.

It is important to note that vendors must obtain separate sales and use tax permit for each place of business where they sell their goods. A farmer, for example, who sells produce both at his house and at two local farmers' markets will need to obtain a different sales and use tax permit for each of the three locations. Permits are not transferable and, if a business or location is sold, the new owner will need to obtain his or her own sales and use tax permits.

Vendors selling taxable goods must keep records relating to the collection of sales and use taxes for four years. These records are subject to review and audit by the Comptroller. Vendors should consider writing receipts for each sale to ensure more accurate record-keeping.

### **What Are a Vendor's Responsibilities After Collecting Sales Taxes?**

Once a vendor collects sales tax, the vendor is responsible for filing a sales and use tax return with the Texas Comptroller of Public Accounts and sending the collected taxes to the Comptroller. Returns must be filed even if no sales tax has been collected.

In 2006, vendors who collect more than \$500 in sales taxes in a month must file monthly returns. Vendors who collect less than \$500 of sales taxes a month (or less than \$1500 per quarter) may file quarterly returns. Vendors who collect \$1000 or less in sales taxes a year may file yearly returns. Returns are due on the 20th day of the month following the end of the return period (i.e., February 20<sup>th</sup> for taxes collected in January if the vendor is a monthly filer or April 20<sup>th</sup> for first quarter taxes if the vendor is a quarterly filer).

Along with the return, vendors must send collected taxes to the Comptroller. In most cases, these payments can be made by mail to the address designated by the Comptroller, in person at one of the Comptroller's local enforcement offices or by electronic funds transfer. However, the Comptroller requires vendors who paid more than \$100,000 a year in sales and use taxes in the preceding year to make payments only by electronic funds transfer.

The Comptroller's office will attempt to mail preprinted tax return forms to vendors at the end of each reporting period. Return forms also are available from the Comptroller's website (<http://cpa.state.tx.us/taxinfo/sales>) or by calling 800-252-1389.



V.  
Selling Food to  
Participants in  
Government  
Assistance Programs



## V. Selling Food to Participants in Government Assistance Programs

Farmers' markets may be located close to economically disadvantaged areas. Vendors at farmers' markets can sell their products to participants in government food assistance programs. Unfortunately, there are some limitations to these programs. Developments in mobile technology and increased funding at the federal level may minimize these limitations.

### WIC Farmers' Market Nutrition Program

In Texas, the only nutritional assistance program operating at the farmers' market level is the Farmers' Market Nutrition Program (FMNP).

Congress created the FMNP in 1992 to provide access to fresh, locally grown fruits and vegetables to participants in the U.S. Department of Agriculture's Special Supplemental Nutrition Program for Women, Infants and Children (or WIC). The goal of FMNP is to stimulate local agriculture and promote local farms as well as to provide WIC participants with fresh fruits and vegetables.

As funds are available, Texas Department of State Health Services (DSHS) will contact local health agencies and determine if they want to participate in FMNP. Generally, these local health agencies are located near a Farmers' Market Association. If the local agency chooses to participate, DSHS will then contact the local Farmers' Market Association to determine if the Market wants to participate. However, a Farmers' Market Association can take the initiative and contact DSHS first to express interest in participating in FMNP.

Texas is scheduled to receive about \$1.4 million in FMNP funding from the USDA and about \$350,000 in State matching funds in fiscal year 2006. The Nutrition Services Section of DSHS administers the FMNP program. As WIC participants receive WIC benefits at local health agencies, they are issued five \$2 coupons per family member. These coupons can only be used May through August. To participate, a Farmers' Market Association must provide DSHS with a bank account number for reimbursement purposes.

The coupon holder buys the food with the coupon. At the end of the day, the vendor gives the coupons to the market manager who provides a receipt to the vendor for the dollar amount of the coupons. The market manager then mails the coupons to DSHS and the State Comptroller reimburses the Farmers' Market Association for the dollar value of the coupons through direct electronic transfer. The Market Manager then directly reimburses the vendor. State reimbursement occurs within 10 calendar days from receipt of the coupons.

For fiscal year 2006, there are 28 WIC local health agencies providing FMNP services to approximately 240,000 women and children in 31 counties. These counties are served by 41 Farmers' Market

Associations. In fiscal year 2005, DSHS reported a 51.7% redemption rate. For more information about the FMSP contact DSHS at 512-341-4400.

Under current regulations issued by the Texas Department of Health, a vendor may accept and redeem FMNP coupons if:

- the vendor is a current member of a market association that has entered into a written agreement with the local health agencies which administer the WIC program; and
- the vendor and market association enter into a written agreement in a form prepared by the DSHS governing acceptance of FMNP coupons, a copy of which must be provided to the Department.<sup>13</sup>

If a vendor ceases being a member of the association, the vendor will no longer be eligible to redeem FMNP coupons, and the association is responsible for providing notice.

### **Senior Farmers' Market Nutrition Program**

The federal government also provides nutritional assistance under the Senior Farmers' Market Nutrition Program (SFMNP), which provides coupons to senior citizens to purchase fresh fruits and vegetables at approved farmers' markets during the harvest season. The SFMNP currently operates in 46 states and tribal jurisdictions. As of October 2005, Texas is not a participant in the SFMNP but may join the program in the near future.

### **Food Stamps**

Technology also soon may allow participants in the food stamps program to purchase food products at farmers' markets in Texas.

The food stamp program is by far the largest program providing nutritional support to low-income individuals and families. The food stamps program is funded by the federal government through the U.S. Department of Agriculture and administered in Texas by the Texas Health and Human Services Commission (THHSC). As of October 2005, however, food stamps could not be used at farmers' markets in Texas due primarily to the fact that food stamp transactions now are transacted solely on an electronic basis.

In the 2002 growing season, the Texas Department of Agriculture and Texas Department of Human Services (THHSC's predecessor) obtained funding from the U.S. Department of Agriculture to conduct a pilot project using wireless point-of-sale terminals and/or special manual vouchers/phone authorization in order to allow recipients to use food stamps at six farmers' markets in different areas of the state. The agencies completed a study, but as of October 2005, the agencies have not taken further action to expand the project. Test projects, however, are ongoing in other states.

# VI. Appendix



## VI. APPENDIX

### Annex A: Considerations for Market Rules

#### Product Mix

- \_\_\_ May a vendor sell food that he or she did not personally grow?
- \_\_\_ May a vendor sell candy or other prepackaged foods?
- \_\_\_ May a vendor sell soft drinks or bottled water?
- \_\_\_ May a vendor sell ready to eat food such as BBQ?
- \_\_\_ May a vendor sell dairy products or fresh meat?
- \_\_\_ Are there any foods that a vendor will be prohibited from selling at the market?
- \_\_\_ Are there any non-food products a vendor will be prohibited from selling (such as fireworks, clothing, household products)?
- \_\_\_ Will alcohol sales be allowed?
- \_\_\_ Will farm inspections be required as part of the process of meeting association goals?

#### Market Look and Feel

- \_\_\_ Should there be a vendor dress code?
- \_\_\_ What limitations will there be on the way vendor's stalls can look?
- \_\_\_ What kind of signs may a vendor have?
- \_\_\_ May a vendor have a TV or radio present on their premises?
- \_\_\_ May vendors bring pets and under what circumstances?

#### Limits on Participating Vendors

- \_\_\_ What geographic or other restrictions should there be on who can participate at the market?
- \_\_\_ Will vendors be required to be a member of the market association?

#### Market Operations

- \_\_\_ What is the shortest term on a stall lease a vendor can have?
- \_\_\_ How will vendors be allocated spots at the market?
- \_\_\_ Who can staff a vendor's stand (children, relatives, friends)?
- \_\_\_ How often may a vendor miss a market day? What penalties, if any, should apply?
- \_\_\_ May a vendor temporarily assign his/her spot if unable to make a particular day?
- \_\_\_ How early may a vendor arrive on a market day?
- \_\_\_ Must the vendor remain open throughout the market day?
- \_\_\_ What clean up obligations does a vendor have at the close of a market day?
- \_\_\_ What insurance should be required of a vendor?
- \_\_\_ Should vendors be required to post a bond?
- \_\_\_ Under what circumstances should a vendor be allowed to terminate his/her participation in a market season?

- \_\_\_\_\_ May a vendor sell or transfer his/her spot?
- \_\_\_\_\_ How will persons on a waiting list be addressed?
- \_\_\_\_\_ What procedures should be followed in resolving disputes with a vendor?
- \_\_\_\_\_ What rules will apply for the use of an association's trademarks and logos by a vendor?
- \_\_\_\_\_ Should the market restrict firearms?
- \_\_\_\_\_ Are the market's scales registered with the Texas Department of Agriculture?

**Fees**

- \_\_\_\_\_ Will vendors be responsible for a share of advertising costs or other fees?
- \_\_\_\_\_ What compensation should be paid to the market

## Annex B: Regulatory Checklist for Market Managers

### Market Certification Compliance

- \_\_\_\_\_ Submit application for renewal of Farmers' Market Certificate to Texas Department of Agriculture (annually in May)
- \_\_\_\_\_ File copy of any amended bylaws adopted by the association
- \_\_\_\_\_ File updated list of members of the association's governing board when changes occur
- \_\_\_\_\_ File updated list of association members (or vendors) who will be selling their own produce at the market when changes occur
- \_\_\_\_\_ File updated description of market's location, seasons, days and hours when changes occur

### Sales Tax Compliance

- \_\_\_\_\_ Obtain sales and use tax permit from Texas Comptroller of Public Accounts if the market association will be selling taxable items at the market on its own behalf
- \_\_\_\_\_ File sales tax returns as required by Texas Comptroller of Public Accounts and remit collected taxes

### FMNP Compliance

- \_\_\_\_\_ Provide copies of agreements with participating vendors to Texas Department of Health
- \_\_\_\_\_ Notify Texas Department of Health if any vendors accepting FMNP coupons leave the association

### Other Regulatory Compliance

- \_\_\_\_\_ Post signs before each market day prohibiting concealed weapons if banned under association rules
- \_\_\_\_\_ Ensure compliance with applicable zoning and local health and safety regulations

### Other

- \_\_\_\_\_ Obtain a copy of required permits from each vendor
- \_\_\_\_\_ Obtain a copy of each vendor's sales tax returns
- \_\_\_\_\_ Collect dues, fees and penalties (if any) from each vendor

## Annex C: Vendor Compliance Checklist

### Before Start of Each Market Season

- \_\_\_\_\_ Has the vendor submitted a signed application for the current market season?
- \_\_\_\_\_ Has the vendor provided proof of insurance (if required by association rules)?
- \_\_\_\_\_ Does the vendor have a valid sales and use tax permit (if selling taxable goods)?
- \_\_\_\_\_ Are the vendor's scales registered with the Texas Department of Agriculture?
- \_\_\_\_\_ Does the vendor have required health permits from the Texas Department of State Health Services or applicable city and county health agencies and/or public health departments (if applicable)?
- \_\_\_\_\_ Is each vendor who will be participating in the Farmers' Market Nutrition Program a member of the association as required by law?
- \_\_\_\_\_ Has each vendor who will be participating in the FMNP signed the contract required to accept FMNP coupons?

### Ongoing Compliance

- \_\_\_\_\_ Has the vendor obtained organic certification, or established that certification is not required, from the Texas Department of Agriculture if selling products labeled as organic?
- \_\_\_\_\_ Does the vendor have an egg dealer permit from the Texas Department of Agriculture if selling eggs not raised by him or her?
- \_\_\_\_\_ Does the vendor have a manufacturer's food license (if applicable)?
- \_\_\_\_\_ Does the vendor have an aquaculture permit from the Texas Department of Agriculture if he or she will be selling cultured seafood?
- \_\_\_\_\_ Does the vendor have a license from the Texas Alcoholic Beverage Commission permitting sale of the type of alcoholic beverages purposed to be sold (if applicable)?
- \_\_\_\_\_ Does the vendor have a nursery/floral license from the Texas Department of Agriculture if he or she will be selling flowers or plants?
- \_\_\_\_\_ Does the vendor have a vegetable seed license from the Texas Department of Agriculture if he or she will be selling vegetable seeds for planting?
- \_\_\_\_\_ Does the vendor have a perishable commodities license if selling Texas grown citrus fruits and vegetables?
- \_\_\_\_\_ Is the vendor in compliance with sales tax reporting requirements?
- \_\_\_\_\_ Is the vendor operating his premises in compliance with city, county and state health codes?

## Annex D: Model Association Rules and Regulations

### Market Rules and Regulations

The purpose and mission of the [Name of Market] is [to educate the community about local food resources and to revitalize low-income communities by creating a vibrant market at which local farmers and craftsman may showcase and sell their goods and products.]

By signing the market application and participating in the market, each Vendor agrees to comply with these rules and agrees and acknowledges that failure to comply may result in penalties, up to and including permanent expulsion from the market.

#### Section 1: Definitions

1. “Association” means [Name of Market], the sponsor and operator of the Market.
2. “Permitted Items” means those categories of items on Schedule 1 to these rules.
3. “Vendor” means a person who has submitted an application to sell goods at the Market and who has been approved by the Market Manager.
4. “Market” means the farmers’ market operated by the Association at [Address].
5. “Market Manager” means the person elected by the board of directors of the Association as the chief administrator of the Market.

#### Section 2: Market Manager Responsibility

1. The Market Manager is the Association’s agent and is responsible for management of all daily activities at the Market. Any comments, issues or complaints should be directed to the attention of the Market Manager at: [Address, Phone Number and E-mail Address].
2. The Market Manager’s responsibilities include:
  - assigning stalls to Vendors
  - collecting rents
  - conducting inspections of Vendor stalls
  - enforcing market rules and regulations
  - taking necessary steps to ensure Vendors and the Market’s compliance with applicable statutes and laws
  - acting as market ombudsman
3. Each Vendor must comply with the direction of, and the rules set by, the Market Manager in furtherance of these rules and regulations.

### Section 3: Vendor Responsibilities

1. Permits and Licenses. Each Vendor shall obtain, and furnish to the Market Manager, a current valid copy of any and all licenses and permits required for operation of the Vendor's business, which may include:
  - a sales and use tax permit
  - a retail food establishment permit
  - a food manufacturer's license
  - a perishable commodities license
  - a nursery/floral license
  - an egg reseller license
  - a weights and measures license

Any Vendor who fails to submit the required licenses/permits or who is not in compliance with the terms of such licenses/permits shall be denied selling privileges at the Market. If the Vendor becomes compliant within one-month after receiving notice from the Market Manager, then, at the discretion of the Market Manager after taking into account the past behavior of the Vendor and the reason that the Vendor failed to obtain the required permit, the Vendor may be reinstated. If the Vendor is not in compliance at the end of such period, the Vendor may be suspended for the market season.<sup>14</sup>

2. Items that May Be Sold. A Vendor may sell only those Permitted Items listed in the Vendor's application to participate in the Market. If a Vendor desires to sell items not included in the application, the Vendor must make a written request to the Market Manager, who has the sole discretion to approve or disapprove the request. The decision of the Market Manager will be provided to the Vendor in writing. All goods sold must be of marketable quality.<sup>15</sup>
3. Farm / Facility Inspections. All Vendors selling products produced on their own farm agree to, and will assist with, the inspection of their farms and other production facilities by the Market Manager and other representatives of the Market. Failure to comply with this requirement may result in suspension or expulsion from the Market. An inspection fee of \_\_\_ will be charged on farms or facilities that are inspected if a violation of the Market's rules is found.
4. Attendance. Vendors must be present each day the Market is open unless excused by the Market Manager. Vendors may not vacate the Market before the official closing time, unless sold out, or as may be allowed by the Market Manager. A Vendor who misses two or more days without a authorization or who leaves without authorization prior to closing time, unless sold out, may be suspended by the Market Manager.<sup>16</sup> Vendors must comply with Section 6 below when vacating the market for any reason.

5. Set Up. Vendors must sign in with the Market Manager upon arriving at the Market. Vendors must have their stalls completely set up and ready for the opening of the Market. The set up period is from \_\_\_\_\_ a.m. to \_\_\_\_\_ a.m. on the day of Market. If a Vendor is not set up at market opening, the Market Manager may suspend the Vendor's selling privileges for the day.<sup>17</sup>
6. Closing. All Vendors must vacate the Market not later than two hours after closing time. No Vendor shall leave the premises until the space occupied by him/her has been swept clean and placed in proper order. Upon vacating the Market for any reason, a Vendor must sign out with the Market Manager.
7. Compliance with Laws. Vendors shall comply with all applicable laws, ordinances and regulations. It is the Vendor's responsibility for knowing and taking all steps necessary to ensure such compliance.
8. Labeling and Packaging. All products offered for sale by a Vendor must be identified by a sign or label. All signage and labeling must be truthful and accurate. Any produce offered for sale in closed packages or sealed containers must bear a label stating the producer's or manufacturer's name and address, name of product, ingredients, net weight or measure and any other information required by law.
9. Organic Foods. No food shall be sold or represented to be organic unless it has been certified as organic by the Texas Department of Agriculture or another certifying body approved by the U.S. Department of Agriculture or otherwise is exempt from certification. All organic products offered for sale shall comply with the National Organic Standards established by the U.S. Department of Agriculture.
10. Insurance. Each Vendor must provide the Market Manager with proof of general liability insurance having a policy limit of not less than \$\_\_\_\_\_, covering the Vendor's activities at the Market. The policy must include the Association as named insured.
11. Sanitary Conditions. Vendors shall not permit litter to accumulate on the premises or create unsanitary conditions by leaving fruit or vegetable refuse or other garbage on the premises. Crates, boxes, baskets or other containers, paper or any other rubbish must be broken down/removed from the stall area and taken to the dumpster area designated by the Market Manager. All Vendors are responsible for clean up of any oil, grease, anti-freeze, etc., leaking from their vehicles.<sup>18</sup>
12. Display Areas. All Vendors are required to keep their merchandise within their allotted stall areas. This includes any merchandise awaiting customer pick-up. Vendors may not display any type of produce/merchandise in walk ways. Produce/merchandise must be displayed in a

safe and neat manner at all times. Displays must be designed so as not to block customers' view of other stalls. Signs may only be placed in the stall area and must have a professional appearance. Radios and TVs are not permitted in stall spaces without permission of the Market Manager.

13. Carriage. Produce/merchandise brought in/out of the Market by a Vendor must be hand carried or transported on small hand carts in a safe manner as directed by Market Manager. For safety reasons, no children are allowed to transport any produce or merchandise.
14. Animals. No animals other than service animals are permitted at the Market during market hours.
15. Parking. Vendors may only park in the location designated by the Market Manager. Motor vehicles may not be operated in the market area.<sup>19</sup>
16. Dress Code. All Vendors must be appropriately dressed in non-revealing attire. At a minimum, this includes a shirt, jeans or shorts, and shoes or sandals. Clothing shall not display graphic, lewd or offensive language, logos or images.
17. Literature. A Vendor may not distribute literature or other written materials at the Market, other than materials about the Vendor's products, without permission of the Market Manager.
18. Ethical Standards. Vendors must adhere to the highest standards of honesty and professionalism in conducting their businesses. Vendors must use reasonable efforts and act in good faith in attempting to resolve complaints with customers, other Vendors and/or the Association.
19. Employees and Agents. Each Vendor is responsible for ensuring that the Vendor's employees and agents comply with these rules and regulations.<sup>20</sup>

#### **Section 4: Market Season Days of Operation and Market Hours**

1. The term of the market season and market days and hours of operation for each season will be established by the Association and provided in writing to the Vendor by the Market Manager prior to the start of the season.
2. The Market Manager may direct that the Market be closed on a given day due to inclement weather or for public safety reasons. If the Market Manager determines that closure is appropriate, the Market Manager will make good faith efforts to contact Vendors and to post signs announcing the closure at the Market. Vendors assume sole responsibility for any losses associated with closure of the Market. Vendors are not entitled to credits or refunds for days that the Market is closed in accordance with this paragraph.<sup>21</sup>

**Section 5: Payment of Annual Stall Rental [and Financial Reporting]**

1. The annual fee for rental of a stall at the Market is \$ \_\_\_\_\_.<sup>22</sup>
2. One-third (1/3) of annual payment is due along with a Vendor's application to participate at the Market, an additional one-third of payment is due by \_\_\_\_\_ of the rental year and the final one-third of the payment is due by \_\_\_\_\_ of the rental year. Payments shall be made to the Market Manager and may be paid by cash or check.<sup>23</sup>
3. No person renting a stall at the Market shall sell, sublet or assign that stall to any other person or allow any other person to use the stall. Exchange of stalls for convenience of Vendors may be made, however, with the approval of the Market Manager.<sup>24</sup>
4. The Market Manager may authorize short term stall leases of less than a season if deemed appropriate by the Market Manager to fulfill the purpose of the Market.
5. Existing Vendors in good standing shall be given an exclusive period of time to apply to participate in subsequent market seasons before applications are accepted from the general public. Stall space will be allocated on a first-come, first-serve basis to the extent available under the Association's current product-mix plan. The Market Manager will make every effort to take into account a Vendor's preferences as to location. However, the Association reserves the right to allocate space in the manner determined by it as maximizing the goals of the Market.<sup>25</sup>
6. The Vendor must accurately report its gross sales to the Market Manager in writing at the end of each market season. If not reported, the Vendor will not be eligible to participate at future markets until the required information has been received.<sup>26</sup>

**Section 6: Advertising**

1. Any Vendor wishing to advertise shall do so at his/her own expense. Neither the Association, nor any Market Manager, employee, agent or representative of the Association shall be responsible for the cost of advertising incurred by any Vendor or group of Vendors.
2. Any advertisement or promotional materials using the Market's name and/or logos must be approved in advance in writing by the Market Manager.
3. By participating in the Market, each Vendor consents to the use by the Association (including the Market) of such Vendor's name, logo and other information in any print, Internet or other audio or visual media published or otherwise made available to third parties.

**Section 7: General Safety Rules and Regulations**

1. No smoking or use of other tobacco products is allowed on market premises.
2. No consumption of or sale of alcoholic beverages is permitted on market premises.
3. No firearms or other weapons are permitted on market premises.<sup>27</sup>
4. Space heaters and cooking devices may not be used at the Market unless approved by the Market Manager.
5. The Market Manager shall have the power and discretion to proscribe any other items or substances deemed by the Market Manager to constitute a danger to persons or property at the Market.

**Section 8: Non-Compliance and Penalties**

1. A Vendor may be fined, suspended or removed from the Market or have selling privileges in the Market conditioned or limited by the Market Manager for violations of the Market's rules, including:
  - Non-payment of rent
  - Refusing to comply with the rules governing the operation of the Market or interference with the Market Manager in carrying out the provisions of these rules
  - Use of abusive language (profane, racial, ethnic, etc.)
  - Conduct at the Market which demonstrates a deliberate attempt to cause poor morale or problems among Vendors or with the public
  - Consistent or repeated unsatisfactory customer service
  - Violations of community standards or a failure to obey or conform to state or local government regulations
2. The severity of any penalty or discipline shall be directly related to the gravity of the violation. The Market Manager will normally give prior warning of possible disciplinary action, but severe or repeated violations of Market rules may lead to immediate fines, suspensions or expulsion.<sup>28</sup>
3. Suspension shall occur upon delivery of written notice to Vendor.<sup>29</sup>
4. Vendors who are suspended will not receive any credit or refund for missed days.
5. In the event a Vendor is suspended, the Market Manager may lease the Vendor's stall to another Vendor for the duration of the suspension.

**Section 9: Grievance and Complaint Process**

1. A Vendor or Market customer may submit to the Market Manager, or if the Market Manager is believed to be part of the problem, to the Association's grievance committee,<sup>30</sup> a complaint against a Vendor (or the Market Manager) when there is reason to believe that a violation of laws or the Market's rules exist. [The identity of the complainant will not be revealed by the Market.]<sup>31</sup> Vendors are urged to submit a complaint whenever they witness a violation of the Market rules. The Market Manager (or the grievance committee, if appropriate) will conduct an initial investigation of any complaint. The investigation will include an attempt to obtain detailed information from the complainant, the alleged violator and other witnesses before a determination is made that a violation occurred.
2. A Vendor who is dissatisfied with any action or rule imposed or taken by the Market Manager may seek review of the action or rule by the Association's grievance committee by calling [Phone Number] or sending a written request to [Address and E-mail Address]. The Association will endeavor to resolve disputes as promptly as possible.
3. Decisions of the Association's grievance committee are final and binding.

## Annex E: Model Vendor Application

### [NAME OF YOUR MARKET] VENDOR APPLICATION

**Completed applications and deposits need to be returned by \_\_\_\_\_.** Applications received by \_\_\_\_\_ will be notified of their status by \_\_\_\_\_. Applications that arrive after \_\_\_\_\_ will be given consideration, if space allows. Full refunds of deposits will be given to any applicants who are not accepted. Call \_\_\_\_\_ or email \_\_\_\_\_ with questions or for more information.

#### PLEASE PRINT

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

Business/Farm Name: \_\_\_\_\_

Name of Seller: \_\_\_\_\_

Full names of family members (and relationship) who may sell for you: \_\_\_\_\_

Street address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business phone: \_\_\_\_\_ Home phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

Street address where items are grown or items are produced: \_\_\_\_\_

Taxpayer ID or Social Security number: \_\_\_\_\_

Are your items Texas grown or produced from Texas grown items?    yes     no

Do **you** grow or produce **all** your items?    yes     no

If not, please explain \_\_\_\_\_

Are any of your items organic or certified organic?    \_\_\_\_ organic    \_\_\_\_ certified organic

Are you selling any processed food items?    yes     no

What food and business related licenses and permits do you currently hold? These may include a manufacturer's food license, scale and balance permit, floral and nursery license, aquaculture license, organic certification and others. \_\_\_\_\_

*(A copy of these licenses and permits must be attached to this application.)*

Please list all items you intend to sell at the market. Items not listed may not be sold at the market without the prior written approval of the Market Manager. If your application is accepted, then we will inform you of which of your listed products may be sold. Add an additional page if necessary.

[NAME OF YOUR MARKET] **VENDOR APPLICATION** *(continued)*

# of stall spaces requested: \_\_\_\_\_ (each space measures \_\_\_\_ feet wide by \_\_\_\_ feet deep and includes [list furniture, power outlets, etc.]

**Please check each item to indicate your agreement:**

- I have read and agree to abide by all of the Association's Rules and Regulations.
- Upon acceptance, I agree to indemnify and hold the Association, the Market and their officers, directors, employees and agents harmless from and against any and all claims and demands, whether for injuries to persons, loss of life or damage to property, on or off the premises, arising out of the use or occupancy of the Market by me or my family, employees or agents and shall defend at my expense any actions brought against the Association, the Market and any of their officers, directors, employees or agents by the acts or omissions of me or my employees or agents.
- I have included all current licenses, permits and insurance policies as requested.
- I understand that all Vendors are required to carry appropriate liability insurance naming the Association and the Market as additional insureds. I have attached a copy of the certificate of insurance to this application.
- I am enclosing my deposit of \$\_\_\_\_\_ per stall space requested. If I am accepted as a
- Vendor, I understand that this deposit will be credited against the annual rental fee (make checks payable to \_\_\_\_\_). ***We will not consider your application until we have received your deposit.***
- I wish to join the Association and enclose my annual membership fee of \$\_\_\_\_\_.<sup>32</sup>
- I represent that all information provided in this application and that will be provided by me, or my authorized representatives, throughout the application process is true and correct in all respects. I understand and agree that if any of the information is false or inaccurate that the Association may reject my application and retain my application fee or that, if the false or inaccurate statement is discovered after my acceptance into the market, I may be expelled from the market and forfeit any fees paid to the Association.

***You must agree to all of the above items and indicate your agreement by checking each box, in order for your application to be considered.***

Signature of Seller or Authorized Representative: \_\_\_\_\_

Printed Name of Signing Person: \_\_\_\_\_

Title (if sole proprietor, please so indicate): \_\_\_\_\_

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

## Annex F: Vendor Permit Worksheet

### Permit and License Worksheet for Vendors

This worksheet is provided to help you determine what permits and licenses you may need in order to operate at the Market. Note, however, that this worksheet is designed only to provide you with general information. It is your responsibility to remain up to date on license and permit requirements and for verifying with regulatory authorities that you have all permits and licenses necessary for your particular business.

Please check all that apply:

- \_\_\_\_\_ *I will be selling food products other than fresh, uncut vegetables.* If yes, contact your city or county health authority to see if you need a Retail Food Establishment Permit. If your city or county says no, contact the Texas Department of State Health Services at 512-719-0246 about state requirements.
- \_\_\_\_\_ *I will be selling hot food, ready-to-eat meals or snacks (other than uncut fruits and vegetables), candy, soft drinks, tea and/or bottled water.* If yes, contact the Texas Comptroller of Public Accounts at 800-252-5555 about a Sales and Use Tax Permit.
- \_\_\_\_\_ *I will be selling merchandise other than food.* If yes, contact the Texas Comptroller of Public Accounts at 800-252-5555 about a Sales and Use Tax Permit.
- \_\_\_\_\_ *I will be describing some of my merchandise as “organic.”* Contact the Texas Department of Agriculture at 800-835-5832 about registering and/or obtaining certification to sell organic products.
- \_\_\_\_\_ *I will be using scales at my stall at the Market.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Scale and Balance Permit.
- \_\_\_\_\_ *I will be selling perishable fruits and vegetables not raised by me.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Perishable Commodities License.
- \_\_\_\_\_ *I will be selling eggs not raised by me.* If yes, contact the Texas Department of Agriculture at 800-835-5832 for a Egg Dealer License.
- \_\_\_\_\_ *I will be selling plants, nursery items and/or floral products.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Floral and Nursery License.

- \_\_\_\_\_ *I will be selling vegetable seeds.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Vegetable Seed License.
  
- \_\_\_\_\_ *I will be selling seafood.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about an aquaculture license or fish farm vehicle license.
  
- \_\_\_\_\_ *I will be selling alcoholic beverages.* If yes, contact the Texas Alcoholic Beverage Commission at 512-206-3360 about obtaining beer and wine permits and contact city and county authorities about local restrictions and permits that may be required.

## Annex G: Form of Certificate of Formation

*The following form of Certificate of Formation should be reviewed by your legal counsel to determine whether any modifications are appropriate. This form assumes that you have selected to form a non-profit corporation and apply for tax exempt status under Section 501(c)(3) of the tax code. You should substitute your information for all [bracketed] provisions. All footnotes should be removed in the final version. Upon finalizing the Certificate of Formation, you should submit it to the Texas Secretary of State along with (1) the requisite fee, which was \$25 in 2006 and (2) an extra copy of the Certificate of Formation, which the Texas Secretary of State will file stamp and return to you as further evidence of filing. You will need the file stamped copy for your Section 501(c)(3) application. The Certificate of Formation may be submitted via mail (P.O. Box 13697, Austin, Texas 78711-3697), overnight delivery (James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701) or via fax (512-463-5709). Fax submissions must be accompanied by a credit card payment (on Form 807) and are subject to an additional convenience fee.*

### CERTIFICATE OF FORMATION OF

[NAME OF FARMERS' MARKET]<sup>33</sup>

I, the undersigned natural person over the age of eighteen, acting as incorporator of a non-profit corporation under the Texas Business Organizations Code, adopt the following Certification of Formation of [Name of Farmers' Market] ("Certificate").

#### ARTICLE ONE NAME

The name of the corporation is [Name of Farmers' Market] (the "Corporation").

#### ARTICLE TWO NONPROFIT CORPORATION

The Corporation is a nonprofit corporation. When it dissolves, all of its assets will be distributed to the State of Texas or an organization exempt from taxes under Internal Revenue Code Section 501(c)(3)<sup>34</sup> for one or more purposes exempt under the Texas franchise tax.

#### ARTICLE THREE DURATION

The Corporation will continue in perpetuity.

#### **ARTICLE FOUR PURPOSES**

\_\_\_\_ Farmers' Market is not formed for pecuniary profit or gain and will perform activities that fall within the meaning of Internal Revenue Code Section 501(c)(3) and Texas Tax Code Section 11.18(c). The purposes for organizing the \_\_\_\_ Farmers' Market is to promote, encourage and support the growth of micro-enterprises and small farming enterprises in the \_\_\_\_ area through the operation of one or more farmers' markets, educate about local products, serve diverse populations, and participate in any other activities reasonably necessary to carry out such purposes.

#### **ARTICLE FIVE POWERS**

Except as this Certificate otherwise provides, the Corporation has all powers provided in the Chapter 22 of the Texas Business Organizations Code. Moreover, the Corporation has all implied powers necessary and proper to carry out its express powers. The Corporation may reasonably compensate its directors or officers for services rendered to or for the Corporation in furtherance of one or more of its purposes.

#### **ARTICLE SIX RESTRICTIONS AND REQUIREMENTS**

The Corporation may not pay dividends or other corporate income to its [members,] directors or officers or otherwise accrue distributable profits, or permit the realization of private gain.<sup>35</sup> The Corporation may not take any action prohibited by the Texas Business Organizations Code. The Corporation may not engage in any activities, except to an insubstantial degree, that do not further its purposes as set forth in this Certificate.

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings and procedures. Nor may it take any action that would be inconsistent with the requirements for receiving tax-deductible charitable contributions under Internal Revenue Code Section 170(c)(2) and related regulations, rulings and procedures. Regardless of any other provision of this Certificate or state law, the Corporation may not:

- (1) Engage in activities or use its assets in manners that do not further one or more exempt purposes, as set forth in this Certificate and defined by the Internal Revenue Code and related regulations, rulings and procedures, except to an insubstantial degree.
- (2) Serve a private interest other than one clearly incidental to an overriding public interest.

- (3) Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings and procedures.
- (4) Participate in or intervene in any political campaign on behalf of any candidate for public office. The prohibited activities include publishing or distributing statements and any other direct or indirect campaign activities.
- (5) Have objectives characterizing it as an “action organization” as defined by the Internal Revenue Code and related regulations, rulings and procedures.
- (6) Distribute its assets on dissolution other than for one or more exempt purposes. Upon dissolution, the Corporation’s assets will be distributed for one or more exempt purposes within the meaning of Internal Revenue Code Section 501(c)(3) or shall to distributed to the federal government, or to a state or local government, for a public purpose.
- (7) Permit any part of the Corporation’s net earnings to inure to the benefit of any private shareholder or member of the Corporation or any private individual.
- (8) Carry on an unrelated trade or business, except as a secondary purpose related to the Corporation’s primary, exempt purposes.

In addition, in the event that this Corporation shall become a “private foundation” within the meaning of the Internal Revenue Code Section 509, the Corporation shall distribute its income at such times and in such manners as to avoid tax for undistributed income under Internal Revenue Code Section 509, or corresponding provisions of any subsequent federal tax laws. The Corporation shall not:

- (1) Engage in any act of self-dealing as defined in Internal Revenue Code Section 4941(d), or corresponding provisions of any subsequent federal tax laws.
- (2) Retain excess business holdings as defined in Internal Revenue Code Section 4943(c), or corresponding provisions of any subsequent federal tax laws.
- (3) Make any investments in such a manner as to subject it to tax under Internal Revenue Code Section 4944, or corresponding provisions of any subsequent federal tax laws.
- (4) Make any taxable expenditure as defined in Internal Revenue Code Section 4945(e), or corresponding provisions of any subsequent federal tax laws.

**ARTICLE SEVEN**  
**INITIAL REGISTERED OFFICE AND AGENT**

The street address of the Corporation's initial registered office is [Address].<sup>36</sup> The name of the initial registered agent at this address is [Name].<sup>37</sup>

**ARTICLE EIGHT**  
**MEMBERSHIP**

[The Corporation will have no members.] [The Corporation may have one or more classes of Members as specified in the bylaws. The bylaws will provide the qualifications, manner of selection, duties, terms and other matters relating to the Members.]

**ARTICLE NINE**  
**MANAGEMENT OF THE CORPORATION**

The management of the corporation is vested in its Board of Directors.<sup>38</sup> The bylaws will provide the qualifications, manner of selection, duties, terms and other matters relating to the Board of Directors.

The initial board will consist of three persons.<sup>39</sup> The initial board will consist of the following persons at the following addresses:

<u>Name</u>	<u>Address</u>
-------------	----------------

The number of directors may be increased or decreased by adopting or amending bylaws. The number of directors may not be decreased to fewer than three.

**ARTICLE TEN**  
**LIMITATION ON LIABILITY OF DIRECTORS**

To the fullest extent allowed by law, a director of the Corporation is not liable to the Corporation for monetary damages for an act or omission in the director's capacity as director.

**ARTICLE ELEVEN**  
**INDEMNIFICATION**<sup>40</sup>

The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors of the Corporation. The right to indemnification conferred by this Article Eleven shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition. The Corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article Eleven to directors and officers of the Corporation.

The rights to indemnification and to the advance of expenses conferred in this Article Eleven shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate, the Bylaws of the Corporation, any statute, agreement, vote of disinterested directors or otherwise.

Any repeal or modification of this Article Eleven or any indemnification provisions of the bylaws shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

**ARTICLE TWELVE**  
**CONSTRUCTION**

All references in this Certificate to statutes, regulations or other sources of legal authority refer to the authorities cited, or their successors, as they may be amended from time to time.

**ARTICLE THIRTEEN  
SOLE INCORPORATOR**

The name and street address of the sole incorporator<sup>41</sup> is:

**Name**

**Address**

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, I execute this Certificate of Formation on [Date].

\_\_\_\_\_  
[Name]

Sole Incorporator

## Annex H: Form of Bylaws

*The following form of Bylaws should be reviewed by the organizer's legal counsel to determine whether any modifications are appropriate. The Bylaws should not be filed with the Texas Secretary of State. You should substitute your information for all [bracketed] provisions. All footnotes should be removed in the final version.*

### BYLAWS<sup>42</sup> OF

[NAME OF FARMERS' MARKET]

These bylaws ("Bylaws") govern the affairs of [Name of Farmers' Market], a nonprofit corporation organized under the laws of the State of Texas (the "Corporation").

#### Statement of Market Purpose and Philosophy

Farmers' markets are typically created to serve the needs of local farmers and consumers.

#### Examples:

##### A. Dane County – Madison, Wisconsin –

- To give growers and producers of Wisconsin agricultural commodities and other farm-related products alternative marketing opportunities;
- To promote the sale of Wisconsin-grown farm products;
- To improve the variety, freshness, taste and nutritional value of produce available in the Madison area;
- To provide an opportunity for farmers and people from urban communities to deal directly with each other, rather than through third parties, and to thereby get to know and learn from one another;
- To provide an educational forum for consumers to learn the uses and benefits of quality, locally grown or prepared food products;
- To provide educational opportunities for producers to test and refine their products and marketing skills;
- To enhance the quality of life in the Greater Madison Area by providing a community activity which fosters social gathering and interaction; and
- To preserve Wisconsin's unique agricultural heritage and the historical role which farmers' markets have played in it.

- B. Washington D.C. – Dupont Circle – The FRESHFARM Markets at Dupont Circle in Washington, D.C. and St. Michaels, Maryland are public education projects and were created as a showcase for regional food drawn from the farms, fields and waters of the Mid-Atlantic region. They were created to demonstrate that there is a direct connection between eating seasonally and locally and the quality of our environment and our daily lives. The market addresses farm economics by providing regional farmers/producers with a direct market for their products and enhances the quality of life in the community by providing residents with direct access to farmers and their farm fresh products. The market provides an opportunity for educating both the farmers/producers and market customers about the connection between preserving local agriculture and buying fresh, seasonal products direct from the farm.
- C. San Francisco – Ferry Plaza Farmers’ Market (FPFM) - The Ferry Plaza Farmers’ Market (FPFM) is a certified farmers’ market operated by the Center for Urban Education About Sustainable Agriculture (CUESA) in accordance with state, county, and local laws, for the benefit of farmers and consumers alike. Its fundamental purpose is to provide the community with a place to buy fresh produce direct from producers in a congenial atmosphere and to provide producers with a direct market for their goods. Further objectives derived from CUESA’s mission include education about and support of regional sustainable agriculture. Sustainable agriculture is a commitment to both growing and distributing foods to meet the needs of current and future generations in a manner that is environmentally sound, economically viable, and socially just. CUESA believes that small family farms are essential to the sustainable agricultural economy, and is committed to making economic and educational connections between urban dwellers and sustainable farmers.

## ARTICLE ONE OFFICES [AND MEMBERS]

### 1.01 **Principal Office**

The Corporation’s principal office in Texas will be located at [Address].<sup>43</sup> The Corporation may have such other offices, in Texas or elsewhere, as the Board of Directors of the Corporation (the “Board”) may determine. The Board may change the location of any office of the Corporation.

### 1.02 **Registered Office and Registered Agent**

The Corporation will maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation’s principal office in Texas. The Board may change the registered office and the registered agent as permitted by the Texas Business Organizations Code.

### **1.03 Members**

The Corporation shall have one class of Members. The Members shall have no voting rights or any other authority to elect directors or officers, or to direct the control, of the Corporation. Each person properly admitted as a “vendor” to the Market in accordance with such rules as shall be established by the Board from time to time shall be a Member of the Corporation. Membership shall automatically expire at such time as such person ceases to be a vendor of the market, whether due to expulsion, the passage of time or otherwise.

### **1.04 Annual Meeting of Members**

The Corporation shall hold an annual meeting of the Members at such place and at such time as set by the Board. The purpose of the meeting shall be to generally advise the Members as to the state of the Corporation, including with respect to any rule changes and financial status and to address any questions of the Members.]<sup>44</sup>

## **ARTICLE TWO BOARD OF DIRECTORS**

### **2.01 Management of Corporation**

The Board will manage corporate affairs.

### **2.02 Number, Qualifications and Tenure of Directors**

The number of members of the Board (collectively, the “Directors”, and each, a “Director”) may be fixed by resolution of the Board, though initially the number of Directors will be [three].<sup>45</sup> Directors need not be Texas residents. Directors shall be comprised of at least two Market vendors. Each Director shall hold office until the next annual meeting of the Board or until his or her successor shall have been duly elected and qualified.

### **2.03 Nominating Directors**

At any meeting at which the election of a Director is held, any Director may nominate any person other than himself or herself to serve as a Director.

### **2.04 Electing Directors**

A person who meets the qualification for Director and who has been duly nominated may be elected as a Director. Directors will be elected by the vote of the Board. Director may be elected to succeed himself or herself as a Director.

### **2.05 Vacancies**

The Board will fill any vacancy in the Board and any Director position to be filled due to an increase in the number of Directors. A vacancy is filled only by the affirmative vote of all remaining Directors, even if it is less than a quorum of the Board, or if there is only a sole remaining Director. A Director elected to fill a vacancy will serve for the remainder of the unexpired term of his or her predecessor in office.

### **2.06 Regular Meetings**

The Board may provide for regular Board meetings by resolution stating the time and place of such meetings. The meetings may be held inside or outside Texas,<sup>46</sup> and will be held at the Corporation's registered office in Texas if the resolution does not specify the location of the meetings. No notice of regular Board meetings is required other than a Board resolution stating the time and place of the meetings.<sup>47</sup>

### **2.07 Special Meetings**

Special meetings of the Board may be called by, or at the request of, the president or any Director. A person authorized to call special meetings of the Board may fix any place within or without Texas<sup>48</sup> as the place for holding a special meeting; provided that such person fixes a place for holding a special meeting that allows all other Directors to participate by teleconference if such other Directors desire. The person calling a special meeting will inform the Secretary of the Corporation of the information to be included in the notice of the special meeting. The Secretary of the Corporation will give notice to all of the Directors as these Bylaws require.

### **2.08 Notice**

Notice of any special meeting of the Board will be delivered to each Director not less than [five]<sup>49</sup> days before the date of the meeting if notice is sent by mail and not less than [two] days before the date of the meeting if the notice is given by facsimile, telephone or e-mail, or, in either case, on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. The notice will state the place, day and time of the meeting; who called it; the purpose or purposes for which it is called; and instructions for participating by teleconference. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

### **2.09 Quorum**

A majority of the Directors constitute a quorum for transacting business at any Board meeting. If a quorum is never present at any time during a meeting, any Director present may adjourn and reconvene the meeting once without further notice.

### **2.10 Actions of Board of Directors**

The affirmative vote of a majority of the Directors present and voting at a meeting at which a quorum is present shall constitute the act of the Board, unless the act of a greater number is required by law or some other provision of these Bylaws. A Director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the Board's decision. For the purpose of determining the decision of the Board, a Director who is represented by proxy in a vote is considered present.

### **2.11 Proxies**

Any Director may vote by proxy executed in writing or electronically signed (including via e-mail) by that Director and delivered to the Chairman of the Board and/or the Secretary prior to the commencement of any meeting of the Board; provided that no proxy shall be valid after three months from the date of its execution; and provided further that each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. A person authorized to exercise a proxy may not exercise the proxy unless it is delivered to the officer presiding at the meeting before the business of the meeting begins. The Secretary or other person taking the minutes of the meeting will record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy will not be effective for that meeting. A proxy filed with the Secretary of the Corporation or other designated officer remains in force until the earliest to occur of the following:

- (1) an instrument revoking the proxy is delivered to the secretary or other designated officer;
- (2) the proxy authority expires under the proxy's terms; and
- (3) the proxy authority expires under the terms of these Bylaws.

### **2.12 Compensation**

Directors as such shall not receive any stated salaries for their services but nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity and receiving compensation therefor. [Furthermore, the Board may adopt a resolution providing for the Corporation to reimburse Directors their reasonable out-of-pocket expenses, if any, incurred for attending Board meetings.]<sup>50</sup>

### **2.13 Removing Directors**

Any Director may be removed from the Board by a majority vote of the remaining Board members after non-performance of her/his designated duties and responsibilities.

### **2.14 Directors Not Trustees**

Directors are not deemed to have the duties of trustees of a trust with respect to the Corporation or with respect to any property held or administered by the Corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

### **2.15 Committees**

The Board by resolution adopted by a majority of the Directors may designate and appoint one or more standing committees each of which shall consist of one or more Directors, which committees, to the extent provided in said resolution shall have and exercise the authority of the Board in the management of the Corporation. However, no such committee shall have the authority of the Board in

reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Director or officer of the corporation; amending the Certificate of Formation; adopting a plan of merger or adopting a plan of consolidation with another entity; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefor; adopting a loan for the distribution of the assets of the Corporation; or amending, altering or repealing any resolution of the Board that by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed on it by her/him by law.

### **2.16 Interested Directors**

Contracts or transactions between Directors or officers and the Corporation are not void or voidable for any of the following reasons: (a) solely because the contract or transaction is between the officer or Director and the Corporation, (b) solely because the officer or Director is present at or participates in the meeting that authorizes the contract or transaction or (c) solely because the interested party's votes are counted for that purpose. However, every Director with any personal interest in the contract or transaction must disclose all material facts concerning the contract or transaction, including all potential personal benefit and potential conflicts of interest, to the other members of the Board or other group authorizing the contract or transaction. The contract or transaction must be approved by all uninterested Directors or uninterested members of such other group with the authority to approve the contract or transaction.

### **2.17 Action by Written Consent**

In accordance with these Bylaws, action may be taken without a meeting when there are signed written consents by the number of Directors whose votes would be necessary to take action at a meeting at which all such Directors entitled to vote were present and voted. Each written consent must be signed and bear the date of signature of the person signing it. A facsimile or similar transmission by a Director, or a photographic, facsimile or similar reproduction of a signed writing, will be treated as an original being signed by the Director.

Consents must be delivered to the Corporation. A consent signed by fewer than all Directors is not effective to take the intended action unless the required number of consents are delivered to the Corporation within 60 days after the date that the earliest-dated consent was delivered to the Corporation. Delivery must be made by hand or by certified or registered mail, return receipt requested. The delivery may be made to the Corporation's registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent having custody of books in which the relevant proceedings are recorded. If the delivery is made to the Corporation's principal place of business, the consent must be addressed to the president or principal executive officer. The Corporation will give prompt notice of the action taken to persons who do not sign consents.

### **2.18 Meetings Conference Telephone or Remote Communication Technology**

Unless otherwise provided in the Certificate of Formation, members of the Board, or any committee thereof, may participate in and hold a meeting of the Board such committee by means of:

- (a) conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other; or
- (b) another suitable electronic communications system, including videoconferencing technology or the Internet, only if:
  - (i) each Director entitled to participate in the meeting consents to the meeting being held by means of that system; and
  - (ii) the system provides access to the meeting in a manner or using a method by which each Director participating in the meeting can communicate concurrently with each other participant.

Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a Director participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE THREE**

### **OFFICERS**

#### **3.01 Officer Positions**

The Corporation's officers will be a President, Market Manager and a Secretary.<sup>51</sup> The Board may create additional officer positions, define the authority and duties of each such person and elect or appoint persons to fill the positions. The same person may hold any two or more offices, except for president and secretary.

#### **3.02 Election and Term of Office**

The Corporation's officers will be appointed annually by the Board at the annual Board meeting. If officers are not appointed at this time, they will be appointed as soon thereafter as possible. Each officer will hold office until a successor is duly selected and qualifies. An officer may be elected to succeed himself or herself in the same office.

#### **3.03 Removal**

Any officer appointed by the Board may be removed by the Board with or without good cause. Removing any officer will be without prejudice to the officer's contractual rights, if any.

**3.04 Vacancies**

The Board may select a person to fill a vacancy in any office for the unexpired portion of the officer's term.

**3.05 President**

The President is the Corporation's chief executive officer. He or she will supervise and control all of the Corporation's business and affairs and will preside at all meetings of the Board. The President may execute any deeds, mortgages, bonds, contracts or other instruments that the Board authorizes to be executed. However, the President may not execute instruments on the Corporation's behalf if this power is expressly delegated to another officer or agent of the Corporation by the Board, these Bylaws or statute. The President will perform other duties prescribed by the Board and all duties incident to the office of president.

**3.06 Market Manager<sup>52</sup>**

The Market Manager shall administer the market and oversee its operating rules and regulations. The Market Manager will report to the President and the Board. The Market Manager will perform other duties as from time to time may be assigned to him/her by the President or the Board and all duties incident to the office of the Market Manager.

**3.06 Secretary**

The Secretary will (a) give all notices as provided in these Bylaws and the Certificate of Formation or as required by law; (b) take minutes of meetings of the Board and keep the minutes as part of the corporate records; (c) maintain custody of the corporate records and seal; (d) affix the corporate seal to all documents as authorized; (e) keep a register of each Director, officer and employee of the Corporation; (f) perform duties as assigned by the President or the Board; and (g) perform all duties incident to the office of Secretary.

**ARTICLE FOUR**  
**TRANSACTIONS OF THE CORPORATION**

**4.01 Contracts**

The Board may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation. This authority may be limited to a specific contract or instrument or it may be extended to any number and type of possible contracts and instruments.

**4.02 Deposits**

All of the Corporation's funds will be deposited to the credit of the Corporation in banks, trust companies or other depositories that the Board selects.

#### 4.03 Gifts

The Board may accept, on the Corporation's behalf, any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation. The Board may take gifts and give charitable contributions not prohibited by these Bylaws, the Certificate of Formation, state law or provisions set out in federal tax law that must be complied with to maintain the Corporation's federal and state tax status.

#### 4.04 Conflicts of Interest

**A. Financial Interests.** Each Director, Officer, and committee member shall fully disclose any and all financial interests involving themselves or one of their family members in regard to any matter that is presented to the Board or a committee for a vote and shall abstain from voting on such matters. The term "family member" as used herein includes: parents, in-laws, children, siblings, spouses, aunts, uncles, nieces, and nephews. "Financial interests" include, but are not limited to:

1. A payment of dividends or loan of the money of the Corporation to a director. Directors who allow the making of a loan to a con-director will be personally liable for the full amount of the loan until it is repaid;
2. An ownership, investment interest, or compensation arrangement with any entity with which the Corporation has a transaction or arrangement;
3. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement;
4. A potential ownership, investment interest, or compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement, including a commission or fee, share of the proceeds, the prospect of promotion or profit, or any other form of financial reward.

#### **B. Additional Prohibited Acts**

As long as the Corporation exists, and except with the Board's prior approval, no Director or officer of the Corporation may:

1. Do any act in violation of the Certificate of Formation, these Bylaws or a binding obligation of the Corporation;
2. Do any act with the intention of harming the Corporation or any of its operations;
3. Do any act that would make it impossible or unnecessarily difficult to carry on the Corporation's intended or ordinary business;

4. Receive an improper personal benefit from the operation of the Corporation;
5. Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business;
6. Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill;
7. Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of its business; or
8. Disclose any of the Corporation's business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.

**C. Duty to Disclose.** In connection with the actual or potential conflict of interest, an interested person must disclose the existence of his financial interests and all material facts to the Directors and members of committees with board-delegated powers considering the proposed transaction or arrangement.

**D. Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested party, the interested party shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

**E. Procedures for Addressing the Conflict of Interest**

1. An interested person may make a presentation at the board or committee meeting, but after such presentation, he shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
2. The President or Chair of a committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or

arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation. The Corporation shall make its decision as to whether to enter into transaction or arrangement in conformity with such determination.

#### **F. Violations of the Conflict of Interest Policy**

1. If the board of committee has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
2. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **4.06 Permitted Acts**

A Director or officer of the Corporation may lend money to, and otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the certificate of formation and applicable law. Such a person transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation.

### **ARTICLE FIVE BOOKS AND RECORDS**

#### **5.01 Required Books and Records**

The Corporation shall keep correct and complete books and records of account, records of attendance and minutes of the proceedings of the Board and committees having any of the authority of the Board, a record at the registered or principal office giving the names and addresses of each Director and such other records as required by law.

#### **5.02 Inspection and Copying**

Any Director or officer of the Corporation may inspect and receive copies of all the corporate books and records required to be kept under these Bylaws. Such a person may, by written request, inspect or receive copies if he or she has a proper purpose related to his or her interest in the Corporation. He or she may do so through his or her attorney or other duly authorized representative. The inspection may take place at a reasonable time, no later than five working days after the Corporation receives a proper written request. The Board may establish reasonable copying fees, which may cover the cost of materials and labor but may not exceed thirty cents per page. The Corporation will provide requested copies no later than five business days after the Corporation receives a proper written request.

## **ARTICLE SIX FISCAL YEAR**

### **6.01 Fiscal Year<sup>53</sup>**

The Corporation's fiscal year will begin on the first day of January and end on the last day of December.

## **ARTICLE SEVEN INDEMNIFICATION**

### **7.01 Indemnification of Officers and Directors**

Each Director or officer, whether or not then in office, and, upon approval of a majority of the Board, each employee or agent of the Corporation, whether or not then an employee or agent, in each case subject always to the provisions of the laws of the State of Texas and the certificate of formation, shall be indemnified by the Corporation against all costs and expenses (including counsel fees) reasonably incurred by or imposed upon him or her in connection with or arising out of any action, suit or proceeding which he or she may be for any reason involved by reason of his or her being or having been a Director, officer, employee or agent of the Corporation, such expense to include the cost of any settlements which has been approved by the Board (other than amounts to be paid to the Corporation itself), made with the view to curtailment of costs of litigation. The Corporation shall not, however, indemnify any Director, officer, employee or agent with respect to matters as to which he or she shall be finally adjudged in any such action, suit or proceeding, to be liable for gross negligence or willful misconduct in the performance of his or her duties in such position, nor in respect of any matter on which any settlement or compromise is effected, if the total expense, including the cost of such settlement shall substantially exceed expense which might reasonably be incurred by such Director, officer, employee or agent conducting such litigation with final conclusion. The foregoing right of indemnification shall not be exclusive of other rights to which any such person shall be entitled as a matter of law. Except as provided in the certificate of formation, provisions of this section shall not be modified or repealed except by affirmative vote of a majority<sup>54</sup> of the Board.

## **ARTICLE EIGHT NOTICES**

### **8.01 Notice**

Any notice required or permitted by these Bylaws to be given to a Director or officer of the Corporation may be given by written notice delivered personally or sent by mail, nationally recognized overnight courier, e-mail or facsimile to each Director at her/his address, e-mail address or facsimile number as shown by the records of the Corporation. Notice shall be deemed to be delivered:

- (a) if mailed, when deposited in the United States mail so addressed with postage thereon prepaid;
- (b) if sent by nationally recognized overnight courier, when delivered with written verification of

receipt, (c) if sent via e-mail, when sent via e-mail without receipt of a delivery error by the sender and (d) if sent by facsimile, when confirmation of receipt is received by transmitting party. Any Director may at any time waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

## **ARTICLE NINE**

### **CERTIFICATION BY TEXAS DEPARTMENT OF AGRICULTURE**

#### **9.01 Certified Farmers' Market**

As required pursuant to the rules of the Texas Department of Agriculture in order for the Corporation to qualify as a "certified farmers' market":<sup>55</sup>

- (1) at least \_\_\_\_% of all agricultural products sold through the markets maintained by the Corporation shall be grown in Texas<sup>56</sup>;
- (2) no less than two of the [vendors]/[Members] of the Corporation's markets shall be farmers' selling their own produce; and<sup>57</sup>
- (3) all agricultural products sold at the market shall be of merchantable quality; and
- (4) the Corporation shall take, and the Board shall cause the Corporation to take, all such other actions as the Board may determine as being reasonably necessary to for the markets operated by the Corporation become, and to maintain their status as, "certified farmers' markets" by the Texas Department of Agriculture.

## **ARTICLE TEN**

### **AMENDING BYLAWS**

#### **10.01 Amending Bylaws**

These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board. The notice of any meeting at which these Bylaws are altered, amended or repealed, or at which new bylaws are adopted, will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended or repealed. Alternatively, the notice may include a fair summary of those provisions.

**ARTICLE ELEVEN**  
**MISCELLANEOUS PROVISIONS**

**11.01 Legal Authorities Governing Construction of Bylaws**

These Bylaws will be construed under Texas law. All references in these Bylaws to statutes, regulations or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

**11.02 Legal Construction**

To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to non-profit corporations. If any provision of these Bylaws is held invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal or unenforceable provision.

**11.03 Headings**

The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**11.04 Number**

All singular words include the plural and all plural words include the singular.

**11.05 Seal**

The Board may provide for a corporate seal. Such a seal would consist of two concentric circles containing the words “[Name of Corporation]”; “Texas” in one circle and the word “Formed” together with the date of formation in the other circle.<sup>58</sup>

**11.06 Power of Attorney**

A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the secretary to be kept with the corporate records.

**11.07 Parties Bound**

These Bylaws will bind and inure to the benefit of the Directors, officers, employees and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as these Bylaws otherwise provide.

[CERTIFICATION PAGE FOLLOWS]

### CERTIFICATION

I certify that I am the duly elected and acting secretary of [Name of Corporation] and that these Bylaws constitute the Corporation's bylaws. These Bylaws were duly adopted at a meeting of the Board of Directors held on [Date].

Dated: [Date]

---

Name:

Title: Secretary

## Annex I: Form of Initial Resolutions of the Board of Directors

ACTION BY WRITTEN CONSENT

OF

THE BOARD OF DIRECTORS

OF

[NAME OF CORPORATION]

The undersigned, being all the members of the Board of Directors (the “Board”) of [Name of Corporation], a Texas non-profit corporation (the “Corporation”), acting pursuant to Sections 6.201(b) and 22.220(b) of the Texas Business Organizations Code (the “TBOC”), do hereby consent to the adoption of, and do hereby adopt, by this written consent, the following resolutions with the same force and effect as if they had been approved and adopted at a duly convened meeting of the Board and direct that this written consent be filed with the minutes of the proceedings of the Board:

### ***Incorporation***

NOW, THEREFORE, BE IT RESOLVED that all actions taken by [Name], the organizer of the Corporation, in connection with the formation of the Corporation, including, without limitation, the filing with the Secretary of State of the State of Texas the Certificate of Formation (the “Certificate of Formation”) of the Corporation, a copy of which is attached hereto as Exhibit A, be, and hereby are, in all respects ratified, affirmed and approved; and the Secretary of the Corporation is hereby directed to insert, or cause to be inserted, a certified copy of the Certificate of Formation in the minutes of the Corporation; and

FURTHER RESOLVED that the Bylaws attached hereto as Exhibit B be, and they hereby are, approved and adopted in all respects as the Bylaws of this Corporation; and

FURTHER RESOLVED that the following persons be, and they hereby are, elected to the offices of the Corporation set forth opposite their respective names, to serve in accordance with the Bylaws of the Corporation and at the discretion of the Board of Directors:

Name Office<sup>59</sup>

[Name]President

[Name][Market Manager]

[Name]Secretary; and

[FURTHER RESOLVED that the proposed corporate seal, an impression of which is affixed to this page in the margin opposite this resolution, be, and it hereby is, adopted as the corporate seal of the Corporation; and]<sup>60</sup>

FURTHER RESOLVED that the Secretary of the Corporation be, and he<sup>61</sup> hereby is, authorized and directed to procure all corporate books, books of account and shareholder records required by the TBOC and the laws of the State of Texas or necessary or appropriate in connection with the business of the Corporation; and

FURTHER RESOLVED that the President<sup>62</sup> of the Corporation be, and he hereby is, authorized to pay all charges and expenses incident to or arising out of the organization of the Corporation and to reimburse any person who has made any disbursements therefor; and

FURTHER RESOLVED that each of the above-named officers, and any other duly appointed officer of the Corporation,<sup>63</sup> and each of their respective successors in office be, and each of them hereby is, authorized and empowered in the name and on behalf of the Corporation, to take such actions as any of them may determine with respect to bank accounts of the Corporation, including, but not limited to: (1) the opening and closing of such accounts; (2) the deposit into and withdrawal of funds from such accounts; (3) the authorization of manual or facsimile signatories for such accounts; (4) the modification of agreements relating to such accounts (whether such accounts now or hereafter exist); (5) the wire-transfer of funds from such accounts; and (6) the issuance of instructions respecting such accounts; and

### ***Adoption of Market Rules***

WHEREAS, the Corporation will organize and operate a farmers' market (the "Market"), the Board deems it advisable and in the best interests of the Corporation to set forth the rules pursuant to which the market will be operated;

WHEREAS, persons desiring to participate in the Market as vendors must apply and meet certain qualifications in order to be accepted as vendors in the Market;

NOW, THEREFORE, BE IT RESOLVED that the rules set forth in Exhibit C hereto are hereby adopted as the initial rules of the Market and all officers shall operate, or cause the Market to be operated, in accordance with such rules; and

FURTHER RESOLVED that the form of application set forth in Exhibit D hereto is hereby adopted and the [President and Market Manager] is authorized and directed to determine which applicants are accepted as vendors;

***[Determination of Members***

FURTHER RESOLVED that any persons accepted as vendors to the Market in accordance with the rules and procedures provided by this Board shall each be a Member of the Corporation as set forth in Section 1.3 of the Bylaws for so long as such person remains a vendor of the Corporation.]<sup>64</sup>

***[Lease Agreement***

WHEREAS, the Board deems it advisable and in the best interests of the Corporation to enter into the proposed [Lease] between the Corporation and [Third Party] (the “Agreement”), pursuant to which the Corporation will be lease certain real property upon which the Market will be located;

WHEREAS, the Board wishes to approve the Agreement and the transactions contemplated thereby;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes, approves and adopts the Agreement and the consummation of the transactions contemplated by the Agreement, substantially on the terms and subject to the conditions set forth in the Agreement in the form previously provided to the Board and on such other terms as the officers of the Corporation shall deem necessary, appropriate or advisable; and

FURTHER RESOLVED that the Board hereby authorizes and directs the officers of the Corporation to take all such action as any such officer shall deem necessary, appropriate or advisable to consummate the transactions contemplated by the Agreement on the terms hereby approved; and

FURTHER RESOLVED that the officers of the Corporation be, and each of them hereby is, authorized and directed to execute and deliver, in the name and on behalf of the Corporation, the Agreement, with such changes therein as the officer executing the same shall approve, such approval to be conclusively established by his execution thereof.]<sup>65</sup>

***Authorization of Filings***

WHEREAS, the Board deems it advisable and in the best interests of the Corporation for the Market to become a “certified farmers’ market” under Texas law;

WHEREAS, the Corporation has been organized as a non-profit corporation under Texas law;

WHEREAS, the Board deems it advisable and in the best interests of the Corporation for the Corporation to apply to the Internal Revenue Service and the Texas Comptroller of Public Accounts for a status as a “tax exempt” entity within the meaning of Section 501(c)(3) of the Internal Revenue Code and under the applicable laws and regulations of the State of Texas;

WHEREAS, the Board further deems it advisable and in the best interests of the Corporation for the Corporation, and the Corporation is required under law or regulation, to obtain certain licenses and permits, including [Describe any licenses or permits, including building permits, scale permits, etc.];

NOW, THEREFORE, BE IT RESOLVED that each of the officers of the Corporation be, and each of them hereby is, authorized and directed in the name and behalf of the Corporation, to apply for the Market to be a “certified farmers’ market” and to apply for and obtain any and all permits necessary or advisable for the Corporation to operate the Market; and

FURTHER RESOLVED that each of the officers of the Corporation be, and each of them hereby is, authorized and directed in the name and behalf of the Corporation, to complete and submit Form 1023 to the Internal Revenue Service, Form AP-205 with the Texas Comptroller of Public Accounts and such other forms and applications as are necessary or appropriate in such other jurisdictions as determined by the officers in order for the Corporation to obtain “tax exempt” status in each such jurisdiction; and

FURTHER RESOLVED that the officers of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to prepare, execute, deliver and file, or cause to be prepared, executed, delivered and filed, all reports, statements, documents and information, and to respond to all requests for additional information and to do such other things necessary or appropriate in connection with any statute, rule or regulation, whether foreign, federal, national, state, provincial or local in connection with such permits, applications or otherwise.

#### **General Authorizations**

FURTHER RESOLVED that the officers of the Corporation be, and each of them individually hereby is, authorized, empowered and directed to take or cause to be taken, in the name and on behalf of the Corporation, all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered, in the name and on behalf of the Corporation, all such other agreements, documents and instruments and to incur and pay all such fees and expenses as such officer shall deem necessary or appropriate in order to carry out fully the purposes and intent of the foregoing resolutions; and

FURTHER RESOLVED that any person dealing with any officer of the Corporation in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such officer and by his or her execution of any document, agreement or instrument, the same shall be a valid and binding obligation of the Corporation enforceable in accordance with its terms; and

FURTHER RESOLVED that any and all actions previously taken by the Corporation or any of its officers in connection with the documents, transactions and actions contemplated by the foregoing resolutions hereby are adopted, ratified, confirmed and approved in all respects as and for the acts and deeds of the Corporation.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned, being all of the members of the Board of Directors of [Corporation], have executed this written consent as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

## Annex J: Key Contacts

### Annual Farmers' Market Certification

Texas Department of Agriculture-Licensing Office . . . . . 877-542-2474

### Aquaculture Permit

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#aquaculture](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#aquaculture) . . . 800-835-5832

### Egg Dealer Permit

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#eggs](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#eggs) . . . . . 800-835-5832

### Marketing Assistance

Texas Department of Agriculture – Go Texan Program

<http://www.gotexan.org> . . . . . 512-463-7624

### Marketing Assistance

The Sustainable Food Center

<http://www.sustainablefoodcenter.org> . . . . . 512-236-0074

### Firearms/Restricting Concealed Weapons

Texas Dept. of Public Safety

[www.txdps.state.tx.us/administration/crime\\_records/chl/chlsindex.htm](http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm) . . . . . 800-224-5744

### Firework Permits and Questions

State Fire Marshal/Texas Department of Insurance and local fire authorities

[www.tdi.state.tx.us/fire/fmlifirework.html](http://www.tdi.state.tx.us/fire/fmlifirework.html) . . . . . 512-305-7900  
or local fire dept.

### Manufactured Foods

Texas Department of State Health Services – Environmental and Consumer  
Safety Section Foods Group

[www.tdh.state.tx.us/bfds/foods/default.htm](http://www.tdh.state.tx.us/bfds/foods/default.htm) . . . . . 512-834-6670

### Nursery/Floral License

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_nf\\_organic.htm](http://www.agr.state.tx.us/license/regulatory/reg_nf_organic.htm) . . . . . 800-835-5832

**Organic Certification**

Texas Department of Agriculture–Organic Certification Program

[http://www.agr.state.tx.us/license/regulatory/reg\\_nf\\_organic.htm#organic](http://www.agr.state.tx.us/license/regulatory/reg_nf_organic.htm#organic) . . . . . 800-835-5832**Perishable Commodities License**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#hmpe](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#hmpe) . . . . . 800-835-5832**Retail Food Establishment Permit**

County, municipal or public health authorities where the market is located or, if none,

the Texas Department of State Health Services . . . . . 512-719-0246

**Sales and Use Tax Permits**

Texas Comptroller of Public Accounts

Online application: [www.window.state.tx.us/permit](http://www.window.state.tx.us/permit) . . . . . 800-252-5555**Scales and Weights**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_wm\\_license\\_info.htm](http://www.agr.state.tx.us/license/regulatory/reg_wm_license_info.htm) . . . . . 800-835-5832**Tax-exempt Status - Federal**

Internal Revenue Service (IRS)

[www.irs.gov/formspubs/lists/0,,id=97817,00.html](http://www.irs.gov/formspubs/lists/0,,id=97817,00.html)**Tax-exempt Status - State**

Texas Comptroller of Public Accounts

[www.window.state.tx.us/taxinfo/taxforms/ap-205.pdf](http://www.window.state.tx.us/taxinfo/taxforms/ap-205.pdf) . . . . . 800-252-5555**Tax-exempt Status – Local**

Local Taxing Authorities . . . . . N/A

**Vegetable Seed License**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/seed/reg\\_seed\\_license\\_info.htm](http://www.agr.state.tx.us/license/regulatory/seed/reg_seed_license_info.htm) . . . . . 800-835-5832**Wine and Beer Retail Permits**

Texas Alcoholic Beverage Commission

[www.tabc.state.tx.us/liccom/LPDesc.htm](http://www.tabc.state.tx.us/liccom/LPDesc.htm) . . . . . 512-206-3360

**Organic Farming**

Texas Organic Farmers and Gardeners Association

[www.tofga.org](http://www.tofga.org) ..... 877-326-5175

**Community Supported Agriculture**

United States Department of Agriculture

[www.nal.usda.gov/afsic/csa](http://www.nal.usda.gov/afsic/csa)

[www.texascertifiedfarmersmarkets.com](http://www.texascertifiedfarmersmarkets.com)

## Annex K: ERS Group: Growing Economic Development with Farmers' Markets in Texas



### Growing Economic Development With Farmers' Markets in Texas

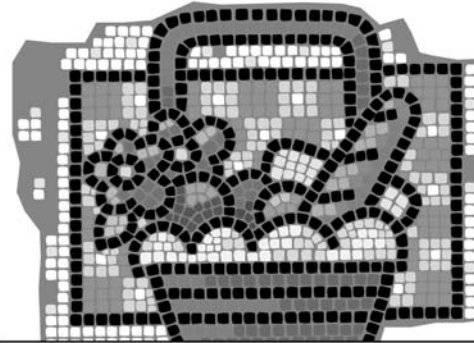
Across America, market days attract customers to buy produce, meat, and other products from local farmers' and producers. These events have attracted interest and growth in recent years – nationwide, 340 markets in 1970 have grown to over 3000 in 2001.<sup>1</sup> Over 50 markets can be found in Texas alone.

"Eat Local" is the theme of Farmers' Markets. Local food markets benefit the participating farmers', customers, and communities. This report outlines the economic benefits and challenges of creating a farmers' market in your community, and provides information on further resources and assistance available for those interested in forming new markets in their communities.

#### Economic Development through Farmers' Markets

Farmers' markets can be found in urban and rural, high-income and low-income communities, but each market reflects the community it serves. Despite differences in marketing and product selection across communities, farmers' markets can be an economic development tool in all types of communities.

This paper focuses on markets in rural communities.<sup>2</sup> For an in-depth discussion of the challenges that farmers' markets face in urban low-income communities, see Andrew Fisher's report: "Hot Peppers and Parking Lot Peaches."<sup>3</sup> The report "Catalysts for Growth: farmers' markets as a stimulus for economic development" from Loyola University's Economics Institute describes an urban mixed-income market in New Orleans.<sup>4</sup>



#### *A Rose by Any Other Name...*

*In many Texas communities, flea-markets, pulgas, and roadside vegetable stands informally fill the role filled by farmers' markets in other areas. In this report, the term "farmers' market" refers to any organized market structure that allows **direct** interaction between **multiple** local farmers' and customers in a community.*

*The benefits of farmers' markets accrue through the assumption of the retailer role by the farmer and the gathering of multiple sellers and buyers at one place and time. Many informal structures fill this role – whether it's called a farmers' market or a "pulga" is not important.*

*Additional benefits are available to markets that meet the requirements to become "Certified Texas Farmers' Markets" and participate in government programs such as the "Farmers' Market Nutrition Program." These programs are further discussed below.*

<sup>1</sup> Allison Brown, 2002 "Farmers' market research 1940-2000: An inventory and review." American Journal of Alternative Agriculture

<sup>2</sup> For further discussion on this topic, see Hilchey, Lyson, Gillespie, 1995 "Farmers' Markets and Rural Economic Development" Farming Alternatives Program Cornell University

<sup>3</sup> Fisher, A. 1999. Hot peppers and parking lot peaches: Evaluating farmers' markets in low income communities. Community Food Security Coalition, Venice, CA. Community Food Security Coalition staff indicate that the report will be available online at [www.foodsecurity.org](http://www.foodsecurity.org) in early 2006.

<sup>4</sup> Alcantara, Leslee 1999 "Catalysts for Growth: farmers' markets as a stimulus for economic development" Economics Institute. New Orleans LA Internet Source: [www.loyno.edu/economics.institute/Catalyststogrowth.html](http://www.loyno.edu/economics.institute/Catalyststogrowth.html)



Economic development occurs through the *creation* and *capture* of value.

- Farmers' Markets *create* value by bringing fresher produce to consumers in a community setting. Markets targeted at mixed-income customers often focus on the fresh and local aspect of farmers' markets. These markets will position their marketing around how food at a farmers' market is *better* than food bought elsewhere.
- Farmers' Markets *capture* the value of local agriculture by avoiding the processing and transport costs of the national food distribution system. Markets targeted at low-income customers best focus marketing on the cost-savings benefit of local markets.

Regardless of the marketing focus of a given market, all farmers' markets have the opportunity to provide both benefits to customers.

### **Creating Value**

A survey of farmers' market customers in Ontario found the primary draw of the market is the freshness of local products.<sup>5</sup> Local farmers' can get produce to a local market within hours of harvest, while a longer timeframe is required for produce reaching consumers through wholesale channels. Many customers of farmers' markets also value the interaction with the farmers' and the transparency of the food production process.<sup>6</sup>

Established markets provide farmers' with an opportunity to grow new vegetables for new markets. This new economic activity benefits communities and goes beyond the opportunity to sell existing products through a new sales channel. New markets create opportunities for new products that would not have otherwise been produced. For example, some farmers' markets offer sales opportunities for "seconds," produce that is cosmetically bruised and unacceptable to supermarkets but still acceptable to consumers in a farmers' market.<sup>7</sup>

The event aspect of many farmers' markets should not be overlooked as an important benefit. At least one survey notes customers appreciate the market as a place to "meet friends and socialize."<sup>8</sup> The limited time that many markets are open offers this benefit: unlike supermarkets, a weekly farmers' market acts as a focal event, aligning schedules of customers and building "social capital" in a community.

<sup>5</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 31

<sup>6</sup> Ibid. Pg. 33

<sup>7</sup> USDA Agricultural Marketing Service Dec. 2001. Improving and Facilitating a Farmers' Market in a Low-Income Urban Neighborhood: A Washington, DC, Case Study. Pg. 8

<sup>8</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 32



## Capturing value

A very strong argument for rural farmers' markets is that the wholesale food distribution network adds needless costs for rural localities. Imagine the hypothetical life of a vegetable grown in East Texas, shipped to Louisiana to be processed and stored in a distribution warehouse, and finally shipped back to an east Texas supermarket shelf. If the farmer sells that vegetable from the back of a truck at the local farmers' market, these transportation, processing, and storage costs are avoided.

In fact, studies indicate farmers' markets offer consumers savings of 10%-18% over supermarkets for comparable quality food.<sup>9</sup> But these lower retail prices are significantly higher than the prices faced by farmers' in the wholesale market.<sup>10</sup> By avoiding the costs of unnecessary transport and storage, both the consumers and the farmers' are better off.

The "buy local for less waste" argument shouldn't be confused with the "buy local to support local jobs" argument. The local jobs argument focuses on the fact that farmer's markets keep "food dollars" in a community. This is analogous to international trade: Local communities have a "balance of trade" with the outside world. Selling agricultural products to the outside world at low wholesale prices and buying similar products from outside distributors at high retail prices can contribute to a "trade deficit," draining funds from the local economy.

As with calls for protective barriers in international trade, this argument is strongest when combined with the value creation and cost savings described above. If the local market cannot offer at least as much value as any outside system, value is destroyed and the market will be unsustainable; Consumers or producers would find themselves better off with the traditional marketing channels.

If value is created by buying local, both the producers and the customers can gain from buy local campaigns and the oft-discussed "multiplier" effect of local business will grow the economic impact of the market. An economic multiplier estimates the total economic impact of a dollar of sales at a market. For every dollar the customer spends at the market, the farmers' will pay their workers some amount, who will buy local products from someone who pays their workers some amount, etc. The sum of all of the local economic activity associated with \$1 in sales is called the economic multiplier. Estimates of the "multiplier" associated with farmers' markets range from 1.58 to 2.<sup>11,12</sup>

<sup>9</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf) PG. 13.

<sup>10</sup> National Association of Farmers' Markets "Getting Started: Benefits" Internet Source: [www.farmersmarkets.net/started/benefits/default.htm](http://www.farmersmarkets.net/started/benefits/default.htm) Accessed 12/27/05

<sup>11</sup> Otto, D. and Varner, T. "Consumers, Vendors, and the Economic Importance of Iowa Farmers' Markets: An Economic Impact Survey Analysis" Department of Economics, Iowa State University.

<sup>12</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 57.



### **Additional Benefits**

Researchers have also identified additional benefits to farmers' markets such as the entrepreneurial "incubator" function of local markets and add-on commerce at businesses near the markets themselves.

Farmers' learn from their interactions with customers and competitors at community markets.<sup>13</sup> The feedback they receive from customers gives them direct insight on customer wants and purchase trends. The producers can use this feedback to create agricultural products that anticipate future market needs. Once the products are created, the "incubator" function of farmers' markets give farmers' a natural test market for expansions of their business lines. Whether the new products are exotic vegetables or home-baked pies, these businesses can grow beyond the local market into larger ventures. Starbucks and Bodyshop are two nationally known brands that started in local public markets.<sup>14</sup>

The "event" aspect of farmers' markets also benefits local businesses that are not directly participating in the market. Studies in the US, UK, and Canada have found increases in business for local shops during market hours that range from 5% to 50%<sup>15</sup>

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## **Resources for Farmers' Markets in Texas**

### **Marketing Assistance in Texas**

- The Texas Department of Agriculture sponsors the Go Texan Certified Farmers' Market Program. The Texas Department of Agriculture publishes a directory of Texas Farmers' markets, and the food marketing program assists Texas agricultural producers market their goods.

More information available from [www.gotexan.org](http://www.gotexan.org)

And the Food Marketing Staff can be reached at (512) 463-7624

- The Sustainable Food Center is a Texas non-profit that works to improve access to local, healthy, and affordable food for children and adults in Central Texas. The Sustainable Food Center operates the Austin Farmers' Market, and has offered to be a resource to communities wishing to open markets in their communities.

Contact: [www.sustainablefoodcenter.org](http://www.sustainablefoodcenter.org), (512) 236-0074

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<sup>13</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [http://www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf)

<sup>14</sup> Alcantara, Leslee 1999 "Catalysts for Growth: farmers' markets as a stimulus for economic development" Economics Institute. New Orleans LA Internet Source: [www.loyno.edu/economics.institute/Catalyststogrowth.html](http://www.loyno.edu/economics.institute/Catalyststogrowth.html)

<sup>15</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf) pg. 8



### **Farmers' Market Nutrition Programs**

• Farmers' Market Nutrition Programs (FMNPs) is a program that provides benefits for WIC recipients and income-eligible seniors that are redeemable only at approved farmers' markets. FMNP is a federal program that requires a 10% state match. In Texas, this program is not currently accepting new markets and has undergone cuts in recent years.

To check the current status of this program, contact:

Mary Alice Winfree

Texas Department of Health FMNP Program

512 341-4400.

See also:

The National Association of Farmers' Market Nutrition Programs: [www.nafmnp.org/](http://www.nafmnp.org/)

FMNP Frequently Asked Questions: [www.fns.usda.gov/WIC/FMNP/FMNPfaqs.htm](http://www.fns.usda.gov/WIC/FMNP/FMNPfaqs.htm)

### **Food Stamp program**

• Food stamps and Temporary Assistance for Needy Families (TANF) in Texas is administered through an Electronic Benefit Transfer (EBT) card known as the Lonestar Card. Several pilot programs have been run to study the use of EBT processing systems at farmers' markets, with mixed results. Farmers' markets face challenges from cost of the EBT equipment and the power and phone infrastructure necessary to operate the EBT system.

Nevertheless, several Texas farmers' markets process EBT cards, including:

- Ridgmar Farmers' Market, Ft. Worth,
- Del Rio Farmers' Market,
- San Antonio Farmers' Market/Tri-State Farmers' Market,
- Lufkin Farmers' Market,
- Jacksonville Farmers' Market,
- Eagle Pass Farmers' Market.<sup>16</sup>

For more information on becoming an EBT retailer, see :

[www.fns.usda.gov/fsp/retailers/becoming.htm](http://www.fns.usda.gov/fsp/retailers/becoming.htm)

### **Additional online resources on Farmers' Markets and Setting up Farmers' Markets**

North American Farmers' Direct Marketing Association

[www.nafdma.com/Resources/FMCresources/](http://www.nafdma.com/Resources/FMCresources/)

USDA Agricultural Marketing Service Farmers' Market Program

[www.ams.usda.gov/farmers/markets](http://www.ams.usda.gov/farmers/markets)

<sup>16</sup> "Food Stamp Program 2005 Growing Season."

Internet Source: [www.fns.usda.gov/fsp/ebt/2005-growing.htm](http://www.fns.usda.gov/fsp/ebt/2005-growing.htm) accessed 2.23.06

**Prepared in February 2006 by:**  
**Kevin Jewell, Prateek Shah, Vivek Shah**  
**ERS Group**  
 Consulting • Economics & Finance • Analysis & Support  
 600 Congress Avenue  
 Suite 250  
 Austin, TX 78701  
 TEL: 512-275-9900  
 FAX: 512-275-9901  
[www.ersgroup.com](http://www.ersgroup.com)

### **In conjunction with**



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## Annex L: Endnotes

- 1 ERS Group, “Growing Economic Development with Farmers’ Markets in Texas,” at 2-5 (February 2006).
- 2 See ERS Group at 3.
- 3 See ERS Group at 4.
- 4 Please note that in order to become a certified farmers’ market, Texas law requires that the market’s bylaws state that at least two “members” of the market must sell their own produce; however, representatives of the Department of Agriculture have verbally informed us that it is sufficient to have two vendors selling their own produce and that this requirement is not intended to refer to “members” of the type described in this section. Nevertheless, it may be preferable to declare that all accepted vendors are members and explicitly state that members have no governance role. In addition, to participate in the Farmers’ Market Nutrition Program, a vendor must be a member of a Farmers’ Market.
- 5 Excerpt from [www.thefarmersmarket.us/join/bylaws.asp](http://www.thefarmersmarket.us/join/bylaws.asp) (February 23, 2006).
- 6 Internal Revenue Service, “Applying for 501(c)(3) Tax Exempt Status” (<http://www.irs.gov/pub/irs-pdf/p4220.pdf>).
- 7 See footnote 4.
- 8 Texas Admin Code - Title 4, Part 1, Chapter 17, Subchapter D.
- 9 See footnote 4.
- 10 See § 229.162(33) of the Texas Food Establishment Rules.
- 11 See § 229.163 of the Texas Food Establishment Rules.
- 12 7 C.F.R. § 205.
- 13 26 Tex. Reg. 5642
- 14 You should consider whether the grace period should be shorter and, once in compliance, whether reinstatement should be automatic. Underlying issues include: what will happen to the vacant booth during the Vendor’s absence? Too many vacant booths drive down the attractiveness of the entire market; however, temporarily filling booths can be difficult and can also impact market character. Also, the circumstances of the non-compliance, such as if the Vendor forged a permit, should be considered when deciding whether the Vendor should have a second chance.
- 15 You should consider the types of products that Vendors may sell, particularly whether they may sell only items produced by that Vendor or also sell items that they purchased wholesale. While allowing Vendors to “resell” some items would potentially make the market accessible to a larger group of vendors, it also risks creating a “flea market” environment as well as potentially undercutting Vendors who are selling similar items that they produced. A similar issue concerns reselling items produced by other farmers. Some markets permit such reselling or “carrying” with the prior approval of the Market Manager, but limit the amount of items that may be carried.
- 16 You should consider whether more formalized procedures for absences and leaving early should be provided. For example, consider requiring Vendors to seek approval for an absence at least a certain amount of time in advance (i.e. 24 or 48 hours) or to follow certain procedures to “check out” when leaving early. Also, consider whether the space can be allocated to another Vendor for that day, including any “stand by” Vendors that may wish to participate in the market whenever someone is absent. Further, different penalties for absences may be appropriate. For example, a Vendor may lose the designated booth location for a specified time for an unexcused absence, be barred from the market for a specified time for two or more unapproved absences and be expelled from the market for a specified number of unapproved absences. It may also be appropriate to limit the number of excused absences to prevent Vendors from abusing that process. Finally, describing reasons that would be considered acceptable for an absence (i.e. sickness, death in family, etc.) would help alleviate any claims that the Market Manager was favoring certain Vendors over others.
- 17 Consider whether different penalties would be appropriate. See also footnote 16 above.
- 18 Some markets require the vendors to provide their own trash cans and bags. In addition, you should consider how the Market will provide a dumpster and the collection times.
- 19 If Vendors will be allowed to park vehicles in the market, then explicit rules prohibiting the operation of vehicles outside of permitted hours, which should exclude market hours and other times when pedestrians are present at the market site, should be established. Insurance requirements for Vendors should also be analyzed in light of such activity.
- 20 You should consider whether a farmer (or the maker of other products) must be present in person at the Market or if it is permissible that only employees of that farmer or other producer may attend.
- 21 Depending on the weather conditions in the area, it may be appropriate to provide at least a partial refund for excessive inclement weather closings. Potentially, the refund could be the amount that the Market saves by not being open on that day.
- 22 You should consider how rents will be structured. While many markets set a relatively high fixed rent for the entire market season (i.e. \$150 - \$250), other markets may require a lesser commitment (monthly or weekly) and still other markets even set aside some stalls (or make stalls available if a vendor is absent) on a daily basis (usually around \$20/day). Some markets also charge a relatively low base rent plus a percentage of the gross revenue of the Vendor (i.e. \$5 + 10% of gross revenues). While a rent based on revenue sharing certainly allows the market to share in its own success, it can also make it difficult to collect and to budget, especially at the start when it is difficult to predict the success. Though we are not aware of this method being used, another option is to vary rents based on the location of the stall, with prime locations bearing higher rents. (Notably, many markets, however, assign stalls based on seniority. Initially, a drawing or some other random means could be used to assign stalls if they are

- all to have the same price.) However set, the rents should be low enough to allow all stalls to be sold and high enough to cover most (if not all) of the Market's bills and other obligations and to build a small operating surplus for the Market.
- 23 Many markets require payment in full of the market fee at the time of the application. In this way, the markets are not as likely to lose money if a Vendor does not show up as the market will have already been paid in full.
- 24 This limitation is important to keep people from renting and then subletting booths at a higher price.
- 25 While the flexibility is good for the Market, organizers should be aware that it can lead to claims of favoritism if not carefully managed or explained. See also footnote 16 above.
- 26 If the rents are based on revenue of the Vendors, then this reporting is critical and probably should be made more often than only at the end of the season, i.e. monthly or (even better) weekly. Even if rent is a fixed amount, this information should be gathered in order to analyze how well the market is performing and to provide any requested information to the USDA or other groups interested in promoting or studying farmers' markets. In this instance, it may also be helpful to have the information on a more frequent basis in order to assess busy and slow times and to see which items are selling at what times. This information would greatly assist any marketing efforts undertaken by the Market.
- 27 In order to enforce this limitation, the necessary signs, as described in the manual, must be posted at the Market.
- 28 Some markets have included a chart to identify the potential violations and the penalties, including for first, second and third offenses. Others have used a "penalty points" system where each violation gives the Vendor a certain number of penalty points and the number of penalty points accrued then determine the discipline taken. It is important to have consistency in discipline, both for general fairness and for legal reasons. Such charts and point systems help to create consistency. At the same time, when beginning your Market, you may desire additional flexibility than a fixed system would allow – both because you will be learning what violations are truly problematic for your Market and because there may be a lot of violations in the beginning as all Vendors are learning the rules for the first time. Whichever path is chosen, we believe that it is critical that the Market's board carefully monitor all disciplinary actions in order to assess whether the Market is being managed as desired and to help the Market Manager identify any trouble areas.
- 29 Some markets permit notices to be given orally; however, it is better to provide the Market Manager with disciplinary forms that he or she can fill out and give to the Vendor, while keeping a copy for the Market's records.
- 30 If there are other officers, consider substituting those persons instead of the board.
- 31 While some markets make this statement, it is not appropriate in many situations. There are many situations in which it may be necessary to disclose the complainant, especially if a violation is involved, and this type of statement could cause problems for the Market in such situations. A better approach would be to say that "The Market will endeavor to maintain the confidentiality of the complainant's identity if appropriate, as determined in the sole discretion of the Market."
- 32 Delete if the Association will not allow Vendors to become "members".
- 33 Unlike for-profit corporations, the names of Texas non-profit corporations are not required to contain the terms "company," "corporation," "incorporated" or "limited." Tx. Bus. Org. Code § 5.054. Before filing the Certificate of Formation, you should verify the availability of your chosen name by contacting the Corporations Section of the Office of the Texas Secretary of State at (512) 463-5555 or [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us). Even though you verify the availability of the name in advance, the final determination may be made only once the actual documentation is filed. As a result, it is imperative that no financial expenditures (i.e. letterhead or business cards printed, logo designed, etc.) based on a preliminary determination. Furthermore, you should also determine whether there are any businesses or non-profits with a similar name to avoid any potential trademark issues. The United States Patent and Trademark website ([www.uspto.gov](http://www.uspto.gov)) is an excellent place to begin your search to see if others have filed a trademark on a similar name.
- 34 If you will be relying on a different exemption, the appropriate reference should be substituted and other revision made to this form to comply with that exemption.
- 35 Modify as appropriate if members are used. See Articles Eight and Nine below.
- 36 The address must be a place at which the agent can be physically served with a lawsuit or other similar official papers. It cannot be, for example, a P.O. Box.
- 37 The registered agent can either be another entity (such as a corporation formed or registered in Texas) or a person residing in Texas. The Corporation cannot act as its own registered agent.
- 38 See footnote 4 above.
- 39 If a board of directors is used, the board must have at least three board directors and the names and addresses of the initial directors must be listed in the original Certificate of Formation. If desired, the address of the farmer's market itself can be used for each director.
- 40 If members will have governing authority, consider adding indemnification for them.
- 41 The sole incorporator is the person signing and responsible for filing the Certificate with the Texas Secretary of State. After the filing has been accepted, the incorporator has no further role and no rights or powers with respect to the Corporation.
- 42 The Bylaws are an internal document that, unlike the Certificate of Formation, are not filed with the Texas Secretary of State. You will, however, be required to furnish your Bylaws in connection with your tax exempt applications and should make them available to your board, officers and, if you have them, members.
- 43 This is the business address of the Corporation.

- 44 As discussed in the manual, there are many issues to be considered by organizers when deciding what role Members should play – or if the Corporation should have any Members at all. If Members are used, it is preferable to include a basic statement to that effect in the Certificate of Formation and set forth the rights and powers of the Members in the Bylaws. The reason is that amending the Bylaws is an easier process than amending the Certificate of Formation, which requires a filing with the Texas Secretary of State. In this manner, the Corporation can modify the classes of Members to give additional rights as desired, such as permitting the Members to elect one (or more) Directors, rights to approve certain changes to the Market’s rules or any other powers that may desired – or, as drafted here, no powers at all. In addition, it is important to note that, under Texas law, the Members (by action of one-tenth of the members) will have the power to call special meetings. Given the lack of voting power in this form of Bylaws, it is unclear as to why they would do so; however, this power should be kept in mind, particularly if the Members (or any group of members) is given additional powers. In addition, once Members have voting rights, they will also have the right to approve major transactions, such as mergers.
- 45 The Board must have at least three (3) directors, but a larger number may be selected. Having an odd number of directors reduces the possibility of tie votes.
- 46 If desired, the potential locations of board meetings may be limited by revising this provision.
- 47 If desired, written notice of the meetings can be required; however, such a requirement can cause meetings to be considered to be improperly held if proper notice is not given.
- 48 If desired, the potential locations of board meetings may be limited by revising this provision.
- 49 Consider providing a shorter period. If shorter, the drawback is that it may be more difficult for Directors to attend on short notice. If longer, the drawback is that if an emergency requiring attention arises and not all Directors agree to waive the notice requirements, then the Corporation will not be able to take action for that longer period.
- 50 Consider whether it is desirable for the Corporation to reimburse such expenses.
- 51 The corporation must at least have a president and a secretary. The president and secretary positions may not be held by the same person. (Tx. Bus. Org. Code § 22.231(a) (2006)). Other possible positions and descriptions include:  
 Vice President: In the absence of the president or in the event of his or her inability or refusal to act, the vice president shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president. If there is more than one vice president, then the order of succession shall be set by the Board. Any vice president shall perform such other duties as from time to time may be assigned to her/him by the president or board of directors.  
 Treasurer: If required by the Board, the treasurer shall give a bond for the faithful discharge or her/his duties in such sum and with such surety or sureties as the Board shall determine. He or she shall prepare an annual financial statement correctly reflecting the financial condition of the Corporation, or statements at any other time when so directed by the President or by the Board. He or she shall also have charge and custody of and be responsible for all funds and securities of the Corporation, receive and give receipts for monies due and payable to the Corporation, and deposit all such monies in the name of the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with these Bylaws; and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board.
- 52 Most farmers’ markets have this position. Should the organizers choose, however, this role may be fulfilled by the president, a vice president (i.e. Vice President - Market Manager) or in such other manner as the organizers may choose. It would be in the best interests of all parties, though, to more specifically spell out the duties of the person serving in this role. To allow for change, such directives should be given by board resolution as opposed to setting such duties out in the bylaws or in some other manner that would not allow the duties to be expediently modified.
- 53 Most companies use a calendar year for their fiscal year; however, you should discuss this issue with the Corporation’s accountants or tax preparers as there are reasons why a different fiscal year may be appropriate for a farmers’ market.
- 54 While the Certificate of Formation prevents any modification of this section from reducing coverage for any past acts, many companies want to provide additional protection of indemnification rights by requiring a vote of greater than a majority of the board (i.e. two-thirds or even unanimous) in order to modify these provisions.
- 55 These requirements can be found in Texas Administrative Code Title 4, Part 1, Chapter 17, Sub chapter D.
- 56 The law does not specify the percentage only that a percentage must be set forth in the Bylaws.
- 57 Please note that the actual statute requires that the market have at least two “members” who sell their own produce; however, representatives of the Department of Agriculture have verbally informed us that it is sufficient to have two vendors selling their own produce. If the Corporation has Members, however, who meet this requirement, then it is preferable that this provision refers to “Members” instead of “vendors.”
- 58 It is not required that the Corporation have a seal; however, banks and other institutions sometimes require them. Seals can be obtained for a nominal cost from corporation suppliers.
- 59 Texas law requires that the Corporation initially have at least a President and a Secretary, which may not be the same person. Other positions contemplated by the Bylaws, including that of the Market Manager, can be appointed at a later date.

- 60 As mentioned in the Bylaws, a corporate seal is not required though it is advisable as certain institutions, such as banks, sometimes still require a seal.
- 61 Change all pronouns to feminine form as appropriate.
- 62 If the Corporation initially will have a Treasurer or Chief Financial Officer, then this statement likely should refer to that position instead.
- 63 If there are many officers, you should limit those authorized to access the bank account to a select few. Also, most banks also have a form of a resolution that they require the Corporation to adopt in order to open an account.
- 64 Include only if the Corporation will have Members. Also, this resolution likely will need to be modified to specifically work with the types of Members contemplated by the Bylaws.
- 65 While this form of resolution is set up for a lease, the Corporation may not have a lease that it is ready to execute at the time of its formation. However, these resolutions may be easily modified to refer to any other material agreement into which the Corporation wishes to enter at the time of its formation – or later.











# Home Grown:

*Legal Guide to Starting  
a Farmer's Market in Texas*

———— 2006 Edition ————

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