

# 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.