

Establishing Land Use Protections for Farmers' Markets

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www.healthyplanning.org

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Introduction

Local governments can promote healthy eating and active living in their communities by supporting local farmers' markets. Local farmers' markets provide fresh produce to community residents, support small farmers, serve as gathering places, and revitalize community centers and downtown areas. There are many ways that local governments can promote farmers markets.

Planning for Healthy Places, a project of Public Health Law & Policy, has created a set of complementary model land use policies to help California communities create more opportunities for farmers' markets and ensure their long-term viability.

Model General Plan Language for Farmers' Markets

This model general plan language suggests goals, policies, and actions to protect existing and promote the creation of new farmers' markets.

Model Zoning Ordinance Establishing Farmers' Markets as a Permitted Use

This model ordinance provides that California Certified Farmers' Markets are an approved use of land in specific zones. This designation allows the establishment and maintenance of Certified California Farmers' Markets in such zones without requiring a permit, finding, variance, or other land use approval. Certified Farmers' Markets must obtain valid health permits and, depending on the local community, other types of licenses and permits.

Why Land Use Protections?

There are several benefits to adopting land use policies for farmers' markets.

1. Increase and Protect Farmers' Markets by Removing Barriers

Land use policies can increase the numbers of farmers' markets in their communities by making it easier to establish new markets as well as protecting existing markets. Some communities have difficulty establishing markets, because they struggle with a cumbersome permitting process or have difficulty finding sites (either public or private) for markets. In addition, generally, if a type of use of land is not defined and permitted in a zoning code, it is considered illegal (even if the type of use does not appear at all in the code). A zoning law that establishes farmers' markets as an *allowed use* in the areas the community selects eliminates the need for a permit and increases the land available for markets. It can also help to protect existing markets in the allowed use area.

For example, until recently, zoning regulations in the city of Fresno, California, prevented the establishment of farmers' markets, since farmers' markets were not a legally defined use in the city's zoning code. The lack of supportive land use policy for farmers' markets was particularly ironic—although Fresno County is one of the most productive agriculture areas in the world, its farmers could not sell directly to residents in their own community. Community members worked with the city's planning department to change the zoning code so that Fresno's residents can now benefit from the fresh, local food that farmers' markets bring.¹

¹ Fresno Municipal Code § 4.5.

2. Optimizing location

Land use policies can help to optimize the location of farmers' markets by requiring the community to decide where markets may operate. An advocacy effort to engage a community in adopting zoning and general plan language to support markets will, ideally, lead to a broader conversation about how a community could maximize the benefits of farmers' markets. One effect of zoning could be to allow the municipality to prioritize markets in appropriate sites (such as near a school, a town center, near public transportation, etc.) and plan for new/future markets.

3. Increasing access for low-income customers

Land use policies can be used both to increase the consumer base and to make fresh local produce accessible and available for more community members, in particular, low-income customers. Zoning provisions can require farmers' markets to accept various forms of food assistance. (See box for more information.) In San Francisco, for example, farmers' markets vendors are required to accept coupons, vouchers, and EBT cards (Electronic Benefit Transfer cards for food stamps).²

Farmers' Markets and Food Assistance Programs

In 1992, Congress established the Women, Infants and Children's (WIC) Farmers' Market Nutrition Program (FMNP) to provide fresh, locally grown produce to WIC participants and to expand the awareness and use of farmers' markets. Currently, 46 state agencies (including California) operate the FMNP. State agencies issue eligible WIC participants FMNP coupons (typically between \$10-30 per year, per recipient) in addition to their regular WIC food vouchers.

The Senior Farmers' Market Nutrition program (SFMNP), established in 2001, extends the program to low-income seniors. In California, the SFMNP is administered by local Area Agencies on Aging.

Beginning in 2009, the United States Department of Agriculture has approved a new WIC food package that includes, for the first time, fresh fruits and vegetables. New cash value vouchers will make available to WIC participants \$6-10 per month for fresh, frozen, or canned fruits and vegetables. Each state will decide whether these vouchers may be redeemable at farmers' markets. California has decided to pilot WIC voucher redemption at one or two farmers' markets before expanding the program statewide.³

Other Ways to Promote and Create Farmers' Markets

The model general plan and zoning ordinances offered here address only land use protections. Local governments can take other action to support farmers' markets, such as such as streamlining permitting processes, sponsoring markets, and partnering with other local agencies.

² S.F. Park Code § 9A.15.

³ More information about the WIC Farmers' Market Nutrition Program is available at: www.cdph.ca.gov/programs/wicworks/Pages/WICFarmersMarketNutritionProgram.aspx. For more information on the farmers' market demonstration project, contact Andy Barbusca at the California Department of Public Health WIC Division: any.barbusca@cdph.ca.gov.

Partnering with Parks

In San Francisco, farmers' markets may be located on parkland, provided that the market does not significantly interfere with public use and enjoyment of other areas of the park. San Francisco's ordinance requires the Commissioner of Agriculture to work with the Recreation and Park department to identify suitable sites for farmers' markets on city parkland.⁴

Partnering with Schools

Communities may promote farmers' markets by partnering with schools to allow markets on school grounds. Some California communities have established thriving farmers' markets at schools. In 1998, parents at La Jolla Elementary School in San Diego established a Sunday farmers' market at their school. It has grown from a market with 14 farmers and one artisan to become a central community meeting place with nearly 100 vendors each Sunday. Since its inception, the market has helped to fund a new library, and art, music, and technology programs at the school. More information on the La Jolla Elementary School Open Aire Market is available at www.lajollamarket.com.

Partnering with Local Organizations

Since 1993, the Millbrae, California, Chamber of Commerce has sponsored a downtown farmers' market in a city parking lot every Saturday year-round, with many of the local merchants offering special prices on market days.⁵ Kaiser Permanente hosts farmers' markets at its hospitals in California, Colorado, Georgia, Hawaii, Oregon, and Washington D.C.; the markets serve hospital visitors, patients, and employees.⁶

No one model is right for every community. See www.healthyplanning.org for more ideas and resources.

⁴ San Francisco Park Code § 9A.3.

⁵ More information on the Millbrae Farmers' Market is available at: www.millbrae.com.

⁶ For more information, see <http://members.kaiserpermanente.org/redirects/farmersmarkets/>.

Model GENERAL PLAN Language to Protect and Expand Farmers' Markets

California state law requires each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, called the *general plan*.⁷ As the “constitution” of a community, the general plan underlies all land use decisions. Legally, all local government land use policies must rest on the principles and goals of the general plan.⁸

General plans can be updated or amended to include policy language supporting farmers' markets.

For information on the general plan update and amendment process, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at: www.healthyplanning.org/toolkit_gpz.html.

For additional ideas for model general plan policies that support healthy communities, and ideas for implementation, see *How to Create and Implement Healthy General Plans*, available at: www.healthyplanning.org/toolkit_healthygp.html.

The following model general plan language establishes a land use policy to promote the establishment of farmers markets as an important land use. The language is designed to be tailored to the needs of an individual community, and can be incorporated into the general plan in many ways.⁹ Language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the policy.

Goal/Objective: Protect existing and establish additional farmers' markets to increase access to healthy, local, affordable, and culturally appropriate foods, encourage community-building, support local agriculture and economic development, and promote agri-tourism.

Policies/Actions

- Encourage the operation of at least [*insert number*] farmers' market[s] in the [*City/County*] at least [*insert frequency*] per week.

⁷ California Gov't. Code § 65300.

⁸ Planning for Healthy Places. *How to Create and Implement Healthy General Plans*, “Section III: Writing a Healthy General Plan.” Available at: www.healthyplanning.org/toolkit_healthygp.html.

⁹ California law requires that general plans address seven “elements,” or issue areas: land use, circulation/transportation, housing, conservation, open space, noise, and safety. Other elements are optional. Policies that support farmers markets could be incorporated into land use, circulation, housing, open space, air quality, parks and recreation, safety, and economic development elements. For more information, see *How to Create and Implement Healthy General Plans*, “Section III: Writing a Healthy General Plan.” Available at: www.healthyplanning.org/toolkit_healthygp.html.

- Identify potential farmers' market sites on public property, including parks, schools, colleges and universities, and other institutions; on private property, including hospitals and commercial centers; and, where feasible, on streets using street closures.
- Adopt zoning regulations that establish farmers' markets as a permitted use in appropriate locations. Farmers' markets are compatible with the [*insert names (e.g., Commercial, Public Facility, Open Space, Multifamily Residential)*] land use designations shown on the General Plan land use map.
- Require City-sponsored farmers' market programs to give priority to establishing new farmers markets in neighborhoods without a currently operating farmers' market and that have a lack of access to fresh produce.
- Where feasible, locate farmers' markets on sites that have convenient pedestrian, bike, and public transit access and sufficient off-street parking.
- Limit operation of farmers' markets during peak commute hours if the site is on a major thoroughfare with congested traffic.
- Encourage [*or require*] farmers' markets to provide secure bike storage, recycling, composting, and trash collection.
- Encourage [*or require*] developers to provide for the dedication of land for neighborhood centers, public squares, or comparable uses that can be used for farmers' markets in new developments.
- Increase support for farmers' markets through partnerships with other public agencies and private institutions, including school districts, neighborhood groups, senior centers, businesses, and agricultural organizations.
- Coordinate with neighborhood planning groups to promote local farmers' markets.
- Work with and encourage school boards to offer locally grown foods in school breakfast and lunch programs and to allow schools to host farmers' markets on weekends or after school hours.

For an editable (Microsoft Word) version of Model General Plan Language to Protect and Expand Farmers' Markets, see www.healthyplanning.org.

Model ZONING Language

Establishing a Farmers' Market as an Approved Use

California state law requires each county and city to adopt a comprehensive, long-term plan for the physical development of the county or city, called the *general plan*.¹⁰ The community's zoning ordinances set forth the regulations to carry out the policies of the general plan. Zoning is a regulatory mechanism by which a government divides a community, such as a city or county, into separate districts with different land use regulations within each district. Simply stated, zoning determines what can and cannot be built, and what activities can and cannot take place on the parcels of land throughout a community.¹¹

The following model language is designed for California cities or counties to tailor and adopt as an amendment to their existing zoning code.¹² It establishes that operating an outdoor California Certified Farmers' Market is an approved use of land in neighborhood commercial, downtown commercial, institutional, and public land, as well as any additional districts that the community might choose, subject to certain regulations the community wishes to impose. This designation allows citizens to develop and maintain a farmers' market in the enumerated districts without requiring the citizens to obtain a conditional use permit, variance or other type of local land use approval.

Market organizers will still need to obtain approval from their County Agriculture Commissioner, as required under state law.¹³ Because no land use permits are required, the ordinance sets forth basic regulations for community gardens. The farmers' market and its applicants need to obtain health permits and, depending upon local law, other types of permits or licenses.

¹⁰ Please see the accompanying document for **model general plan language** promoting farmers markets.

¹¹ For more information about **zoning regulations and healthy communities**, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at: www.healthyplanning.org/toolkit_gpz.html.

¹² For more information on **how to amend zoning codes**, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at: www.healthyplanning.org/toolkit_gpz.html.

¹³ See Cal. Food & Agric. Code §§ 47000 - 47026; 3 C.C.R. Article 6.5.

California Certified Farmers' Markets

Briefly, a certified farmers' market is a market (1) operated by a local government agency, one or more certified producers, or a nonprofit organization; (2) certified by and operating in a location approved by the county agricultural commissioner; and (3) where farmers sell directly to consumers agricultural products or processed products made from agricultural products that the farmers grow themselves ("direct marketing").¹⁴ State law requires that the agricultural products meet certain health and safety standards, but provided that the produce meets certain quality requirements, state law exempts the produce from size, standard pack, container, and some labeling requirements.¹⁵ Certified farmers' markets must adopt written rules and procedures pertaining to the operation of the market.¹⁶

State law permits local communities to establish by zoning ordinance districts where certified farmers' markets may operate, but the county agricultural commissioner must approve the location of and issue a certificate to permit the certified farmers' market to operate.¹⁷ The county agricultural commissioner's approval ensures that only directly marketed agricultural products are included within the certified market. Other vending must occur outside of the perimeter of the certified market.

Certified farmers' markets are "food facilities" as defined in the California Uniform Retail Food Facilities Law (CURFL).¹⁸ They must obtain a valid health permit to operate and are regulated by local environmental health agencies.¹⁹ Depending on the local community, certified farmers' markets may also need to obtain other licenses or permits to operate.

This zoning ordinance is directed toward *outdoor* farmers' markets, because outdoor markets raise zoning issues. An indoor market may be held in a public building (such as a school or town hall) or in a private building (such as a church or shopping mall) under a lease agreement; these indoor markets are unlikely to raise zoning issues. The fact that this ordinance is directed toward outdoor markets would not prohibit vendors from using tents or shade structures, consistent with the markets' rules and operating agreements.

The local jurisdiction will need to determine where within its existing code the amendment would best fit, make other amendments as necessary for consistency, and follow the appropriate procedures for amending the zoning law. The language is designed to be tailored to the needs of an individual community. Language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the ordinance. "Comments" provide additional information.

¹⁴ Cal. Food & Agric. Code § 47004(b); 3 C.C.R. § 1392.2.

¹⁵ Cal. Food & Agric. Code § 47002; 3 C.C.R. § 1392.4.

¹⁶ Cal. Food & Agric. Code § 47004(a); 3 C.C.R. § 1392.6.

¹⁷ Cal. Food & Agric. Code § 47004(a); 3 C.C.R. § 1392.2, § 1392.6.

¹⁸ Cal. Health & Safety Code § 113785(a)(3).

¹⁹ Cal. Health & Safety Code § 113920.

Permitted Use of Farmers' Markets

(a) Definition. A Farmers' Market shall consist of a Certified California Farmers' Market, pursuant to the requirements of Division 17, Chapter 10.5, Article One of the California Food and Agricultural Code and Title 3, Division 3, Chapter 1, Subchapter 4, Article 6.5 of the California Code of Regulations, or their successor provisions.

Comment: This definition requires the farmers' market to be a Certified California Farmers' Market, as described above.

(b) Permitted use. Farmers' Markets are a permitted use in the following zoning districts: downtown commercial, neighborhood commercial, institutional, public, mixed-use, open space, multi-family residential)_____ [*add other use districts*] subject to the following regulations:

- (1) All Farmers' Markets and their vendors comply with all federal, state and local laws relating to the operation, use and enjoyment of the market premises;
- (2) The county Agricultural Commissioner has approved the location of the Farmers' Markets.

Comment: State law requires the county Agricultural Commissioner to approve the location of all Certified Farmers' Markets.²⁰

- (3) All Farmers' Markets and their vendors comply with all rules and regulations of the County Agricultural Commissioner and _____ [*add any additional rules and regulations*];
- (4) All Farmers' Markets and their vendors receive all required operating and health permits and these permits (or copies) shall be in the possession of the Farmers' Market operator or the vendor, as applicable, on the site of the Farmers' Market during all hours of operation;
- (5) All Farmers' Markets and their vendors accept forms of payment by participants of federal, state, or local food assistance programs, including but not limited to the Food Stamps/Supplemental Nutrition Assistance Program; the Women, Infants, and Children (WIC) Farmers' Market Nutrition Program; and the Senior Farmers' Market Nutrition Program. Such forms of payment include but are not limited to coupons, vouchers, and Electronic Benefit Transfer (EBT) cards.

Comment: It is important to require farmers' markets to accept payments from participants in food assistance programs to ensure that low-income residents have access to fresh produce and local

²⁰ 3 C.C.R. § 1392.2.

farmers can benefit from the spending power of these consumers. California participates in the WIC Farmers' Market Nutrition Program. For more information on the program, see www.cdph.ca.gov/programs/wicworks/Pages/WICFarmersMarketNutritionProgram. Communities should consider offering technical assistance and resources to markets to facilitate their participation in these programs.

- (6) All Farmers' Markets have a representative of the operator authorized to direct the operations of all vendors participating in the market on the site of the market during all hours of operation.
- (7) All Farmers' Markets provide secure bicycle storage for their patrons and provide for composting, recycling, and waste removal in accordance with all applicable City codes.
- (8) [*List additional regulations here such as permitted operating hours (including set-up and clean-up), etc.*].

Comments: Communities may list additional operating conditions here. Because Certified Farmers' Markets are required to have operating rules, it is not necessary to include specific regulations addressing the internal operations of the markets.

For an editable (Microsoft Word) version of Model Zoning Language Establishing a Farmers' Market as an Approved Use, see www.healthyplanning.org.