

Establishing Land Use Protections for Farmers' Market



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Photos by Lydia Daniller.

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 community gathering places, and revitalize community centers and downtown areas.

NPLAN has created a set of complementary model land use policies to help communities create more opportunities for farmers' markets and ensure their long-term viability.

Model Comprehensive Plan Language for Farmers' Markets

This model language for a comprehensive plan (also known as "general plan," "master plan," or "community plan") suggests goals, policies, and actions to protect existing and promote new farmers' markets.

Model Zoning Ordinance Establishing Farmers' Markets as a Permitted Use

This model ordinance provides that farmers' markets are an approved use of land in specific zones. This designation allows farmers' markets to be established and maintained in such zones without requiring a permit, finding, variance, or other land use approval. Because no land use approval is required, the ordinance sets forth basic regulations for farmers' markets, including requiring operating rules. Depending on the laws of the local community, a farmers' market may need to obtain a health permit, business license, or other type of permit.

Why Land Use Protections?

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

1. Increasing and Protecting Farmers' Markets by Removing Barriers

Some communities have difficulty establishing farmers' markets because of a cumbersome permitting process or difficulty finding sites, either public or private. 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, Calif., prevented farmers' markets from being established because farmers' markets were not a legally defined use in the city's zoning code. The lack of supportive land use policy for farmers' markets in Fresno 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

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, or public transportation, or in neighborhoods that have no fresh produce outlet) and to plan for new markets.

3. Increasing access for low-income customers

Land use policies can be used both to support local agriculture by increasing the pool of consumers and to make fresh, local produce accessible to more (particularly low-income) community members. Zoning provisions can require farmers' markets to accept various forms of food assistance. (See box for more information.) In San Francisco, for example, farmers' market vendors are required to accept coupons, vouchers, and EBT cards (Electronic Benefit Transfer cards for food stamps).²

Farmers' Markets and Federal Food Assistance Programs

In 1992, Congress established the **Women, Infants and Children (WIC) Farmers' Market Nutrition Program (FMNP)** to provide fresh, locally grown produce to participants in the Special Supplemental Nutrition Program for Women, Infants and Children, popularly known as WIC, and to expand the awareness and use of farmers' markets.³ Currently, 45 states, territories, or Indian Tribal Organizations 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. WIC participants may use the coupons to buy eligible foods from farmers, farmers' markets, or roadside stands that have been approved by the state agency to accept FMNP coupons; the farmers, farmers' markets, and roadside stands then submit the FMNP coupons to a bank or state agency for reimbursement. State agencies may supplement the benefit level with state, local, or private funds. During fiscal year 2008, 2.3 million WIC participants received FMNP benefits, and farmers received more than \$20 million in revenue from the program.⁴

The U.S. Department of Agriculture has approved a new WIC food package that includes, for the first time, fresh fruits and vegetables. New cash value vouchers 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.⁵

The Senior Farmers' Market Nutrition Program (SFMNP), established in 2001, extends grants to states, territories, and federally recognized Indian tribal governments to provide low-income seniors with coupons to purchase fresh produce from farmers, farmers' markets, roadside stands, and community supported agriculture programs. Benefits are provided to eligible recipients for use during the harvest season.⁶ For fiscal year 2008, grants were awarded to 49 state agencies and tribal governments, and over 900,000 seniors received coupons.⁷

Other Ways to Promote and Create Farmers' Markets

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

Streamline Permitting Processes for Smaller Markets

The City of Minneapolis instituted a streamlined permitting process for small farmers' markets to increase access to fresh produce in low-income neighborhoods. "Mini Markets" (also called "local produce markets") are small farmers' markets with five or fewer vendors who sell their own locally grown produce and flowers. Mini markets require only a permit to operate (a "Local Produce Market" permit), rather than a business license, which greatly reduces the time and expense of establishing a new market. Most mini markets are hosted by community organizations and can be held at any location in Minneapolis that complies with the health and zoning codes for locations with food sales. Mini markets can be authorized to accept Farmers' Market Nutrition Program food assistance coupons.⁸

Offer Farmers' Market Sites on City Property

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.⁹

Subsidize Farmers' Market Purchases for Low-Income Residents

Several local communities have developed programs providing subsidies to low-income residents purchasing food at farmers' markets. At the San Diego City Heights Farmers' Market, recipients of federal food programs may receive "Fresh Fund Dollars" to shop at the market. Fresh food vendors redeem them for cash at the end of the day.¹⁰

Seven urban farmers' markets in Rhode Island offer "Fresh Bucks" for low-income residents receiving federal assistance. Those using their electronic benefit cards may receive up to \$10 per day in additional money to spend at the markets.¹¹ Many of the communities offering additional cash to low-income residents to spend at farmers' markets use a combination of local government money and philanthropic grants.

Partner 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 the school; originally hosting 14 farmers and one artisan, the market has grown 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.¹²

Partner with Local Organizations

Chambers of Commerce and other Business-Development Organizations

- In Iowa, a nonprofit revitalization partnership known as the Cedar Rapids Downtown District is committed to promoting a vital downtown community. It hosts a downtown farmers' market that is one of the largest open-air markets in the Midwest, attracting more than 160 local vendors.¹³
- Since 1993, the Chamber of Commerce in Millbrae, Calif., 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.¹⁴

Hospitals

- 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.¹⁵

Universities

- SEED Wayne, a project of Wayne State University's Department of Geography and Urban Planning in Detroit, hosts a campus farmers' market that serves members of the university, Midtown neighborhood, and the broader Detroit

Community. The market features farmers from Detroit and the surrounding metropolitan area. The market accepts EBT cards and the Wayne State One Card, which students and employees use for University purchases.¹⁶

- The Greeneville Farmers' Market in Greeneville, Tenn., is a producer-only market founded more than ten years ago, held in the Walters State College parking lot. Among its supporters are the Tacoma Regional Hospital and the Tennessee Department of Agriculture.¹⁷

Faith-Based Communities

- The Saugatuck Congregational Church in Westport, Conn., hosts a weekly farmers' market in its parking lot, as well as a monthly canned and fresh food drive for food pantries in conjunction with the market. In addition, vendors donate their aftermarket produce and goods to designated food pantries.¹⁸

No one model is right for every community. See www.nplan.org for more ideas and resources to promote healthy eating and active living.

State and Local Laws Regulating Farmers' Market

Depending on the community, farmers' markets may be regulated by both state and local law. State law may regulate the health and sanitation of farmers' markets, while local law, through comprehensive plans and zoning, may regulate the location of food establishments.¹⁹

State Health and Safety Laws

Generally, state law governs the health and sanitation requirements for food retail. But the regulations vary among states. In California, for example, farmers' markets are considered "food facilities" under the state's food retail code.²⁰ In contrast, Iowa's food retail law specifically excludes farmers' markets from regulation as food establishments.²¹ In other states, the Agriculture Commissioner regulates farmers' markets.²² Because state law varies, it is important to review the state law governing any local community to ensure that the state law does not affect the community's ability to regulate farmers' markets. In addition to health and safety regulations, farmers' markets and their vendors may also be subject to licensing and labeling laws, tax laws, and labor laws.

Local Land Use Laws

Land use regulation primarily takes place at the local government level through planning, zoning, and subdivision regulations. All states have some type of enabling act empowering municipalities to enact zoning ordinances or regulations.²³ Local governments use zoning and other land use measures to regulate the growth and development of the city in an orderly manner.

Although state laws vary in the type of legal authority they provide to local governments, most states require local governments to adopt comprehensive (also called "general" or "master") plans.²⁴ While these plans vary from state to state, they typically cover all land within the jurisdiction of the local governmental entity. Comprehensive plans establish guidelines for the land uses that are permissible in the different areas within the community and guide public and private development. Common factors addressed in comprehensive plans are future land use, transportation and circulation, housing, park and recreation areas, and public facilities.²⁵

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.

Local governments have considerable discretion when enacting zoning regulations. Governments enact zoning laws under their “police power” – the power of the government to regulate private conduct to protect and further the public’s health, safety or general welfare.²⁶ Courts generally defer to the government’s judgment underlying a land use classification. Because, by its nature, land use regulation cannot be done with scientific precision, courts presume zoning ordinances are valid. Provided that there is a rational basis for different zoning treatment of similar lands, land uses, or land users, courts will generally uphold the regulations, even in the absence of evidence that the different zoning treatment will have its intended effect²⁷

Model COMPREHENSIVE PLAN Language to Protect and Expand Farmers' Markets

The following model comprehensive 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 comprehensive plan in many ways. 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 agritourism.

Policies/Actions

- Encourage the operation of at least [*insert number*] farmers' market[s] in the [*jurisdiction*] at least [*insert frequency*] per week.
- 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 temporary street closures.
- Adopt zoning regulations that establish farmers' markets as a permitted use in appropriate locations. Farmers' markets are compatible with the [*insert types of zoning districts, such as, downtown commercial, neighborhood commercial, institutional, public, mixed-use, open space, multi-family residential*] land use designations shown on the Comprehensive Plan land use map.
- Require [*jurisdiction*]-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.
- 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 parks, squares, or plazas, 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.

Model ZONING Language Establishing a Farmers' Market as an Approved Use

Most cities have “use-based” zoning laws. Use-based codes divide the jurisdiction into distinct districts, such as residential, commercial, multi- or mixed-use, and industrial, and regulate the use and development of the land within the districts based on the designation.²⁸ If a farmers' market is not included in the zoning codes, it is vulnerable to being closed down as an “illegal” use or being displaced by development that is expressly permitted in the zoning district.

The following model establishes that operating an outdoor farmers' market is an approved use of land in downtown commercial, neighborhood commercial, institutional, public, mixed-use, open space, multifamily residential, 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. Because no land use permits are required, the ordinance sets forth basic regulations for community gardens. Depending on local law, the farmers' market may need to obtain health permits and other types of permits or licenses.

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.

Permitted Use of Farmers' Markets

(a) Definitions.

- (1) “Farm Products” means fruits, vegetables, mushrooms, herbs, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, cheese and other dairy products), and fish.
- (2) “Farmers' Market” means an outdoor market open to the public, operated by a governmental agency, a nonprofit corporation, or one or more Producers, at which (a) at least [75] percent of the products sold are Farm Products or Value-

added Farm Products and (b) at least [75] percent of the vendors regularly participating during the market's hours of operation are Producers, or family members or employees of Producers.

- (3) "Producer" means a person or entity that raises or produces Farm Products on land that the person or entity farms and owns, rents, or leases.
- (4) "Value-added Farm Product," means any product processed by a Producer from a Farm Product, such as baked goods, jams, and jellies.

COMMENT: The "Farmers' Market" definition requires the farmers' markets to meet two standards. First, it requires that a certain percentage (we suggest 75%) of the products sold are farm produce or products made from farm produce. This requirement distinguishes a farmers' market from a "flea market" or other type of market, which may primarily sell crafts, furniture, or other non-food items or which may sell foods other than agricultural products.

Second, the definition requires that a percentage of the vendors are farmers engaged in "direct marketing," that is, farmers directly selling to consumers the farm produce or products made from farm produce the farmers grew themselves. Direct marketing benefits both small farmers and consumers. Farmers have an outlet specially suited for moving smaller volumes of produce and may sell produce that is too delicate for the packing and shipping process. Consumers benefit from access to fresh-picked quality produce and the cost savings achieved by purchasing directly from the growers. While we suggest that 75% of the vendors be Producers, in communities with shorter growing seasons or fewer local farmers that number may not be feasible; in those communities, the number can be adjusted downward.

(b) Permitted use. Farmers' Markets are a permitted use in the following zoning districts: downtown commercial, neighborhood commercial, institutional, public, mixed-use, open space, multifamily 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 and regulations relating to the operation, use, and enjoyment of the market premises;²⁹
- (2) 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 Manager or the vendor, as applicable, on the site of the Farmers' Market during all hours of operation;

- (3) 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 farmers can benefit from the spending power of these consumers. In some communities, a local community-based organization may run the EBT program at the market. Communities should consider offering technical assistance and resources to markets to facilitate their participation in these programs.³⁰

- (4) All Farmers' Markets have an established set of operating rules addressing the governance structure of the farmers' market, hours of operation, maintenance and security requirements and responsibilities; and appointment of a Market Manager.
- (5) All Farmers' Markets have a Market Manager authorized to direct the operations of all vendors participating in the market on the site of the market during all hours of operation.³¹
- (6) All Farmers' Markets provide for composting, recycling, and waste removal in accordance with all applicable [*jurisdiction*] codes.
- (7) *All Farmers' Markets provide secure bicycle storage for their patrons.*
- (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.

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- ¹ Fresno, Cal., Municipal Code § 12-105(F)(4.5) (2009).
- ² San Francisco, Cal., Administrative Code § 9A.15 (2009).
- ³ The WIC program provides supplemental foods, health care referrals and nutrition education at no cost to low-income pregnant, breastfeeding and non-breastfeeding postpartum women, and to infants and children up to five years of age, who are found to be at nutritional risk. “WIC Farmers’ Market Nutrition Program Fact Sheet,” United States Department of Agriculture. May 2009. Available at: www.fns.usda.gov/wic/FMNP-Fact-Sheet.pdf.
- ⁴ *Id.*
- ⁵ More information about the WIC Farmers’ Market Nutrition Program is available at: www.cdph.ca.gov/programs/wicworks/Pages/WICFarmersMarketNutritionProgram.aspx.
- ⁶ “Senior Farmers’ Market Nutrition Program Fact Sheet.” United States Department of Agriculture. May 2009. Available at: www.fns.usda.gov/wic/SFMNP-Fact-Sheet.pdf.
- ⁷ *Id.*
- ⁸ More information on Minneapolis Mini Markets is available in Institute for Agriculture and Trade Policy. A “How-to” Guide for Hosting Mini Farmers’ Markets in Minneapolis. 2009. Available at: www.iatp.org/iatp/publications.cfm?accountID=258&refID=103489; Institute for Agriculture and Trade Policy. *The Minneapolis Mini Farmers Market Project*. 2009. Available at: www.iatp.org/iatp/factsheets.cfm?accountID=258&refID=103490.
- ⁹ San Francisco, Cal., Administrative Code § 9A.3 (2009).
- ¹⁰ More information about the City Heights Farmers’ Market Fresh Fund Dollars is available at: <http://cityheightsfarmersmarket.com>
- ¹¹ More information on the Rhode Island Fresh Bucks program is available at: www.farmfreshri.org/about/freshbucks.php.
- ¹² More information on the La Jolla Elementary School Open Aire Market is available at: www.lajollamarket.com.
- ¹³ More information on the Cedar Rapids Farmers’ Market is available at: www.downtowncr.org/content/Farmers-Market.aspx.
- ¹⁴ More information on the Milbrae Farmers’ Market is available at: www.millbrae.com/farmersmarket/farmersmarket.htm.
- ¹⁵ More information on farmers’ markets hosted by Kaiser Permanente is available at: <http://members.kaiserpermanente.org/redirects/farmersmarkets/>.
- ¹⁶ More information on Wayne State Farmers’ Market and SEED Wayne is available at: www.clas.wayne.edu/seedwayne/.
- ¹⁷ More information on the Greeneville Farmers’ Market is available at: www.greenevillefarmersmarket.com.
- ¹⁸ More information on the Saugatuck Church farmers’ market is available at: www.westportnow.com/index.php?v2/comments/23713/ and www.saugatuckchurch.org.
- ¹⁹ More information on the general plan update and amendment process is available in Public Health Law & Policy, Planning for Healthy Places. *General Plans and Zoning: A Toolkit on Land Use and Health*. 2007. Available at: www.phlpnet.org/healthy-planning/products/general-plans-and-zoning. Additional ideas for model general plan policies that support healthy communities, and ideas for implementation are available in Public Health Law & Policy, Planning for Healthy Places. *How to Create and Implement Healthy General Plans*. 2008. Available at: www.phlpnet.org/healthy-planning/products/create-and-implement-hea.
- ²⁰ Cal. Health & Safety Code § 113789(b)(9) (West 2009).

²¹ IA ADC. 481-30.2(10A) (2009).

²² In Georgia, for example, the State Commissioner of Agriculture is responsible for implementing rules related to maintenance of safety and order, health and sanitation grades and classes of agricultural products, and designating places in any market where agricultural products may be sold. GA. ST § 2-10-56 (West 2009).

²³ 8 McQuillin Mun. Corp. § 25.48 (3d ed. 2009).

²⁴ Breggin L and George S. “Planning for Biodiversity: Sources of Authority in State Land Use Laws.” *Virginia Environmental Law Journal*. 22: 81–121, p. 88–91, 2003.

²⁵ *Id.*

²⁶ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf’s *The Law of Zoning and Planning* § 1:2 (4th ed. 2009).

²⁷ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf’s *The Law of Zoning and Planning* § 4:1 (4th ed. 2009).

²⁸ Another form of zoning that is becoming increasingly popular with “smart growth” advocates is “form based zoning.” While form based zoning is broader in how it defines allowed uses, use definitions still apply. Most of the provisions here could be applied to form based codes. More information on form based and use based zoning is available in Public Health Law & Policy, Planning for Healthy Places. *How to Create and Implement Healthy General Plans*. 2008, 51-84. Available at: www.phlpnet.org/sites/phlpnet.org/files/HealthyGP_SectionV.pdf.

²⁹ In some communities, farmers markets may be regulated in their state’s food retail code or agricultural code. If so, the farmers’ market may require a health permit from their state or county health department. *See, e.g.* Cal. Health & Safety Code § 113789(b)(9) (2009) (including certified farmers’ markets within the definition of food facility under the California Uniform Retail Food Facilities Law).

³⁰ For more information regarding accepting Food Stamps/Supplemental Nutrition Assistance Program benefits at Farmers’ Markets, see the USDA website at Accepting SNAP Benefits At Farmers’ Markets at: www.fns.usda.gov/FSP/ebt/fm.htm or the resource library of the Farmers’ Market Coalition available at: www.farmersmarketcoalition.org/resources/resource-library/.

³¹ For more information regarding operating rules for farmers’ markets, *see* Hamilton ND, “Farmers’ Markets Rules, Regulations and Opportunities.” *National AgLaw Center Publications*. June 2002. Available at: www.nationalaglawcenter.org/assets/articles/hamilton_farmersmarkets.pdf. For sample Farmers’ Markets operating rules, *see* Dane County, Wisconsin, Farmers’ Market available at: www.dcfm.org/rules.asp and Freshfarm Markets rules in Washington, D.C. available at: www.freshfarmmarket.org/pdfs/2009_farmer_app.pdf.