

# LEGAL EATS

Legal Resources  
for  
Food Justice Enterprises



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**Local  
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Project**



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## INTRODUCTION

This manual provides an overview of some of the various aspects of the law that are involved with starting and operating a small-scale food business. We've compiled information into brief chapters with the goal of getting you up to speed on the basic legal requirements. Generally speaking, knowing everything in this handbook will provide a good foundation for you to move forward with your food business idea, but it's not a substitute for individualized legal advice for your specific situation. We hope that you feel more empowered to take the next step in starting or expanding your food business and meeting the needs of your community.

## Food Justice and Enterprise: What is the Connection?

It's not immediately apparent why people who are passionate about food justice should also care about enterprise. After all, business and enterprise are often viewed as the cause of the problem, particularly with the domination of the food industry by a few mega-corporations. And yet, we believe that creating socially responsible, community-accountable enterprises is a potent means of achieving food justice. So what do we mean by food justice? Let's start with some definitions.

Food justice: A movement that attempts to address hunger by addressing the underlying issues of racial and class disparity and the inequities in the food system that correlate to inequities in economic and political power.<sup>1</sup>

Enterprise: A business, company, or undertaking that is difficult and complicated.

### Why connect these two terms?

Food justice is a vision that one day all communities will have control over their food systems, including the land base required to produce the food. Further, enterprises are not just businesses, but also community-scale projects that are complicated and risky for sure, but that can also create opportunity and ownership for the communities that most need it. We're connecting the two terms because we see the need for more food justice enterprises to realize our vision of a just food system.

A movement for food justice enterprises envisions an economy in which food businesses are not only traditional for-profit businesses but can encompass a broad range of organizations and ventures, including cooperatives, land trusts, community-supported agriculture, urban gardens, farmers' markets, and nonprofit organizations. The common theme uniting all of these enterprises is that they are engaging in transactions involving food, whether it is growing food, bartering or selling it with local community groups, or running farmers' markets and community-supported agriculture projects. These transactions of food raise a host of important legal issues to be aware of before you start doing "business," so you can save yourself a lot of headaches (and perhaps fines) down the line!

### How can access to local, healthy food impact broader social equality?

Food is the most basic of human needs, and access to it has significant human health, social, economic, environmental, political, and moral dimensions. Here in the U.S., approximately 23.5 million Americans live in low-income areas that are more than one mile from a supermarket.<sup>2</sup> This physical distance has detrimental social consequences, including increased crime rates<sup>3</sup> and incidents of disease.<sup>4</sup> Existing food production and

<sup>1</sup> Glossary of Food Sovereignty Terms, available at <http://www.foodsovereignty.org/resources/glossary/> <sup>2</sup> MICHELE VER PLOEG, ET AL., ECON. RESEARCH SERV., FOOD AND NUTRITION SERV., COOP. STATE RESEARCH & EDUC. AND EXTENSION SERV., U.S. DEP'T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES (2009).

<sup>3</sup> See, e.g., Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL'Y 1 (2009).

<sup>4</sup> See, e.g., Barbara L. Atwell, *Obesity, Public Health and the Food Supply*, 4 IND. HEALTH L. REV. 3 (2007).

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distribution practices – dependent on national and international food conglomerates rather than local producers – furthers this systemic inequity. However, when local communities take control of their own food systems, they can not only improve the local economy, but also positively affect social change.

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## **CHOICE AND FORMATION OF AN ENTITY**

### **Why form an entity?**

People form business entities for several reasons. Some do it to limit their legal liability—that is, to limit the ability for outsiders to sue them personally for any problems that the business may cause. Others do it to facilitate getting grants (as a nonprofit) or getting investments (such as a for-profit). Still others do it because there may be tax advantages to forming certain types of enterprises.

Whatever reasons you may have for forming a legal entity, once you have decided that you are going to start a food enterprise there are many issues you should think through and we recommend you first make a business plan. You may want to consult with a business counselor at this stage of the start-up process.

There are free business planning resources available through organizations such as the U.S. Small Business Administration and the local county Small Business Development Center (SBDC). Above all, your plan should help clarify in your mind the following: your product or service, the market (or your community's needs), the plan to reach your market, the financial projections including your profit and loss, and other information related to who you are and why you would run a good business. Many people use business plans to attract funds to their enterprise in the form of grants, loans or investments.

In choosing a legal entity, there are several questions you will need to answer, such as: •

- Will your enterprise have an owner, or will it be dedicated to the public?
- Will it have more than one owner?
- How will the enterprise be managed? Democratically or hierarchically?
- Will you need to protect the owners from being personally liable for anything that goes wrong with the business?
- Do you want to create a separate taxable legal entity, or do you want income and deductions to pass through to the owners?
- And so on...

Once you have thought through these questions, you can begin to consider which legal entity may be right for you.

### **Different types of legal entities:**

**Sole Proprietorships:** This is the simplest type of business structure, in which an individual decides to go into business as the sole owner. There are no formal requirements for the formation or operation of a sole proprietorship and ownership and management can exist in the sole owner. A major drawback of this form of business is that the sole proprietor or owner is personally liable for the obligations of the business. An individual who starts a business but does not form any type of LLC or corporation will by default be considered a sole proprietorship.

**Partnerships:** A partnership is a group of two or more people who want to operate a business for profit. A partnership is comprised of its owners and each owner is personally liable for the debts and obligations of the partnership, similar to a sole proprietorship. A partnership requires no formal action or written agreement. Similar to a sole proprietorship, two or more individuals who start a business but do not form any type of LLC or corporation will by default be considered a partnership. Thus, two individuals acting together to run a business could have a legal partnership without even knowing it! So it's a good idea if you're going to have a partnership to have a written agreement between the partners detailing how the partnership will operate and reimburse people for the debts the business may incur. This is called a Partnership Agreement.

**Limited Liability Companies (LLCs):** A limited liability company is a flexible form of enterprise that blends elements of partnership and corporate structures. LLCs are popular for small businesses because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC, but like a partnership, LLCs have pass-through taxation (meaning the LLC's profits and losses are passed through to its owners who incur most of the LLC's tax burdens) and do not need to practice formalities of corporations such as electing a board of directors, appointing officers and holding regular meetings. Most states require that LLCs have an Operating Agreement, although in California it can be oral. An Operating Agreement formalizes the relationship between the members and can also override default statutory rules that would otherwise govern the entity.

**Corporations:** To form a corporation, one must file articles of incorporation with the state, create Bylaws, hold elections for a board of directors and hold annual meetings for shareholders. A lawyer is often needed for the formation process, although it is possible to do it yourself with the use of books from Nolo Press. A corporation is viewed as a separate legal entity, distinct from its owners, who are called shareholders. Because it is a separate entity, a corporation is able to incur its own debts and liabilities and the owners (the shareholders) are, with some exceptions, shielded from personal liability.

**Nonprofit Public Benefit Corporations:** A California Nonprofit Public Benefit Corporation is a corporation that has no "owners" and may not distribute its profits to private individuals. Like a for-profit corporation, a nonprofit corporation is a separate legal entity, which is created by filing articles of incorporation with the Secretary of State, and must have a board of directors. Similar to owners of for-profit corporations, the participants in a nonprofit are generally protected from personal liability. Most nonprofit public benefit corporations also obtain tax exemption from the IRS under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Tax exemption under 501(c)(3) makes the corporation eligible to receive grants from many foundations and to allow individuals to donate to the corporation and receive a tax benefit for doing so. For more information, see the Nonprofits section of this handbook, starting on page 12.

**Cooperative Corporations:** The legal structure of cooperatives varies considerably from state to state. In California, cooperative corporations are organizations that are democratically controlled by and operate for the benefit of their members. One significant difference between a cooperative and a standard corporation is that, in cooperatives, there can be no more or no less than one vote per member, whereas in traditional corporations voting rights are generally proportional to the amount of money one has invested in the company. Another significant difference lies in the way that a cooperative distributes its net income. Whereas a typical corporation distributes profits to the shareholders on the basis of the number of shares they hold, in a cooperative, surplus income is distributed to members on the basis of the value or quantity of each member's patronage. In a consumer cooperative, a member who made a greater number of purchases will receive a larger patronage dividend. In a worker cooperative, a member who worked a greater number of hours will receive a larger patronage dividend. For more information, see the Cooperatives section of this handbook, starting on page 9.

**Filing or registering your company:**

After choosing a business entity you need to figure out how to register or file your entity with the State of California and sometimes with the IRS. For more information, see <http://www.sos.ca.gov/business/be>.

# OTHER ENTITY FORMATION ISSUES

## Business Names and Business Licenses



### Naming Your Business

You'll need to file a Fictitious Business Name Statement with the county, unless the name of your business is your personal name or the name you registered with the state when you formed a corporation or LLC. •

County of San Francisco (\$47 fee): <http://www.sfgov2.org/index.aspx?page=31>

- County of Alameda (\$40 fee + \$7 per additional owner): <http://www.co.alameda.ca.us/auditor/clerk/fbnforms.htm>

### Applying for a Business License

In order to operate a business in your city, you'll need to apply for a business license. This is primarily a means of collecting taxes for the city. You'll need to register your business every time you: • Open a new business

- Take over an existing business
- Open an additional location for your business, or
- Move your business to a new location

San Francisco (\$76 registration fee)	Oakland (\$60 registration fee)	Berkeley (\$25 registration fee, plus \$51- \$77 business license tax)
<ul style="list-style-type: none"> <li>• Apply at <a href="http://sftreasurer.org/registration">http://sftreasurer.org/registration</a></li> <li>• Renew by May 31<sup>st</sup> each year</li> </ul>	<ul style="list-style-type: none"> <li>• Download at: <a href="http://oaklandbusinesscenter.com">http://oaklandbusinesscenter.com</a></li> <li>• Note: Business license is called "Business Tax Certificate"</li> <li>• Renew by March 1st each year</li> </ul>	<ul style="list-style-type: none"> <li>• Download at: <a href="http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=4236">http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=4236</a></li> <li>• Renew by Feb. 28th each year</li> </ul>

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## Cooperatives and the Food System

Cooperatives play a critical role in enabling small-scale food producers to compete in a marketplace dominated by enormous food companies. Producing and selling food is costly, labor intensive, and equipment intensive, and there are many regulatory hurdles. Cooperatives are often able to place the needs of members (e.g. workers, consumers, or farmers, depending on the type of cooperative) above profit motivations.

### What Are Cooperatives?

Cooperatives are entities that are 1) owned by their members, 2) governed by their members, and 3) operated for the benefit of their members. A couple of qualities, in particular, make cooperatives unique among other business structures:

1. **Democratic Control:** Cooperatives are democratically controlled on a one-member one-vote basis, meaning no member will have a larger vote because they invested more money in the cooperative.
  - To ensure democratic control, the “California Worker Cooperative Act”<sup>5</sup> requires that worker-owners of a worker cooperative corporation maintain a controlling interest in the business: 51% of workers must be worker-owners or be on track for worker-ownership.
2. **Method of Profit-Sharing** Cooperatives generally distribute their surplus earnings on the basis of patronage (more info below), rather than on the basis of capital contribution. In a worker cooperative, for example, this means that the largest profit distribution for the year will go to the worker that put in the most hours. This is in contrast to most corporations, where the largest dividends go to the people who own the largest number of shares.
  - Distribution of surplus from patronage of the cooperative is limited to worker-members. However, under AB 816, cooperative corporations are permitted to distribute earnings to investors in the form of capital dividends as long as the earnings are capped at 15%.

#### **Cooperatives manifest themselves at a few levels:**

1. **Cooperatives, as a legal entity:** “Cooperative” may refer to a type of legal entity, which you can choose to form in any U.S. state. The legal requirements for forming a cooperative vary. In California, cooperatives generally form as a Cooperative Corporation, as described in the Corporations Code provisions beginning with Section 12200. In California, you cannot have the word “cooperative” in your business name unless you have formed a cooperative corporation, with a few narrow exceptions for housing cooperatives.
2. **Cooperatives, as a legal structure:** Many organizations operate like a cooperative, but, for a variety of reasons, may have formed an entity other than a cooperative corporation. For example, some cooperatives form as a Limited Liability Company (LLC) or a Nonprofit Mutual Benefit Corporation, and build cooperative principles and practices into their Operating Agreement or Bylaws. The AB 816 bill creates an election under the existing law to form as a worker cooperative. Existing California worker cooperatives incorporated under the current California cooperative statute will be able to amend their articles of incorporation to elect worker cooperative status.

<sup>5</sup> AB 816, passed in August 2015 and effective January 2016, amended the California Corporation statute to provide a statutory definition of worker cooperatives and ease some burdens to their operation and financing. For more information, see [http://www.theselc.org/governor\\_brown\\_signs\\_california\\_worker\\_cooperative\\_act](http://www.theselc.org/governor_brown_signs_california_worker_cooperative_act).

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3. **Cooperatives, as a set of practices and values** Some organizations or groups call themselves “cooperatives,” even without having formed a cooperative legal structure or entity. For example, groups of tenants sometimes form housing “cooperatives,” simply by adopting highly participatory and democratic ways of operating.

#### **Consumer, Producer, and Worker Cooperatives – What’s the Difference? And What Is Patronage?**

Whether an entity is a consumer, producer, or worker cooperative depends on the type of business or transactions the members have with the cooperative. Patronage is determined by measuring the value or

quantity of a member's transactions with the cooperative. See the examples below.

**Consumer:** If the members of the cooperative are people who purchase and consume products and services from the cooperative, then it is a consumer cooperative. There are many grocery stores in the U.S. that are operated as consumer cooperatives. If a consumer cooperative pays patronage dividends to its members, the dividends should be determined based on the quantity or value of products purchased by the member.

**Producer:** If the members are independent producers of products that are sold by the cooperative, then it is a producer cooperative. For example, Organic Valley is a cooperative of dairy farmers; the cooperative purchases the products of many farmers and sells them under one label. Patronage dividends are paid to farmers on the basis of the quantity or value of the products sold by the producer to the cooperative.

**Worker:** If the members are people that are employed by the cooperative, then it is a worker cooperative. For example, Arizmendi Bakeries, in the Bay Area, are cooperatively owned by the people who work in the bakeries. Patronage dividends are generally paid on the basis of the number of hours worked by the member, or they can be allocated in proportion to a worker's wages or salary, or the number of jobs or tasks completed.

In the context of low-income communities, many community economic development organizations are promoting worker-owned businesses as a model of building wealth and pulling people out of poverty. Organizations such as Mandela Marketplace are using the cooperative model to build cooperative food enterprises. Mandela Foods, a worker-owned cooperative, is the only grocery store in West Oakland, and is an example of a food justice enterprise.

### **Cooperatives Have a Special Tax Status!**

Thanks to Subchapter T of the Internal Revenue Code, cooperatives get special tax treatment. Typical corporations are subject to double taxation, meaning that the corporation pays tax on its net profits and the shareholders are taxed again when the profits are distributed as dividends. For cooperatives, the profits are taxed when they are allocated or distributed to the cooperative members as patronage refunds (aka patronage dividends); the patronage refunds are treated like a tax-deductible expense for the cooperative. To be taxed under Subchapter T, a cooperative must operate on a "cooperative basis," which means that distributions of net profits are based on the "quantity or value of business done with or for such patron."

### **Cooperative Resources**

- Co-opLaw.org: The Coop Legal Resource Library ([www.co-oplaw.org](http://www.co-oplaw.org))
- US Department of Agriculture, Rural Development ([http://www.rurdev.usda.gov/LP\\_CoopPrograms.html](http://www.rurdev.usda.gov/LP_CoopPrograms.html))
- California Center for Cooperative Development ([www.cccd.coop](http://www.cccd.coop))
- US Federation of Worker Cooperatives ([usworker.coop](http://usworker.coop))
- Democracy at Work Institute (<http://institute.coop>)
- Democracy at Work Network (<http://www.dawn.coop/>)
- National Cooperative Business Association ([www.ncba.coop](http://www.ncba.coop))

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- Worker Cooperatives: Pathways to Scale (<http://www.project-equity.org/worker-cooperatives-pathways-to-scale/>)
- [www.Community-wealth.org](http://www.Community-wealth.org)
- [www.Cultivate.coop](http://www.Cultivate.coop)

### **Examples of Bay Area Worker Cooperative Food Enterprises**

- Rainbow Grocery
- Cheeseboard Collective / Arizmendi Bakeries

- Juice Bar Collective
- Other Avenues

### Examples of Worker-Owned Businesses in Low-Income Communities and Communities of Color

- Mandela Foods in West Oakland
- Prospera, all over the Bay Area
- TeamWorks in San Jose
- Evergreen Cooperatives in Cleveland, Ohio
- AK Press in Oakland

## Cooperative Principles

From the website of the International Cooperative Alliance: [www.ica.coop](http://www.ica.coop)

- 1. Voluntary and Open Membership:** Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.
- 2. Democratic Member Control:** Cooperatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organized in a democratic manner.
- 3. Member Economic Participation:** Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.
- 4. Autonomy and Independence:** Cooperatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.
- 5. Education, Training and Information:** Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They inform the general public -- particularly young people and opinion leaders -- about the nature and benefits of co-operation.

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- 6. Co-operation among Cooperatives:** Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.
- 7. Concern for Community:** Cooperatives work for the sustainable development of their communities through policies approved by their members.

# Nonprofits and the Food System

## Nonprofit Organizations and the Food System

Nonprofits participate in the food system in many ways, such as by operating urban farms, farmers' markets, food stands, soup kitchens, seed libraries, and commercial kitchens. At the same time, nonprofits' abilities to take part in these activities are limited by the rules governing tax exemption. In particular, when a nonprofit seeks to earn income from these activities – by selling food or by selling spaces at a farmers' market, for example – it is important to determine whether such activity will be acceptable within the limits of the organization's tax exemption.

## Tax Exemption Under 501(c)3

The most familiar type of tax exemption falls under section 501(c)3 of the Internal Revenue Code. To obtain tax exemption under section 501(c)3, the organization must be organized and operated for a limited set of purposes, the most common of which are charitable, educational, scientific, or religious.

Producing food, in and of itself, is not a tax-exempt purpose under 501(c)3. A 501(c)3 nonprofit that is producing and/or selling food needs to show that the primary purpose of the activity is to further its tax exempt purposes. What you think is “educational” or “charitable” may not be the same things the IRS considers to be “educational” or “charitable.” The IRS has interpreted the term “charitable” to mean:

- relief of the poor,

- lessening the burdens of government,
- promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination or combat community deterioration and juvenile delinquency.<sup>6</sup>

However, the only way to know with any certainty whether the IRS would accept your activity as tax-exempt is to look at rulings where the IRS has examined similar activities. These rulings can be found in Private Letter Rulings, Revenue Rulings, and tax court decisions.

Also, it's not just what you do WITH the money, it's also what you do TO EARN the money. Many organizations believe that their food business should be tax-exempt simply because they reinvest all profits into the nonprofit organization. However, this is a given with any nonprofit – the earnings should not be distributed to private individuals. What matters to the IRS is the nature of the activity that earns the money, and whether the activity is operated with the primary purpose of achieving tax-exempt status.

**Beyond 501(c)3:** Note that beyond 501(c)3 there are many types of tax exemption under section 501(c) of the Internal Revenue Code. Tax exemption under section 501(c)3 has a unique benefit, in that the donations to the organization are tax deductible to the donors. However, tax exemption under sections 501(c)4, 501(c)5, 501(c)6, 501(c)7, or another section may afford an organization greater flexibility and allow a broader range of purposes. It is also possible for a nonprofit corporation to operate without obtaining tax exemption, in which case the corporation would be taxed like a normal business.

<sup>6</sup> IRS Regs. 1.501(c)(3)-1(d)(2).

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## Related Versus Unrelated Business

The law allows nonprofits to operate income-generating businesses of two sorts: 1) related business (this income IS NOT taxed) and 2) unrelated business (this income IS taxed).

**Related Business:** A “related” business is one in which the activities are substantially related to the tax exempt purpose of the organization. The primary purpose of the activity must be to further the exempt purpose, and it must have a substantial causal relationship to achieving those purposes. The primary motivation behind the activity and its primary impact should be the furtherance of the tax-exempt purpose; the primary motivation should not be to earn money. The money that you earn must be incidental to, and not the primary goal of the project. When the nonprofit makes decisions about the business activity, it should be with the question: “What will most help us achieve our educational or charitable goals?” and not “How can we earn the most money?”

Because nonprofits are exempt from income tax, the IRS is especially concerned with preventing nonprofits from unfairly competing with for-profit businesses. Thus, a nonprofit’s business activity should not be operated on a scale that is larger than necessary to achieving the tax-exempt purposes. The IRS has stated that the following activities tend to show a “nonexempt”, or commercial purpose:

- Competition with commercial firms
- Lack of voluntary financial contribution from the public
- Presence of net profits
- Failure to offer any free or below-cost services
- Failure to limit clientele to exempt organizations.<sup>7</sup>

**Food Store Example:** For example, it is incredibly rare, but not impossible, for the IRS to grant tax exemption to a food store. Some nonprofits have formed small stores or food stands as a forum to educate people about food and health, or as a space to provide job training to unemployed or at-risk individuals. For example, a farm stand that operates to provide temporary job opportunities to recently released prisoners, and which serves as an educational forum to teach about nutrition, could, in theory, obtain tax exemption. The store or stand should not be operated on a scale larger than is necessary for the achievement of the exempt purpose of providing job training and educating the community. If the store starts to look and make decisions like a regular grocery store, then the IRS may ultimately conclude that it is not operating for tax-exempt purposes.

**Unrelated Business:** In contrast to a “related” business, an “unrelated” business can be operated with the primary goal of earning money for the nonprofit, so long as it is a small portion of the nonprofit’s total activities. Income from such a business is subject to Unrelated Business Income Tax (UBIT), and must be reported in the organization’s annual 990 filing. The purpose of UBIT is to ensure that nonprofits do not gain an unfair advantage if they are competing in a regular market. The most important thing to remember about unrelated business is that it should not become substantial in relation to the nonprofit’s total activities. There is no bright-line rule for determining when the unrelated business has become “substantial,” but the safest thing to do is to keep it at less than 10% or 15% of the organization’s activities or income. If the activity grows and is successful in generating income, the organization may want to create a for-profit subsidiary.

### **For-Profit Subsidiaries**

If a nonprofit would like to generate a substantial amount of income from an unrelated business, the organization may want to consider forming a for-profit subsidiary. For more information on how to do this, see the following resource: <http://ww1.insightcced.org/uploads/publications/legal/707.pdf>.

<sup>7</sup> See *B.S.W. Group, Inc. v. Comm’r*, 70 T.C. 352 (1978).

### **Tax Exemption and Farmers’ Markets**

Unless a farmers’ market is operated by a public entity or by the farmers themselves, the market must be

operated by a nonprofit organization in order to become a Certified Farmers' Market in California. Ironically, while state law requires formation of a nonprofit, at the federal level, the IRS is somewhat inconsistent in its willingness to grant tax exemption to nonprofits that operate farmers' markets. Many farmers' markets have obtained 501(c)3 status on the grounds that they are operating the market to serve low-income communities, to provide opportunities to disadvantaged farmers, or to provide an educational forum for the community. For most farmers' markets, however, it would be hard to make the case that the market is a "related" business (see above), especially for markets in middle-to-upper income communities. Furthermore, the IRS has denied tax exemption to some farmers' markets on the grounds that they are inappropriately operating for the benefit of a limited group of farmers. See Priv. Ltr. Rul. 200818028 (Feb. 8, 2008).

If you are organizing a farmers' market, you may want to consider seeking tax exemption under 501(c)4. Also, some farmers' markets have obtained tax exemption under 501(c)5, 501(c)6, and 501(c)7. These categories of exemption can be limiting, however, so do your research before applying under these sections.

## Part I: Who Is an Employee?

Why is it important for urban farmers and food businesses to understand employment law issues? Employment law issues may be one of the most common legal barriers that both nonprofit and for-profit food organizations will encounter, especially considering that small-scale and organic agriculture often relies on volunteer labor. These issues are becoming increasingly important as the state's regulatory bodies step up enforcement. We've heard of many examples of small family farms being fined for having volunteers helping with the farm work; some farms have been fined \$22,000 or more! Even getting occasional volunteer help from family members is considered illegal for a for-profit farm or food business and that barrier alone has made the operation of small farms unviable in some cases. Even consensual contracts between an employer and an intern, worker, or volunteer can be deemed illegal if they do not adhere to statutory and regulatory requirements. Employment laws apply to businesses in all contexts, so all owners need to know about them!

### Who enforces employment laws?

At the California state level, the Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) is the primary body that enforces wage and hour laws, child labor laws, etc. The Division of Occupational Health and Safety (Cal/OSHA) and the Division of Workers' Compensation (DWC) also play a role in enforcing employment-related laws and regulations. The Department of Fair Housing and Employment protects employees from discrimination. In addition to the state-level agencies, agencies operate at the federal level to enforce similar laws.

Any disgruntled individual who provides labor could bring a claim for back wages, health and safety violations, or some other complaint. In addition, even without a complaint by a worker, the DLSE may audit a business and issue fines for violations, sometimes even showing up unannounced.

### Having employees comes with a list of obligations and requirements, including:

- Registration with the CA Employment Development Department;
- Compliance with standards for wages, hours, and working conditions;
- Payment of payroll taxes;
- Maintaining workers compensation insurance;
- Complying with occupational safety and health laws. Cal/OSHA provides free consultations with employers to help develop Injury and Illness Prevention Plans;
- Verifying eligibility to work in the U.S. (by viewing proof of U.S. Residency, for example);
- Posting of certain kinds of notices and posters related to employees rights; and
- Recordkeeping requirements.

### What is the legal definition of a volunteer?

A person who donates services without contemplation of payment for humanitarian, public service or religious purposes is not considered an employee and therefore is not subject to the wage-hour laws. *Tony & Susan Alamo Found. v. Sect'y of Labor*, 471 U.S. 290, 295 (1985). The DLSE considers the intent of the volunteers to be controlling in making this determination of whether someone is a volunteer. Thus, if someone is providing free labor on an urban farm with the intent of eventually getting paid or receiving free food, that person may not meet the legal definition of a volunteer.

### Can a for-profit urban farm or food business have volunteers?

Generally, volunteers may work in nonprofit food organizations, like community gardens, but not in for profit organizations or businesses. What many people are surprised to learn is that a for-profit farm or food

stand could be fined thousands of dollars for having volunteers, even if the volunteers are friends or extended family members, and even if they are volunteering for a very short period of time. Generally, anyone working at a for-profit business would be legally considered an employee, unless that person is an owner/officer of the business (with some exceptions) or meets the definition of an intern or independent contractor. There are otherwise very few examples of situations where people have been able to legally work on for-profit businesses without pay. In the urban farm context, spending an hour picking berries on a U-Pick farm does not seem to make you an employee.

### **How can nonprofit urban farms food organizations use volunteers?**

The rule that nonprofits may have volunteers does not apply across the board. For example, according to one DLSE opinion, “when religious, charitable, or nonprofit organizations operate commercial enterprises which serve the general public, such as restaurants or thrift stores, or when they contract to provide personal services to businesses, such enterprises are subject to the Industrial Welfare Commission Orders and volunteers may not be utilized.” (See: <http://www.dir.ca.gov/dlse/opinions/1988-10-27.pdf>)

Interpreting this DLSE opinion will be very important for urban agriculture nonprofits, since many such organizations operate related businesses (selling plants and produce). In particular, it will be necessary to determine what the DLSE means by “commercial.”

In addition, someone who is an employee of a nonprofit organization may not also volunteer for the nonprofit, unless the volunteer activities are separate from what the employee does on a day-to-day basis. For example, someone who is a grant-writer and fundraiser for a community garden may not volunteer to help with a fundraising event for the nonprofit; however, that person may volunteer in the gardens from time to time, so long as helping in the gardens is not part of that person's normal job description.

Also, to the extent that volunteers come to economically depend on a charitable, religious, or nonprofit food organization in some manner - being paid in food, given shelter - they may also be deemed workers under federal labor law.

**What is the definition of an intern, and how does this apply to the urban farm context?** Having an internship program is one way that a for-profit farm or food business can have unpaid individuals take part in the farming, food sales, or other activities. However, the legal definition of “intern” is very limited, and many farms that have interns may be violating employment laws without realizing it. An intern is defined in California by the following six criteria:

1. The training, even though it includes actual operation of the employer's facilities, is **similar** to that which would be **given in a vocational school**;
2. The training is for the **benefit of the trainees** or students;
3. The trainees or students **do not displace regular employees**, but work under their **close observation**;
4. The employer derives **no immediate advantage** from the activities of trainees or students, and on occasion **the employer's operations may be actually impeded**;
5. The trainees or students are **not necessarily entitled to a job** at the conclusion of the training period; and
6. The employer and the trainees or students understand that **the trainees or students are not entitled to wages** for the time spent in training.

For more details on the definition of an intern, see: <http://www.dir.ca.gov/dlse/opinions/2010-04-07.pdf>.

### **What work may an independent contractor do for a food organization?**

If someone meets the definition of an independent contractor, they may set the terms of their work arrangement with an urban farm, which may include working for free. For example, an attorney providing

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services for a farm may choose to provide those services free of cost. However, this is because the attorney's relationship to the farm is as an independent contractor, not an employee.

Many businesses have tried to get around compliance with employment standards by classifying workers as independent contractors. However, in the agricultural context, it is risky to classify workers as independent contractors. One farmer recently reported to us that a DLSE officer told her that if you hire an electrician without a business license, they are considered an employee. She said that it pretty much means that everyone working on your farm, except for people who clearly work for another legitimate business that has other clients and is performing a task that is not a part of the main production of your farm, is an employee, not an independent contractor. It sounds like the DLSE is mostly assuming that anyone working on a farm is an employee, and making it extremely hard to prove otherwise.

### **How do I know if I am an employee or an independent contractor?**

Here is more information from the from CA Department of Industrial Relations website to help understand the definitions of employees versus independent contractors:

There is no set definition of the term "independent contractor" and as such, one must look to the interpretations of the courts and enforcement agencies to decide if in a particular situation a worker is an employee or independent contractor.

In handling a matter where employment status is an issue, that is, employee or independent contractor, DLSE starts with the presumption that the worker is an employee (Labor Code Section 3357). This is a rebuttable presumption however, and the actual determination of whether a worker is an employee or independent contractor depends upon a number of factors, all of which must be considered, and none of which is controlling by itself. Consequently, it is necessary to closely examine the facts of each service relationship and then apply the law to those facts.

For most matters before the DLSE, depending on the remedial nature of the legislation at issue, this means applying the "multi-factor" or the "economic realities" test adopted by the California Supreme Court in the case of *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations*, 48 Cal.3d 341 (1989). In applying the economic realities test, the most significant factor to be considered is whether the person to whom service is rendered (the employer or principal) has control or the right to control the worker both as to the work done and the manner and means in which it is performed. Additional factors that may be considered depending on the issue involved are:

1. Whether the person performing services is engaged in an occupation or business distinct from that of the principal;
2. Whether or not the work is a part of the regular business of the principal or alleged employer;
3. Whether the principal or the worker supplies the instrumentalities, tools, and the place for the person doing the work;
4. The alleged employee's investment in the equipment or materials required by his or her task or his or her employment of helpers;
5. Whether the service rendered requires a special skill;
6. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision;
7. The alleged employee's opportunity for profit or loss depending on his or her managerial skill;
8. The length of time for which the services are to be performed;
9. The degree of permanence of the working relationship;
10. The method of payment, whether by time or by the job; and
11. Whether or not the parties believe they are creating an employer-employee relationship may have

some bearing on the question, but is not determinative since this is a question of law based on objective tests.

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Even where there is an absence of control over work details, an employer-employee relationship will be found if (1) the principal retains pervasive control over the operation as a whole, (2) the worker's duties are an integral part of the operation, and (3) the nature of the work makes detailed control unnecessary. *Yellow Cab Cooperative v. Workers Compensation Appeals Board*, 226 Cal.App.3d 1288 (1991).

## **Part II: Responsibilities of an Employer**

Being an employer comes with a lot of responsibility—both to employees and to the government. For a more thorough guide to your responsibilities as an employer, we recommend the book “The Employer’s Legal Handbook,” published by Nolo Press. In the meantime, here are a few of the basic responsibilities:

### **Register with the CA Employment Development Department (EDD)**

If you pay over \$100 in wages in a calendar quarter, you must register with the CA EDD. You can register online at: [http://www.edd.ca.gov/About\\_EDD/Employer\\_Services\\_Online\\_Enrollment.htm](http://www.edd.ca.gov/About_EDD/Employer_Services_Online_Enrollment.htm).

For more information on your obligations with EDD, see this webpage:

[http://www.edd.ca.gov/Payroll\\_Taxes/Am\\_I\\_Required\\_to\\_Register\\_as\\_an\\_Employer.htm](http://www.edd.ca.gov/Payroll_Taxes/Am_I_Required_to_Register_as_an_Employer.htm).

### **Comply With Minimum Wage and Overtime Laws**

Wage laws require an employer to pay at least minimum wage, which is currently \$10.00 per hour in California. However, many cities have adopted higher minimum wages, so if your business is based in one of those cities or if your employee is working for your business in that city, the local, higher minimum wage will apply. For example, in San Francisco the minimum wage is \$12.25 as of May 1, 2015, and it will increase to \$13 on July 1, 2016, increasing incrementally until 2018. In Berkeley the minimum wage is \$12.52. In Oakland the minimum wage went up to \$12.55 as of January 1, 2016. Raising the minimum wage has recently been a politically popular idea so many city governments and the California State Legislature have been discussing possible further increases. Businesses must pay attention to these developments regarding the minimum wage and other employment laws.

The law also requires an employer to pay a worker overtime, unless the worker can be considered an “exempt” employee. More information about determining overtime requirements can be found at: [http://www.dir.ca.gov/dlse/faq\\_overtime.htm](http://www.dir.ca.gov/dlse/faq_overtime.htm).

The Fair Labor Standards Act or FLSA is the main federal law that affects workers’ pay. (29 U.S.C. §§ 201). California Labor Code 1171 is the main state law related to wage requirements.

### **Comply With Meal, Break, and Time Off Requirements**

Employers must comply with rules governing breaks and meal periods during the workday. Employers must provide nonexempt employees one day off per week, and provide a 30-minute meal break for any shift of five hours or more, and a 10-minute break for every four hours worked, with a few exceptions. For more info, see: [http://www.dir.ca.gov/dlse/FAQ\\_MealPeriods.htm](http://www.dir.ca.gov/dlse/FAQ_MealPeriods.htm).

### **Provide Paid Sick Leave to Employees**

*California state law*

A California law that came into effect in 2015 mandates that most employers provide paid sick leave to their employees. Under the law, employees must receive at least 24 hours or three days of paid sick time leave from work per year. Employees who work for the same employer for at least 30 days within a single year in

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California qualify for paid sick leave. They must complete 90 calendar days with the employer before they can take sick leave.

Employers can adopt one of two policies: an *accrual* or *no accrual/up front* policy. An *accrual* policy is one where employees accrue sick leave over time, with accrued time carrying over in each year of employment. Generally, employees must earn at least one hour of paid sick time per 30 hours of work. An employer can limit an employee's use of paid sick leave to 24 hours or three days during each year.

A *no accrual/up front* policy makes a full amount of sick leave for the year available up front to employees. The employer must provide at least 24 hours or three days per year, and the full amount must be available for the employee's use from the start of the year. Employers set how the period will be calculated (i.e. calendar year, fiscal year, or other).

Employers can also develop their own "Paid Time Off" or sick leave plans as long as these plans meet the minimum requirements under state law.

Employers are required to display a poster in a conspicuous place in the workplace with the following information regarding the sick leave policy:

- That an employee is entitled to accrue, request, and use paid sick days;
- The amount of sick days provided for and the terms of use of paid sick days;
- That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and
- That an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee.

For more information about the details of this requirement and frequently asked questions and answers regarding paid sick leave, see this link: [http://www.dir.ca.gov/dlse/Paid\\_Sick\\_Leave.htm](http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm).

#### *Oakland Law*

As of 2015, the city of Oakland also enacted new sickleave requirements. An employer with employees who work at least two hours in a particular workweek within the geographic limits of Oakland must allow their employees to accrue paid sick leave. Employees must accrue at least one hour of sick leave per 30 hours they work, including overtime. Small businesses (generally employers with less than 10 compensated staff members) can cap sick leave earned at 40 hours. All other employers can cap earned at 72 hours. Oakland employers must use an accrual policy and may not use an up-front policy. For further information, see this link: <http://www.oaklandcityattorney.org/PDFS/Guides%20and%20FAQs/Revised%20Measure%20FF%20FAQ%20Feb%202015.pdf>.

#### *San Francisco Law*

San Francisco enacted its "Paid Sick Leave Ordinance" in 2007. The law mandates that employers use an accrual system whereby employees accrue one hour of paid sick leave for every 30 hours worked. Small businesses (generally employers with less than 10 compensated staff members) can cap sick leave earned at 40

hours. All other employers can cap earned at 72 hours. The accrual cap is not annual; whenever an employee's accrued hours fall below the cap because he/she has used hours, the employee begins to accrue hours again.

For further information, see this link:

[http://sfgov.org/olse/sites/default/files/FileCenter/Documents/13606-FAQs%20on%20PSLO%20and%20CA%20PSL%2011\\_13\\_15%20Final3.pdf](http://sfgov.org/olse/sites/default/files/FileCenter/Documents/13606-FAQs%20on%20PSLO%20and%20CA%20PSL%2011_13_15%20Final3.pdf).

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### **Provide Safe Working Conditions and Comply With Safety Standards**

The federal Occupational Safety and Health Act (OSHA) requires an employer to provide a safe workplace free from hazards that could likely cause serious physical harm to employees. Under this law, employers MUST:

- Inform employees about hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling required by some OSHA standards.  Provide hearing exams or other medical tests required by OSHA standards.
- Post OSHA citations, injury and illness data, and the OSHA poster in the workplace where workers will see them.
- Notify OSHA within eight hours of a workplace incident in which there is a death or when three or more workers go to a hospital.
- Not discriminate or retaliate against a worker for using their rights under this law. See OSHA's

Resources for Small Businesses: <http://osha.gov/dcsp/smallbusiness/index.html>.

*Free consultations:* OSHA also provides free consultations and advice to small businesses to help businesses comply with the OSHA regulations. You can call the toll-free number, or you can call the local office to set up a consultation or get advice. Cal/OSHA Consultation toll-free number 1-800-963-9424 (SF Bay Area – (510) 622-2891).

*Posting notices:* OSHA requires that you post a notice called “Job Safety and Health Protection” for employees to see. The notice is available for free online, or you can get one from the nearest OSHA office. <http://www.osha.gov/Publications/osha3165.pdf>.

*Logging injuries:* All businesses with 11 or more employees must keep a log of all workplace injuries and illnesses. This log must be available for employees to see, and any incident must remain on the log for at least five years.

### **Obtain Workers' Compensation Insurance**

Employers in California are required to have workers' compensation insurance, even if they only have one employee. When a worker suffers an injury, illness or death because of work, workers' compensation insurance can provide medical care, temporary disability benefits, permanent disability benefits, supplemental job displacement benefits or vocational rehabilitation and death benefits.

See the California Department of Industrial Relations website for a more detailed explanation of workers' compensation insurance and links to relevant forms: <http://www.dir.ca.gov/dwc/employer.htm>.

You can find a workers' compensation fact sheet for employers at the link here: [http://www.dir.ca.gov/dwc/FactSheets/Employer\\_FactSheet.pdf](http://www.dir.ca.gov/dwc/FactSheets/Employer_FactSheet.pdf).

*Note!* There are special rules that apply to young employees, and workers under 16 cannot work as many hours as other workers – this is intended to prevent youth from leaving school for work. More info on the laws related to child workers here: <http://www.dir.ca.gov/dlse/DLSE-CL.htm>. Child Labor Pamphlet:

[www.dir.ca.gov/dlse/ChildLaborPamphlet2000.html](http://www.dir.ca.gov/dlse/ChildLaborPamphlet2000.html).

### **Payroll Taxes and Other Withholding**

An employer is required to withhold money from each employee's paycheck for federal and state income taxes, social security tax, Medicare tax, and federal unemployment tax. The California Employment Development Department provides state payroll tax services and information on its website here: [http://www.edd.ca.gov/Payroll\\_Taxes/default.htm](http://www.edd.ca.gov/Payroll_Taxes/default.htm).

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An employer can also withhold money from an employee's paycheck for health, welfare, or pension contributions – but only with the employee's consent. The State rules on deductions can be viewed here: [http://www.dir.ca.gov/dlse/faq\\_deductions.htm](http://www.dir.ca.gov/dlse/faq_deductions.htm).

Most small businesses hire a payroll company to handle their employee's paychecks to ensure all relevant laws are being followed, as there are lots of possibilities for innocent mistakes when it comes to providing paychecks to employees.

### **Verify Employee Eligibility**

Immigration laws require employers to complete the Form I-9, the Employment Eligibility Verification form, to be sure that the employee can legally work in the United States. However, when an employee has substantial ownership and control over at least part of the business (as a shareholder, partner, or member of an LLC), she may be exempt from the Form I-9 requirement. Factors such as minimal supervision, other employees regarding the worker has an owner, and difficulty in firing the worker make an exemption more likely. Despite an owner-worker being exempt from the requirement, immigration enforcement authorities may still subject the worker to immigration proceedings. For more detailed information, and to see the forms, go to the U.S. Citizenship and Immigration Services (USCIS) website. [www.uscis.gov](http://www.uscis.gov).

On the right side of the page there is a section titled "Employment Verification," you can click on the link below "Employment Verification" that says "I-9 Central" to get specific information on completing and filing the I-9 Form. You can also call this toll-free number for additional information: 1-800-357-2099.

### **Additional Government Requirements:**

Notices and records: Employers are also required to post notices related to employee's rights, and to keep employee records according to the government's requirements. You can view, download, and print all the required employer postings here: <http://www.dir.ca.gov/wpnodb.html>.

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## CONTRACTS

Running a business involves many relationships, and many of these relationships will be governed by contracts. We have relationships with our employees, independent contractors, lenders, landlords, suppliers, and customers. A contract is like a roadmap to a relationship, explaining how the relationship could play out, how to manage things that go wrong, how parties will respond to changes, and so on.

As an entrepreneur, you will likely be party to many contracts. Here are a few pointers to get you better acquainted with contracts:

- Contracts and agreements – what’s the difference? Really there is no difference between a contract and agreement; except the word “contract” generally refers to an agreement that is put into writing and meant to be legally binding.
  - Contracts don’t HAVE to be in writing, but it’s a good idea: Contracts don’t always have to be in writing in order to be enforceable. An oral agreement can be a binding contract. There are some circumstances where a contract must be in writing to be enforced – contracts involving real estate, and contracts that take longer than one year to carry out. In general, it’s good to get all contracts in writing – to avoid confusion and to make sure parties are “on the same page.”
- Contracts should make sense: Contracts don’t have to say “heretofore, theretofore, blah blah blah.” The more you can use plain language in a contract, the better! It’s important that you read the contract and make sure it makes sense to you.
- A contract needs *consideration*: Consideration is a funny legal term, but it means that each party has

to promise or provide something of value in order to have a real contract. If someone tells you that you can use their empty lot for free, that would not be a contract until you have promised something in return. That's why you will sometimes hear about nonprofit organizations leasing land for \$1 per year – the \$1 is the consideration.

- A few key ingredients of contracts
  - Responsibilities: What does each party put into the relationship?
  - Rights: What does each party get out?
  - Rules: What can or can't each party do under the agreement?
  - Termination: How will the agreement be terminated?
  - Default and remedies: What happens if one party violates the contract and what can be done to repair the harm?
  - Risk management: What risks are involved and how do you want to allocate them?
  
- Common types of contracts:
  - Promissory notes
  - Liability waivers
  - Leases
  - Licensing agreement
  - Contract for sale of goods
  - Nondisclosure agreement
  - Independent contractor agreement
  - Employment contract
  - Insurance policies

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- When should you have a lawyer review your contract?
  - Any time the stakes are high – are you making a big commitment?
  - Any time you don't understand it
  - Any time you can afford it – really there is always a lot of potential for a contract to run afoul of the law (labor laws, securities laws, landlord/tenant laws, etc.), and attorneys are trained to catch these issues.

## Commercial Leases Checklist

Ready to find a location for your business and move in? The terms of your lease could be very important to the success of your business – especially questions related to how you can use the space, how long you get to be there, and so on. Here are some things you should be sure to sort out with the landlord:

- ⌘ **What spaces do you get to use?** Clarify the exact spaces and equipment you will be able to use. What storage areas, parking spaces, restrooms, entryways, trash areas, hoses, or sign spaces will you get to use?
  
- ⌘ **Who maintains what?** Who is responsible for repairs of your space? Possibly ask that the landlord be obligated to repair all unexposed plumbing and wiring, any damage caused by acts of nature or by external activity, or by acts or omissions of the landlord. If there are any common areas – like common entries, hallways, and restrooms – who is responsible for maintaining them? Will the landlord charge you common area maintenance (CAM) fees? Are the charges reasonable? If the space is partially or entirely restored, does the landlord have an obligation to repair/rebuild?

⌘ **How long is the lease term?** Can you renew it? Usually leases obligate the landlord and tenant to commit to a fixed number of years for the lease, and they also give the tenant an option to renew it for additional terms. For example, a lease might be for three years, with an option to extend it for two years.

⌘ **What do you need in the space to make it ready?** Is there anything that the landlord needs to do to the space to make it ready for you to move in? What condition should the space be in? Does anything need to be installed? What happens if the space is not ready when your lease starts?

⌘ **How will rent be determined?** What will the rent be? Can it be raised and by how much? Can you negotiate lower rent during the first few months or ask for a month of free rent while you make necessary improvements to the space? Would it make sense to set a base rent and pay an additional percentage rent – usually determined by the gross sales of your business? Will there be a security deposit? Will it be kept in an interest-bearing account? What are the terms for refunding the security deposit?

⌘ **Who pays property taxes?** If there are multiple tenants sharing payment of property taxes, how do you determine your percentage?

⌘ **How can the space be used?** It is often good to negotiate a flexible set of allowable uses for the space, in case your business changes or in case you need to sublet the space to another tenant.

⌘ **Can you make changes to the space?** Will you need to alter the space? Usually leases allow you to make changes, within reason, especially in the case of longer term leases.

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⌘ **Who pays for utilities?** If there are shared meters servicing the building, on what basis will you determine your share of the utilities to be paid?

⌘ **Can you assign or sublet the space?** At a minimum, in case you need to move out, ask the landlord to allow you to assign or sublet the space, so long as the new tenant is reasonable.

⌘ **Under what circumstances can you terminate the lease or withhold rent?** If the landlord is not upholding his/her responsibilities under the lease, at what point would you have a right to terminate the lease or withhold rent? Would it make sense to give yourself other ways to terminate, such as if your business does not reach a certain level of sales?

⌘ **What kinds of signs can you put up?** Where can you put signs and what size? Does the landlord have to approve a sign?

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## **UNDERSTANDING ZONING: WHERE YOU CAN OPERATE YOUR BUSINESS**

### **What is zoning?**

Cities use zones to designate what activities and structures are allowed on each plot of land. This helps separate land uses that are incompatible, such as high-pollution industry and residential neighborhoods. Zoning also sets standards so that land is best used for the common good.

Each city has a planning code or ordinance which dictates where a business can and cannot be operated. Most cities, for example, do not allow a business to be run from one's own house or apartment or, if they do, it usually requires a special permit (such as for home offices, group homes, childcare, and tutoring).

The city's planning code and zoning map can give you an idea of where you can run your business. Pay

attention to permitted and conditionally permitted activities AND facilities, and contact the planning department to determine what permits you will need.

**In a city’s planning code, you will find a table or list that says what you can/can’t do with regard to:**

**Activities permitted or conditionally permitted**

- For example, specific types of housing, community/civic, businesses, industrial and agricultural activities
- Each activity may have its own limitations, like how far it must be from residences, the distance it must be from another establishment of the same type, what floor of the building it may be on, etc.

**Facilities permitted or conditionally permitted:**

- Such as, single or multi-family facility, enclosed/open/drive-in facility, types of signage allowed

**Property development standards:**

- For example, lot sizes, location of the building on the lot, etc.

**Design standards; usable open space standards**

**Where to find zoning information for your city and neighborhood:**

	Oakland	Berkeley	Emeryville	Richmond
<b>Planning Code + Zoning Map</b>	www.oaklandnet.com ☞Residents☞Zoning Code	http://www.ci.berkeley.ca.us/maproom ☞Zoning Map; <b>Zoning Ordinance:</b> http://www.ci.berkeley.ca.us ☞Municipal Code and Zoning Ordinance	http://ca.emeryville.civicplans.com ☞Departments Planning and Building☞Planning	http://www.ci.richmond.ca.us ☞Departments☞Planning and Building Services☞Planning Division☞Plans, Codes and Guidelines
<b>Zoning Information</b>	<b>Zoning Information Hotline:</b> (510)238-3911; <b>Planning Permit Counter</b> at 250 Frank H. Ogawa Plaza, 2nd Floor.	<b>Office of Economic Development:</b> 2180 Milvia St., 5th Floor. Tel: (510) 981-7530 www.ci.berkeley.ca.us/oed/	<b>Planning and Building Department:</b> Civic Center, 1333 Park Ave., ground floor. Tel: (510) 596-4300	<b>Planning Division:</b> 450 Civic Center Plaza - 2nd Floor, Tel (English): 510-620-6706, Tel (Spanish): 510-620-6662

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**First: Figure Out Your Zone**

Example of zoning map (Oakland’s Fruitvale District)



RESIDENTIAL ZONING	COMMERCIAL ZONING
RH Hillside	CN Neighborhood Center
RD Detached Unit	CC Community
RM Mixed Housing	CR Regional
RU Urban	C-40 Community Thoroughfare
R-90 Downtown Apartment	C-45 Community Shopping
	HBX-1 Housing and Business Mix 1
	HBX-2 Housing and Business Mix 2
	HBX-3 Housing and Business Mix 3
OPEN SPACE ZONING	INDUSTRIAL ZONING
OS (AF) Athletic Field	M-20 Light
OS (CP) Community Park	M-30 General
OS (LP) Linear Park	M-40 Heavy
OS (AMP) Active Mini-Park	CI-X-1 Commercial Industrial Mix 1
OS (NP) Neighborhood Park	CI-X-2 Commercial Industrial Mix 2
OS (PMP) Passive Mini-Park	IG Industrial General
OS (RCA) Resource Conservation Area	IO Industrial Office
OS (RSP) Region-Serving Park	
OS (SU) Special Use	
CENTRAL BUSINESS DISTRICT ZONING	SPECIAL and COMBINING ZONING
CBD-C Central Business District Commercial	D-BR Broadway Retail Frontage District Interim
CBD-P Central Business District Pedestrian Retail	D-KP Kaiser Permanente Oakland Medical Center District
CBD-R Central Business District Residential	D-OTN Oak To Ninth District
CBD-X Central Business District Mixed Commercial	D-W5 Wood Street District Commercial
	S-1 Medical Center
	S-2 Civic Center
	S-3 Research Center
	S-4 Design Review
	S-8 Mobile Home
	S-7 Preservation
	S-10 Scenic Route
	S-11 Site Development and Design Review
	S-12 Residential Parking
	S-15 Transit Oriented
	S-17 Downtown Residential Open Space
	S-19 Health and Safety Protection Overlay
	S-20 Historic Preservation District

Commercial/Corridor Height Limits
35 Feet
35 Feet (*)
45 Feet
60 Feet
75 Feet
90 Feet
120 Feet
160 Feet

General Plan Land Use Designations
Estuary Policy Plan Area
Institutional General Plan Land Use Classification

Zoning
Zoning Boundaries (April 14, 2011)

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**Examples of Zones and Sub-Categories**  
 (From Oakland's Planning Code):

**Residential Categories**

For

- Detached Unit (RD)
  - RD-1 single-family
  - RD-2 two-family allowed
- Mixed Housing (RM)
  - RM-1 (lowest density)
  - RM-2
  - RM-3
  - RM-4 (highest density)
- Urban Residential (RU)
  - RU-1 (low-rise)
  - RU-2 (low-rise or mid-rise)
  - RU-3 (low-rise or mid-rise, higher density)
  - RU-4 (mid-rise and high-rise on city's main corridors)
  - RU-5 (mid-rise, high-rise, and ground floor businesses on main corridors)

### **Commercial**

- Neighborhood Center (CN)
  - See examples on later in this handout
- Community Commercial (CC)
  - CC-1 (shopping centers and malls)
  - CC-2 (businesses with frontages on city's corridors and commercial areas)
  - CC-3 (heavy commercial and service)
- Central Business District (CBD)
  - CBD-R (residential and small-scale businesses)
  - CBD-P (ground-level store fronts for pedestrian retail, upper-story office/residential) ○
  - CBD-C (ground-level office and commercial, upper-story office/residential/commercial) ○
  - CBD-X (ground-level and upper-story residential/commercial/light industrial) **Industrial**
- Light Industrial (M-20)
  - Manufacturing and related, limited external impact
- Heavy Industrial (M-40)
  - Manufacturing and related, should be separated from residential

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## **Next: Figure Out What You Can Do In Your Zone**

### **Example: Oakland's Neighborhood Commercial Zone**

(selections taken from the Oakland Planning Code)

P= Permitted  
 C=Conditionally Permitted  
 L= additional limitations apply (see next page)  
 --- = prohibited

Table 17.33.01: Permitted and Conditionally Permitted Activities					
Activities	Zones				Additional Regulations
	CN-1	CN-2	CN-3	CN-4	
<b>Residential Activities</b>					
Permanent	P(L1)(L2)(L3)	P(L1)(L2)(L3)	P(L1)(L3)	P(L1)(L3)	
Residential Care	P(L1)(L2)(L3)	P(L1)(L2)(L3)	P(L1)(L3)	P(L1)(L3)	17.102.212
Service-Enriched Permanent Housing	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)	17.102.212
Transitional Housing	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)	17.102.212
Emergency Shelter	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)(L4)	C(L1)(L3)	17.102.212
Semi-Transient	--	--	--	--	
Bed and Breakfast	C(L3)(L4)	C(L3)(L4)	C(L3)(L4)	C(L3)	17.10.125
<b>Civic Activities</b>					
Essential Service	P	P	P	P	
Limited Child-Care Activities	P(L2)	P(L2)	P(L5)	P(L5)	
Community Assembly	C(L4)	C(L4)	C(L4)	C	
Recreational Assembly	P(L2)	P(L2)	P(L5)	P(L5)	
Community Education	C(L4)	C(L4)	C(L4)	C	
Nonassembly Cultural	P(L5)	P(L5)	P(L5)	P(L5)	
Administrative	P(L2)	P(L2)	P(L5)	P(L5)	
Health Care	C(L4)	C(L4)	C(L4)	C	
Special Health Care	C(L4)	C(L4)	C(L4)	C	17.102.410
Utility and Vehicular	C(L4)	C(L4)	C(L4)	C	
Extensive Impact	C(L4)	C(L4)	C(L4)	C	
<b>Commercial Activities</b>					
General Food Sales	P(L5)	P(L5)	P(L7)	P(L7)	

**Other Useful Resources**

- Oakland Business Assistance Center: <http://www.oaklandbac.com/>
- Doing Business in Oakland (links to city regulations and other info): <http://www2.oaklandnet.com/Business/index.htm>
- Richmond California Business: <http://www.richmondca4business.com>
  - Nation-wide Food Desert Locator: <http://www.ers.usda.gov/data/fooddesert/fooddesert.html>

**AB 551: Urban Agriculture Incentive Zones Act (UAIZ)**

Adopted in 2013 by the California State Legislature, AB 551 provides landowners with tax incentives to convert urban land for agriculture uses.

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How it works:

- City and/or counties choose whether or not to opt into the UAIZ program. Each jurisdiction administers its own UAIZ program.
- Landowners enter into a 5-year contract with a city/county to convert their land for urban

agriculture in exchange for reduced property tax rate. Tax rate reflects an agricultural use rather than a market rate commercial or residential use.

- Requirements for Parcels
  - Must be vacant with no dwelling units; between 0.1 and 3 acres; located in an urbanized area (as defined by the US Census Bureau) that includes at least 250,000 people, and dedicated solely to agricultural use

Which jurisdictions have adopted the program?

- San Francisco
- Sacramento
- Santa Clara County (adopted in unincorporated areas of the county)

Coming Soon:

- San Diego
- San Jose
- Los Angeles
- Berkeley

### **Other Useful Resources**

#### San Francisco:

- Find My Zoning San Francisco: <http://propertymap.sfplanning.org/>
- Overview of the San Francisco Planning Process: [http://www.sfplanning.org/ftp/files/publications\\_reports/SF-Planning-Permitting-Process-June2011.pdf](http://www.sfplanning.org/ftp/files/publications_reports/SF-Planning-Permitting-Process-June2011.pdf) •
- Urban Agriculture Incentive Zone: <http://www.sfplanning.org/Modules/ShowDocument.aspx?documentid=9312>
- Restaurant/Food Service: <http://www.sf-planning.org/index.aspx?page=2844> •
- Food Trucks: <http://www.sf-planning.org/index.aspx?page=2846>

#### Oakland

- Find My Zoning Oakland: <http://mapgis.oaklandnet.com/planmap/> (note: requires Microsoft Silverlight free download)
- Urban Agriculture Program: <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK029859>
- Food Trucks/ Mobile Vending: <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK032864>

#### Berkeley:

- Find My Zoning: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/Zoning%20Map%2036x36%20050120.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%20050120.pdf)
- Zoning Certificate Requirements: [http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Home/Zoning\\_Certificate.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Home/Zoning_Certificate.aspx)

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## **FOOD SAFETY LAWS FOR CALIFORNIA FOOD**

# BUSINESSES

There are many different government agencies that regulate our food system. Many food enterprises need multiple government agency permits or registrations. Food safety laws differentiate between (1) "agricultural products" that are raw, uncut, which are generally not ready-to-eat as sold, and (2) "processed" or "prepared" foods which are foods that have been chopped, mixed with other ingredients, cooked, or otherwise altered from their raw state. Typically, but not always, agricultural departments regulate raw agricultural products and health departments regulate processed food.

## What Stores, Restaurants, and other Food Retailers Need to Know about Selling Food

**Note:** This Section describes requirements that apply to California “retail food facilities” which include fixed, mobile, and temporary food facilities such as restaurants, grocery stores, mobile food facilities (food trucks), food carts, food booths at events, farm stands, certified farmers’ markets, and any other facilities that provide food to consumers among the general public.

### What is a “retail food facility”?

Knowing whether you operate a retail food facility will help you determine whether you are subject to certain health and safety laws. A “retail food facility” is any facility that “stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level.” There are exceptions to this rule, which you can find in section 113789 of the California Health and Safety Code,

**Retail Food Facilities in California Must Acquire All Food from “Approved Sources”** California’s Health and Safety Code requires that all food (including ingredients) entering a retail food facility be from “approved sources.”<sup>8</sup> Many food businesses satisfy this requirement by purchasing food from large wholesale food distribution companies that are permitted by the California Department of Public Health or some other government agency that regulates food. Stores purchasing directly from farms and gardens should request affirmation from the farm that the farmers are implementing the Small Farm Food Safety Guidelines provided by the California Department of Food and Agriculture at the very least, though other requirements could apply. More details related to purchasing directly from small farms are provided later in this guide in the section for farmers and gardeners (beginning on page 32).

### Food Retailers Must Keep Records

If you manage a retail food facility in California, which includes most corner stores, grocery stores, restaurants and institutions that provide food to the public such as school cafeterias, hospitals and food banks, then you are required to keep records of produce and other food that comes into your facility. Such records must include:

- Date
- Identity of the producer (name of farmer or other source of produce)
- Address of the producer
- Identity of produce purchased
- Quantity of produce

<sup>8</sup> California Health and Safety Code Section 113980.

These records are required so that if a customer gets sick, it's easier for a health regulator to find the source of the illness. Additionally, it may help protect your business from liability.

### **Retail Food Facility Requirements**

Any facility in California where food is handled in preparation for sale must have the following: •

- Equipment certified by American National Standards Institute (eg NSF certified)
- Washable walls, floors, ceilings, and light fixtures
- 4 sinks: 3-compartment sink for washing utensils, hand washing sink (with paper towels), floor (mop) sink and a food washing sink. Federally approved soap and single-use (eg paper) towels must be available.
- Shelving and any other food storage equipment must keep all food at least 6 inches above the floor
- Refrigerators that consistently stay at 41°F or below and freezers that consistently stay at 0°F or below
- Hot water for washing hands must run between 100 and 108 °F.
- Hot water temperatures for ware washing sinks, food prep sinks and mop sinks must be provided at a minimum of 120 °F at the tap
- Signs reminding employees who handle food to wash their hands

### **Safe Food Handling Training for Workers**

In any business in California where open food is handled, prepared, or served to the public, all employees must have a Food Handler Card. Additionally, at least one person, typically someone in a kitchen management position, must have a Food Safety Manager Certification and be responsible for ensuring safe food handling practices are implemented in the facility, including teaching other employees to handle food safely. Both the Food Safety Manager Certification and the Food Handler Card involve a class and an exam. Classes are taught in multiple languages on a regular basis.

Food Handler Cards cost \$15 or less and can be obtained online from various providers. Here is a list of certified organizations that can provide the food handler training program:

[http://www.ansi.org/Accreditation/credentialing/certificate\\_issuers/AllDirectoryListing.aspx?prgID=228,238&statusID=4](http://www.ansi.org/Accreditation/credentialing/certificate_issuers/AllDirectoryListing.aspx?prgID=228,238&statusID=4)

Food Safety Manager Certification training and exams are offered by local Departments of Environmental Health for a fee that varies by county. In Alameda County, the Department of Environmental Health offers the training in English and Spanish. The course costs \$141 the first time and \$38 to retest. Recertification costs \$95.

### **Selling Produce and other Food by Weight**

There are two ways to price produce: by weight and “by each.” If you sell any food by weight, your business must have a scale approved by the County Division of Weights and Measures. This is required if you have bulk bins of produce, or other foods, and you allow customers to choose their own quantity to purchase at a certain price per pound (or other unit of weight). Selling by weight also happens if you place produce in bags of a certain weight and you advertise that the bag of produce weighs that certain amount. Stores can choose to sell some food products “by each,” instead of by weight, if the price is not directly tied to the weight and if the weight is not advertised on the product. However, products sold “by each” generally cannot be in sealed containers. Common examples of products sold “by each” are a fresh pastry, a basket of strawberries, or a bunch of kale. These types of products sold “by each” can be sold in a store without a scale. Many fresh fruits and vegetables are often sold by weight, but they can be sold “by each” if they are not in sealed container or a container that advertises a specific weight.

### **Produce in Ready-to-Eat Containers and Cut Samples**

California law distinguishes between two types of sales of fresh produce

- (1) One type of sale involves produce sold in a store that is intended to be bought by the consumer and washed at home before being eaten. An example of this kind of sale is a bunch of cilantro sold at a grocery store.
- (2) The second type of sale of produce is when the produce is sold in a way that is intended for immediate consumption. Freshly cut pieces of fruit are an example of this kind of sale. Note that freshly cut fruit offered as in-store samples and fresh cut produce sold in serving containers are both also included in the second category of sales. When a store plans to wash, package, or slice any produce, this is considered food “processing” or “preparation” and more extensive facility requirements will apply compared to a grocery store that sells prepackaged food only.

If you would like to sell produce in ready-to-eat containers or provide cut fruit as samples, then the produce must be washed in a commercial kitchen that complies with all the equipment and facility requirements described in the California Retail Food Code (part of the Health and Safety Code), and anyone handling the produce must complete a course and pass an exam about food safety. If your store does not have a kitchen at all, then in order to lawfully provide ready-to-eat produce and samples, your store may need to install additional sinks and other equipment, employees will need to undergo safe food handling training, and a different type of food facility permit will be required. We recommend contacting the Department of Environmental Health directly to make sure you are applying for the right permit and fulfilling all the requirements for it because the department has many different types of permits for various types of food facilities.

### **Labels for Produce Sold in Containers**

If your store has a kitchen that can accommodate produce washing (in a designated produce washing sink) and you would like to offer ready-to-eat produce, then produce must be washed and put into containers that include the following information on each label:

- Name, address and zip code of the producer.
- Name of the produce in the package.
- Quantity of the produce in the package.<sup>9</sup>

## **Food Safety Laws for Gardens, Urban Farms, and Small Farms**

### **Farmers and Gardeners Might Need to Become “Approved Sources”**

The California Health and Safety Code requires that all food entering a retail food facility be from “approved sources,”<sup>10</sup> meaning, that restaurants, grocery stores, mobile food facilities, and other facilities that provide food to consumers among the general public must ensure that all their ingredients are from approved sources. Many food businesses satisfy this requirement by purchasing food from large wholesale food distribution companies which are permitted by the California Department of Public Health, or some other government agency. With regards to fresh fruits, vegetables, and nuts, Section 113735 of the California Health and Safety Code defines “approved source” as:

“(a) [...] a producer, manufacturer, distributor, or food facility that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

(b) Any whole uncut fruit or vegetable or unrefrigerated shell egg grown or produced in compliance with all applicable federal, state, or local laws, regulations, and food safety guidelines issued by a regulatory agency shall be deemed to be from an approved source.”

<sup>9</sup> California Food & Ag Code § 47002(c).

<sup>10</sup> California Health & Safety Code § 113980.

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While this law fails to specify what exactly is meant by “guidelines issued by a regulatory agency,” other health and agricultural laws are increasingly pointing to California Department of Public Health’s Small Farm Food Safety Guidelines as a set of standards that small farms must follow.

### **Small Farm Food Safety Guidelines**

California Department of Food and Agriculture (CDFA) has published a set of guidelines for farmers on how to safely grow, harvest, and handle fresh produce. These are now required for certain farms, including all “community food producers,” farmers selling at farmers' markets, and gleaners. Regardless of whether your farm falls under any of the laws that specifically require following these guidelines, it is generally advisable that all farmers, including backyard gardeners, abide by these guidelines to minimize the risk of eaters getting sick. Make sure that all people involved in planting, harvesting, or handling food at your farm, garden, or gleaning organization are familiar with these guidelines. The guidelines are available here: [http://www.cdfa.ca.gov/is/i\\_&\\_c/sffsg.html](http://www.cdfa.ca.gov/is/i_&_c/sffsg.html).

### **Community Food Producers**

A new law that applies to mostly urban (and some rural) producers of fresh fruits, vegetables, and eggs in California went into effect in 2015. It defines anyone growing those food products on land that is not zoned as agricultural as a “community food producer” and requires these producers to follow safe food handling practices and labeling requirements. The law also allows the local environmental health department to require that these producers register with the department in some situations. However, effective in 2016 there are numerous exemptions from registration requirements, so very few community food producers will need to register, but the safety and labeling requirements still apply.

All community food producers, whether exempt from registration or not, must follow the California Small Farm Food Safety Guidelines, described above. All community food producers must follow basic labeling requirements when selling or giving away produce. At a farm stand that is at the location where the food is grown, “community food producers” must have a sign with their name and address on it displayed at the site. When selling or donating produce elsewhere, they must label produce with their name and address if the produce is sold in a package. When selling directly to the public (not through a food facility such as a store or restaurant), “community food producers” and gleaners must keep records related to their sales which include the type of food sold and the date. These records must be kept for 30 days. For example, if your farm operates a produce stand once per week, you must keep a list of the products you sold at the farm stand for each date you operated the farm stand.

### **Gleaners**

What is gleaning? A gleaner is defined as “a person who legally gathers remnants of an agricultural crop or harvests part of, or all of, an agricultural crop made available by the owner of the agricultural crop.”<sup>11</sup> Gleaners often gather fruits and vegetables from residential areas, community gardens, and other small farms and gardens to prevent waste. Gleaners should be aware of the new requirements regarding community food producers described above, including whether they must comply with certain safe food handling, labeling, and record-keeping requirements. When working with community food producers, like with any producers of food, gleaners should make sure their sources of food comply with applicable food safety laws.

### **Safe Food Handling, Keeping Records, and Registration**

Fresh produce sellers/producers and gleaners must follow the Small Farm Food Safety and record-keeping requirements. Gleaners should be familiar with these guidelines, even if they do not harvest the produce, because some of these guidelines apply to the storage and general handling of food, not just growing and

harvesting food. As for record-keeping, records must specify the food received or donated, the date, and the name and contact information of the donor and records should be kept for 30 days. Food facilities, including

<sup>11</sup> California Health & Safety Code § 113796.

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charitable organizations such as food banks, must also keep these records when they receive food from community food producers or gleaners.

### **Selling Gleaned Produce**

New California laws enacted in 2015 and 2016 allow local environmental health departments to require gleaners to register in some circumstances. See the examples below where a gleaner is exempt from registration.

### **Donating Gleaned Produce**

As of 2016, new provisions of the California Health and Safety Code clarify that gleaners may collect whole, uncut fruits and vegetables to donate to a food bank or food kitchen. In this scenario, a gleaning organization does not need to register with the local department of environmental health. Additionally, community food producers are exempt from registration when their agricultural products are donated to a food bank or food kitchen that provides food at no cost to consumers. This means that gleaners can aggregate whole, uncut fruits and vegetables from community food producers to donate to a food bank and both the community food producer and gleaner do not need to file paperwork with the health department or pay associated fees.

### **The following situations illustrate some instances when community food producers and gleaners are exempt from registration requirements:**

- a gleaner sells or donates produce from a community food producer to consumers and the producer or gleaner keeps records for 30 days of the type of food sold and the date;
- a gleaner donates produce (that was produced by a community food producer) to a food bank or food kitchen and the producer or gleaner keeps records for 30 days of the type of food sold and the date;
- a community food producer or gleaner provides produce directly to the public at their farm or garden or some other premises controlled by the community food producer;
- a community food producer donates produce to a food bank or food kitchen that provides food at no cost to consumers; and
- a community food producer sells produce directly to a food facility that is permitted by a health regulatory agency, such as a corner store or grocery store that has a permit to operate from the County Department of Environmental Health.

Because so many transactions are exempt from registration under state law, there are very few situations in which a community food producer or gleaner would need to register. One type of transaction that is not exempt is where a community food producer wants to set up a produce stand at a festival, other temporary event, or other site that is not at the farm or garden where produce is grown. This could be done lawfully if the community food producer obtains a Temporary Food Facility permit from the local Department of Environmental Health (see the section on Low Cost Alternatives for more about TFFs).

### **Other Avenues to Becoming an “Approved Source”**

#### **Certified Producer’s Certificate**

The Certified Producer’s Certificate was developed to ensure that farmers selling at certified farmers’ markets are in fact selling produce that they grew, and not someone else’s agricultural products. This certificate is a requirement for any farm seeking to sell at a certified farmers’ market in California. Farmers with a Certified Producer’s Certificate are considered to be an “approved source” for selling at Certified Farmers’ Markets, and some interpret the law as even permitting the Certified Producer’s Certificate to act as documentation of

“approved source” status for other purposes as well, such as selling to a food facility, not just directly to consumers. The application for obtaining a Certified Producer’s Certificate must include “a declaration by the producer that he or she is knowledgeable of and intends to produce in accordance with good agricultural practices, as outlined in the Small Farm Food Safety Guidelines published by the department [CDFA].”

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**Farmers seeking a Certified Producer’s Certificate may apply online** at <http://www.cdffa.ca.gov/egov/farmersmarket/>

Similarly, getting organic certification is sometimes considered to provide “approved source” status, though this process involves notable annual fees and significant record keeping, so many very small urban farms and backyard gardens find that it’s not worth the cost and inconvenience to be certified organic. If you are interested in organic certification, California Certified Organic Farmers (CCOF), or another organic certification organization accredited by the USDA, can help guide you through the steps involved. Numerous laws apply to using the word “organic” on labels, and organic certification and practices generally, which are briefly described on page 55.

### **Community Supported Agriculture (CSA)**

A registered Community-Supported Agriculture (CSA) program is considered an “approved source.” Anyone seeking to sell produce advertised as a Community Supported Agriculture (CSA) share or subscription is supposed to register with the California Department of Food and Agriculture. The registration includes a declaration by the producer that he or she will follow the Small Farm Food Safety Guidelines. The fee for registering a CSA is currently \$75 annually and \$25 for each amendment to the registration.

**The CSA registration form is available at**

[http://www.cdffa.ca.gov/is/i\\_&c/pdfs/CSAProducerRegistrationRemittanceForm.pdf](http://www.cdffa.ca.gov/is/i_&c/pdfs/CSAProducerRegistrationRemittanceForm.pdf)

## **Labeling Requirements**

### **Packaged Food Labeling Requirements**

Packaged food products generally must comply with FDA labeling requirements, which require at the minimum:

- the name and identity of the product,
- quantity of contents,
- name and place of business of manufacturer,
- packer or distributor,
- list of ingredients in descending order by weight, and
- nutritional information (though this last requirement only applies to retail food businesses that do greater than \$50,000 in sales annually, or greater than \$500,000 in sales annually.)

Single ingredient packaged foods such as a box of fresh tomatoes or a bag of walnuts do not need to have a nutrition facts statement, but other information as listed above must be on the label. Also, the FDA has additional specific standards if a business wants to claim a product is “low fat,” “high in fiber,” “a good source of protein,” “heart healthy,” or other similar health claims.

See this link for guidance on filing a notice for a small business nutrition labeling exemption:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm053857.htm>

For information on organic certification and labeling, see the Organic Certification section of this handbook,

on page 55.

### **Produce Labeling Requirements**

When selling produce to a retail food facility, containers carrying produce must have the following information:

- Producer name

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- Address and ZIP code of the manufacturer, packer or distributor
- Name of the produce in the package, and
- Quantity of the produce in the package.
- List of ingredients in descending order by weight
- Any of the eight major food allergens

While the FDA or CDPH do not pre-approve labels for food products, questions about labeling laws and regulations could be directed to [FDBInfo@cdph.ca.gov](mailto:FDBInfo@cdph.ca.gov), or the Food Labeling and Standards Staff (HFS-820) at the FDA. Additionally, the FDA provides guidance for food labeling organized by areas of interest that can be found at:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm>.

## **Miscellaneous Requirements You Should Know About**

### **Wholesalers need to register with the FDA**

Food facilities that primarily process food for wholesale generally must register with the Food and Drug Administration (FDA). **NOTE:** Retail food facilities and all farms are exempt from registering with the FDA. Even facilities that do some wholesale sales but are primarily retail food facilities are exempt from FDA registration. See this link for more information on who must register and how to register:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm331959.htm>

### **Produce Dealers need to register with CDFA**

Does your business plan to purchase produce that was grown by a separate enterprise and then resell that produce to a retail store or to another food business? If you are acting as an intermediary in this way then you are considered a “dealer” by the California Produce Dealers Act,<sup>12</sup> and therefore you must register with the California Department of Food and Agriculture (CDFA). If your business is a corner store, grocery store, or other retail business with a fixed location and it only sells to end consumers (not to other businesses) then this registration requirement does not apply to you; this registration requirement only applies to businesses that sell produce at wholesale.

The annual registration fee for the Market Enforcement Branch as of this writing is \$136 to \$400 depending on the volume of sales of your business. Find the registration instructions and application here:

<http://www.cdffa.ca.gov/mkt/meb/forms.html>

Note: A corner store, grocery store, or other retail food facility may be able to act as a pick-up and drop-off site for farm products without registering with CDFA as a produce “dealer” if the retail store does not actually sell the produce or otherwise collect any money from acting as a pick-up and drop-off site.

### **Farms Using Pesticides Must Obtain Permits**

We generally recommend that community gardens and urban farms use organic practices as much as possible, but if you decide to use pesticides, the county Department of Agriculture and the California Department of Pesticide Regulation both have helpful information about how to mitigate risks, obtain permits, and comply

with the law. Farms planning to use pesticides or herbicides must generally obtain permits to do so.

### **Keeping Records**

Any time a farmer sells produce to a restaurant, store or other food facility, the farmer must also provide a receipt that lists

<sup>12</sup> California Food & Ag Code §§ 56101, *et seq.*

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- the date, the identity of the producer,
- the address of the producer, and
- the identity and quantity of the produce purchased.

Food facilities are also required to keep records of this information for all food coming into their facility in case of an incident of food borne illness, so that the source of the illness may be traced back to its source. Though not required by law, it may be helpful to note prices in these records for accounting purposes.

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## **LOWER-COST, ALTERNATIVE WAYS TO SELL FOOD**

Around the country, there are an increasing number of alternative ways to sell food. Food trucks and food carts (or “mobile food”), cottage food, “pop-up” events, catering, farmers’ markets, and temporary events are all becoming increasingly popular avenues for food entrepreneurs to get a business started without having to invest in a “brick and mortar” location. In addition to regular business licenses and seller’s permits, mobile food

facilities and temporary events require zoning and health permits. This section just discusses the zoning and health regulations for mobile food facilities and temporary events - remember that other general laws discussed in this guidebook still apply to these mobile and temporary avenues for selling food. Zoning laws concern the locations where mobile food facilities can operate and temporary events can be held, while health laws concern the preparation and handling of food to ensure public health, including the equipment needed for mobile food facilities and temporary events. First, there is a general discussion surrounding the regulation of mobile food facilities and temporary events, followed by specific information regarding San Francisco and Alameda counties.

## **Mobile Food Facilities (MFF) and Temporary Food Facilities (TFF)**

### **Mobile Food Facilities**

MFFs including food trucks, trailers, and push-carts are typically regulated by county departments of environmental health.

MFFs require an annual health permit to operate, which includes an annual inspection of the unit similar to a stationary restaurant or grocery store. MFFs must be affiliated with a stationary commercial kitchen where the unit can be regularly stored in clean conditions, be serviced and cleaned, dispose of wastewater, and refresh water tanks. Food and supplies used in the MFF must also be stored in the affiliated commercial kitchen when not kept in the MFF.

Some of the common equipment that is required by health departments for MFFs include refrigeration, handwash sinks, and warewashing sinks. Pushcarts that serve only prepackaged foods (within the 1st and 2nd MFF categories) may need refrigeration but do not typically need any sinks, while MFFs dealing with potentially hazardous foods need both refrigeration and sinks. In addition to learning about the requirements for MFFs from a county's permit application, it is also useful to read through the California State Retail Food Code.

In addition to regulations for the MFF, other food and business requirements apply, including the food handler certificate classes as discussed in other sections of this guidebook. For employees working on MFFs, they must receive their food handler card through the California Food Handler Certificate Program. The course can be taken online in a couple of hours and also involves an examination that must be passed. The card is good for three years once received.

From a zoning perspective, cities regulate where MFFs can operate. It is common for the city's planning department or public works department to be involved in issuing permits for MFFs to serve in a specific location or set of locations. There is often a regulated distance that MFFs have to be from restaurants, schools, and other institutions in order to properly manage safety, right of way, business, and other concerns.

### **Temporary Food Facilities**

Temporary events, also known as "temporary food facilities" (TFF), are an additional avenue for vendors to sell food. The prepared food booths seen at farmers' markets, music festivals, city fairs, and the like are all regulated by the health department as a TFF. The permit applications for TFFs are fairly different from MFFs. Chapters 10.5 and 11 of the State Retail Food Code also offer general guidance. Often, a number of food booths can share a common setup for handwashing and warewashing so long as this setup is near to

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each booth. Generally, there is one organization that should apply for the head or "sponsor" TFF permit, and then each business entity operating their own booth will apply for a booth TFF permit.

### **Alameda County**

The Alameda County Environmental Health Department runs a weekly information session for free every

Monday at their office (1131 Harbor Bay Parkway in Alameda) from 10-11AM and check in begins at 9:30AM at the 1st floor reception desk. The head inspectors there will be able to answer any specific questions you have then, and they offer a useful handout which sums up the main food vending options that the office permits, including MFF (truck, trailer, and pushcart), caterer's license, farmers' markets, and TFF's. Alameda County has provided this list of commercial kitchens and commissaries operating in the county.

The applications for MFF and catering license can be found at this link, while the applications for TFF can be found at this link. A plan check is required, and the department recommends having this done before a MFF is constructed or remodeled. The health permit for MFF's costs between \$376 and \$759. The costs are summarized and compared with SF County in the previous table.

For TFF's, similar to SF, there are separate applications for the event sponsor and the booth operators. The cost for a TFF booth permit is \$132 for non-prepackaged foods and \$67 for prepackaged foods for events that are between 1 and 4 continuous days. For TFF's serving between 5 and 25 days within a 90 day period (at the same event), the costs are \$333 and \$164 for non-prepackaged and prepackaged foods, respectively.

### **City of Oakland**

Though the particular zoning regulations will vary between cities within Alameda County, here we summarize Oakland's program as an example. Currently, the City of Oakland is redoing its zoning with respect to food vending, including mobile food and temporary events in order to provide a more comprehensive program.

A recent informational report on a city-wide food vending program was released by city's Department of Planning and Zoning. That report can be found at this link. The report notes that there is a clear demand for additional food vending within the city than current programs have provided for in the past. The report also notes that a comprehensive food vending program can help provide living wage jobs for the city as well as improved access to healthy, affordable food.

Oakland had one of the first mobile food pilot programs in 2001 and implemented a permanent pushcart program in 2004, though it was limited primarily to areas in East Oakland. In 2011, it created a pilot "food pod" program for districts 1 through 4, but the city has lacked staff resources to expand its programs and enforce its existing programs. In the past, the permitting for zoning of these various programs as well as other city events such as Off the Grid and First Fridays has been managed by many different departments including Building Services, Planning and Zoning, the City Administrator's Office, and the Police Department. It is the city's hope to consolidate permitting and enforcement under a new comprehensive mobile food program. The timeline for the program was announced in summer 2015, with a target date of a new plan being set in place by Spring 2016.

In the meantime, information about Oakland's existing pushcart and food pod programs can be found at this website or by visiting Oakland's Business Assistance Center at 270 Frank Ogawa Plaza.

### **City of Berkeley**

The City of Berkeley has an Environmental Health Department that is separate from and independent of Alameda County Department Environmental Health. Only a very limited amount of MFF's operate within the city due to zoning limitations on where mobile food vendors are allowed to operate. The city's farmers markets are run by the non-profit Ecology Center. The city does have many events, and thus there are opportunities to have food booth TFF's at those events. The permits for those TFF's can be found at this link.

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### **San Francisco County**

San Francisco has the benefit of being both a county and a city, so there is coordination between zoning and health departments for food vending permits. Even given that coordination, there is a fair amount of

paperwork to prepare when applying for a MFF permit. In SF County, the applicant generally goes through zoning permissions before proceeding to the health permit process.

For MFFs serving on private property, the MFF will apply for zoning permit through the Planning Department. However, if they are serving at a location that a larger permit holder already coordinates (such as Off the Grid or SOMA Street Food Park), they can proceed directly to the Department of Public Health for their health permit.

For MFFs serving on public property such as in parking spaces, streets, alleys, and sidewalks, the Department of Public Works provides the permit. San Francisco Department of Public Works describes their process which involves a public notification and comment period in a flowchart available at: <http://www.sfdpw.org/mff-flowchart>.

San Francisco Public Works has the following requirements regarding how far MFFs be from various boundaries or how much space they should provide for the public path of travel:

- 75' from existing restaurant primary entrance
- 8' from Street Artist
- 5' from Curb Return
- 6' Path of Travel
- 6' from Street Furniture
- 7' from Fire Hydrant
- 8' from Bus Zones
- 12' from Blue Zone

The Department of Public Health issues the health permit for MFFs, as well as caterers, TFFs, farmers' markets, and pop-ups. For MFFs, the process involves both a plan check and inspection as well as a permit application, each with separate costs. The approximate fees (as of summer 2015) are shown below. The plan check is generally a one-time fee so long as the setup of the MFF does not change, while the zoning renewal fee is much lower than the initial fee. The health permit is an annual fee. The plan check and permit fees vary based on what category of MFF is being permitted.

Mobile Food Facility zoning and health permit fees by city/county (approximate)

City/County	Zoning	Health - plan check	Health - permit	Total (range)
SF/SF	\$764+	\$300	\$500	\$700
\$200	\$800	\$1,300-2,300	Oakland/Alameda	\$785, \$2215
\$438	\$376-759	\$1,600-3,412		

For TFFs, a “sponsor” permit is required for the overall coordinating party of the event. Then, each unique vendor and booth is required to have a booth permit, which cost roughly \$100-200. Applications must be submitted 14 days prior to the event, otherwise there is a late fee. Applications cannot be submitted less than 7 days prior to the event. Farmers' market booths are essentially a TFF that occurs every week. For this purpose, a quarterly permit can be issued instead of having to get a permit for each week (which would be very costly). These booths must not be in operation any more than 25 days in a 90-day period. San Francisco's Small Business Assistance Center also offers support and services for food entrepreneurs.

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## Oakland Mobile Food Vending Locations


**NOTE: As of this printing, the City of Oakland is updating its mobile food vending regulations. The**

new regulations will expand the areas in which mobile food vending will be allowed. For the latest information on this process, visit <http://www2.oaklandnet.com/FoodVending/index.htm>

## Oakland Business Assistance Center

*Helping Your Business Thrive in Oakland*

**CITY OF OAKLAND**  
270 Frank H. Ogawa Plaza, Oakland, CA 94612 Phone (510) 238-7952  
Fax (510) 238-9105, [www.OaklandBAC.com](http://www.OaklandBAC.com)



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### Permitted Locations

- Foothill Blvd. from 19<sup>th</sup> Ave. to 23<sup>rd</sup> Ave., and  
from 47<sup>th</sup> Ave. to MacArthur Blvd.
- International Blvd. from 1<sup>st</sup> Ave. to 23<sup>rd</sup> Ave., and  
from 51<sup>st</sup> Ave. to 105<sup>th</sup> Ave.
- San Leandro St. from 51<sup>st</sup> St. to 98<sup>th</sup> Ave.
- East 12<sup>th</sup> St. from 4<sup>th</sup> Ave. to 23<sup>rd</sup> Ave.
- 14<sup>th</sup> Ave. from East 11<sup>th</sup> St. to 19<sup>th</sup> Ave.

### Permitted Zones

- C-20 Shopping Center Commercial
- C-28 Commercial Shopping District
- C-30 District Thoroughfare Commercial
- C-40 Community Thoroughfare Commercial
- M-20 Light Industrial
- M-30 General Industrial
- M-40 Heavy Industrial

### Distance Requirements

1. Vendors may vend at any location within permitted zones and along permitted sidewalks, however, pushcarts must be located 100 feet from each other.
2. The food cart vendor must allow a 200 foot buffer between pushcarts and parks or schools.
3. A pushcart vendor shall not vend or locate equipment adjacent to on-street parking spaces reserved for disabled access, driveways, entries and exits from building or facilities, or adjacent to street intersections where equipment may obstruct vehicle and pedestrian sight distance.

### Hours of Operation

Monday through Friday, 7:00 a.m. to 10:00 p.m., Saturday and Sunday, 8:00 a.m. to 10:00 p.m. with one hour time duration to breakdown and travel.

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## Food Bikes

When food entrepreneurs look to enter the mobile food space, they encounter two issues with the main types of mobile food facilities. On the one hand, food trucks have a very high capital cost, while on the other hand pushcarts offer limited mobility and menu options, typically limited to prepackaged foods. Food bikes (carts

pulled by bicycle or electric bicycle) are emerging as a potential option to offer increased mobility and menu options.

There have been a number of food bikes operating in the Bay Area, including El Taco Bike, Curbside Creamery, Hot Bike, and Bicycle Coffee Co. Hot Bike (no longer in operation) was a food bike that catered small private parties. Curbside Creamery (currently operating) has a storefront and kitchen where ice cream sandwiches are prepared. The sandwiches are often sold at events and farmers' markets as well, by use of a food bike manufactured by Icicle Tricycle based in Portland. Curbside Creamery's food bike does not need any sinks, and keeps sandwiches in a well-insulated freezer on wheels. El Taco Bike followed the basic requirements set forth for "push carts", selling pre-packaged tamales and burritos to avoid refrigeration and warewashing sink requirements. The bike has a small handwash sink. Instead of pushing his cart by hand, he pulls it with his bicycle to different public events. Finally, Bicycle Coffee Co. is a successful business which delivers roasted coffee beans by bicycle to many cafés around Oakland. It is also the main coffee business at the popular Grand Lake Farmers Market in Oakland and operates under a TFF permit. This includes buckets and water for washing hands and utensils, and coolers for milk products.

Despite these food bikes' successes, there remains a gap: all existing food bikes are either operating as a TFF or as a class 1, 2, or 3 MFF. There are no class 4 or class 5 food bikes. In other words, no existing food bike can prepare non-prepackaged foods due to the inability to fit the required refrigeration and warewashing facilities within the scope of a bicycle trailer. One company, Culinary Ink of Vancouver, is beginning to manufacture a class 4/class 5 MFF that is pulled by an electric bicycle.

## **Selling Homemade Food through "Cottage Food Operations"**

California law allows limited amounts and types of foods to be prepared in home kitchens and then sold directly to consumers and through local shops and restaurants – known as cottage food operations. This can save start-up food businesses many thousands of dollars if they meet the requirements of the law, as detailed below.

### **Cottage Food Operations are limited to:**

- Producing only "non-potentially hazardous" foods, which are foods that do not need to be kept refrigerated or frozen and do not need to be served hot. Allowed foods are:
  - Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas
  - Buttercream frosting, buttercream icing, buttercream fondant, and gum paste that do not contain eggs, cream, or cream cheese
  - Candied apples
  - Candy, such as brittle and toffee
  - Chocolate-covered nonperishable foods, such as nuts and dried fruit
  - Confections such as salted caramel, fudge, marshmallow bars, chocolate covered marshmallow, nuts, and hard candy, or any combination thereof
  - Cotton Candy
  - Dried fruit
  - Dried or Dehydrated vegetables
  - Dried pasta
  - Dried vegetarian-based soup mixes

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- Dry baking mixes
- Fruit pies, fruit empanadas, and fruit tamales
- Granola, cereals, and trail mixes
- Ground chocolate

- Herb blends and dried mole paste
- Honey and sweet sorghum syrup
- Jams, jellies, fruit preserves, and fruit butter
- Nut mixes and nut butters
- Popcorn
- Vegetable and potato chips
- Vinegar and mustard
- Roasted coffee and dried tea
- Waffle cones and pizelles
- No more than \$50,000 in annual sales.
- Conducting direct sales (where the food producer or their employee sells the food to the consumer) only within California.
- Conducting any indirect sales (sales to a shop, restaurant or other retailer) only within the same county where the food product was produced, or in another county only if that other county allows the indirect sale of cottage food products from other counties.
- The most updated list of approved foods is available here:  
<http://www.cdph.ca.gov/programs/Documents/fdbCFOfoodlist.pdf>

Cottage Food Operations are required to:

- Take a safe food handling class approved by the California Department of Public Health. • Obtain either a Class A or Class B Cottage Food Operation permit from the county health department.
  - Class A Permit – When you sell directly to consumers
  - Class B Permit – When you through a local shop or restaurant within their county • Label products with a common or descriptive name of the product, a list of ingredients in descending order of predominance by weight, the words “Made in a Home Kitchen,” the name of the cottage food operation, its registration or permit number issued by the health department, and, if a Class B Cottage Food Operation engaged in indirect sales, the name of the county. The net weight of the product must be on the label for most products.

Sustainable Economies Law Center has more information about the California Homemade Food Act at its website here: [http://www.theselc.org/cottage\\_food\\_laws](http://www.theselc.org/cottage_food_laws).

## **Certified Farmers’ Markets & Farm Stands**

### **Certified Farmers’ Markets**

Certified Farmers’ Markets are sites where farmers sell their produce directly to consumers. California law requires that the market is:

1. Operated by a local government agency, one or more certified producers (farmers/growers), or a nonprofit organization;
2. Certified by and operating in a location approved by the county agricultural commissioners; and
3. The farmers (or producers) sell agricultural products that they grow/produce themselves directly to consumers (“direct marketing”).

Operating and selling at a certified farmers’ market has many benefits, such as the produce being exempt from grade, size, labeling, and packaging requirements for fruits, nuts, and vegetables.

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Each vendor must get a Certified Producer’s Certificate from the county agricultural commission in the county where they are growing. Each farmer must be inspected and obtain this certificate before they can sell at a

Certified Farmers' Market.

Only California-grown agricultural products may be sold in the Certified Farmers Market, and the products must be sold by a farmer who holds a valid Certified Producer's Certificate for that farm's products. The farmer can hire an employee to sell their products at a farmers' market but the employee must be an employee of the farm. Other sales (crafts, art, etc.) can be sold outside of the market perimeter. Prepared food (Temporary Food Facilities) must be located outside or adjacent to the certified portion of the certified market.

Additionally, when selling at a certified farmers' market, you must have a copy of your Certified Producer's Certificate, and if you are claiming that your products are organic, a copy of your organic certification.

### **Fees**

Certification fees are different depending on the county. They usually cost around \$50 per certificate. Markets will charge a service fee as well.

### **Health and Safety Regulations for Certified Farmers' Markets**

The local environmental health agency (county health department) is responsible for regulating the health and sanitation aspects of the markets. Depending on the laws in the local community, certified farmers' markets may also need to obtain business or other licenses or land use approvals to operate.

### **Food Storage, Food Sampling and Sanitation Requirements**

Fresh produce offered as a sample at certified farmers' markets must be washed with potable water such that any visible soil is removed. When cutting up products for sampling, farmers must wear gloves and use clean utensils. Samples must be kept in containers approved by the health department. Samples of all cut fresh fruits, vegetables, cheeses and other perishable samples must be kept at 45 degrees F and disposed of within 2 hours of cutting among other requirements.

### **To Start a Certified Farmers' Market**

Contact the Agricultural Commissioner's office in the county where you are considering starting the market. It is also highly recommended that you contact existing Certified Farmers' Market operators in the same city or county to obtain their input. Applications for Certified Farmers' Market and Certified Producer Certificates can be found at [www.cdfa.ca.gov/is/i\\_&\\_c/cfm.html](http://www.cdfa.ca.gov/is/i_&_c/cfm.html).

### **Farm Stands and Field Retail Stands**

A Field Retail Stand is a producer-owned and operated stand located on the premises or near the point of production and is established in accordance with local ordinances and land use codes. A Farm Stand is a field retail stand that sells California agricultural products grown or produced by the producer, and also sells bottled water, soft drinks, or non-potentially hazardous prepackaged food products from an approved source.<sup>13</sup>

### **Changes to the law regarding Certified Farmers' Markets**

In 2015, a new law passed changing how certified farmers' markets operate. The law stiffens penalties for producers who make false or misleading statements about the origin of the agricultural products they sell. In addition, the bill outlines three requirements with which farmers must comply at farmers' markets. First, farmers must post a sign stating "We Grow What We Sell" or the equivalent. Second, farmers must ensure that all processed agricultural products that they offer for sale are labeled that they consist only, with the

<sup>13</sup> See California Food & Ag Code §§ 47030, 47050; California Health & Safety Code §§ 113778.2, 114375(c)(3).

must identify the facility where the product was processed. Third, farmers must ensure that organic products are clearly labeled as organic. The law makes other changes including how fees are assessed and how farmers' markets must be arranged.

#### **Additional Resources**

- The UC Small Farm Program publications about farmers' markets:  
[http://sfp.ucdavis.edu/farmers\\_market/](http://sfp.ucdavis.edu/farmers_market/)
- ChangeLab Solutions information on farmers' markets and farm stands in California:  
<http://changelabsolutions.org/publications/land-use-farmers-markets>
- ChangeLab Solutions information on farmers' markets at schools in California:  
<http://changelabsolutions.org/publications/spinach-schoolyards>

# PRIMER

## Introduction

Financing your enterprise will be one of the most important and challenging steps in starting a food business. This guide does not offer detailed strategies for *how* to raise money (although the appendix does have some information on financing opportunities), but it does address some of the laws that *regulate how* you can raise money. Laws related to how investments can be made in a business are called “securities laws.” We highly recommend entrepreneurs avoid asking for loans and other forms of investment without first knowing how they will comply with securities laws. Securities laws exist at both the federal and state levels and are designed to protect investors by limiting when and how entrepreneurs can solicit investments. To comply with securities laws, an enterprise sometimes needs a permit from a government agency (or multiple permits from multiple agencies) before asking for investments. Even asking can be a violation of securities laws. This is a complex area of law and we recommend speaking with an attorney before implementing any plan to solicit investments (including loans) for your business.

## What Is a Security?

You create a security when you ask people to put money into your business or venture and you offer them a return or when you put money at risk. For example, a security could be:

- Selling stock in your business
- Asking people to lend money to your business
- Offering a share of your business’ profits
- Interests in limited liability companies (LLCs)
  - Pre-selling products or services that have not been developed yet (in California and other states)

Most financing and fundraising options require compliance with securities laws. This is true when the investors are looking for a "return" on their investment.

It’s important to know what is or isn’t a security because whenever you sell or even offer to sell a security, it needs to either: 1) be registered with the Securities Exchange Commission and with the state agency in every state where you want to raise money or 2) qualify for an exemption from registration.

## Ways to Raise Capital NOT Regulated by Securities Law:

**These are common examples of ways to raise money for a business without the solicitation triggering securities regulation:**

### 1. Donations

A donation is when someone gives money without the expectation of receiving anything in return. If someone donates to your business without the expectation of getting anything of value in return, this is not a security. Many entrepreneurs (and others) are using crowdfunding websites such as Kickstarter.com and Indiegogo.com to raise money for various projects. Entrepreneurs that solicit donations often provide non monetary rewards to donors such as invitations to special events for donors and other VIPs, t-shirts and other thank you gifts.

At what point might a reward be valuable enough that it could be seen as a financial return on investment? This issue has yet to be tested, but it is advisable to ensure that any rewards offered are valued at less than the amount donated. Some states have stricter securities laws than others. California is one of the states with

money back, if there is any risk involved, the transaction (and even the offering, or advertisement of the investment opportunity) would be considered a security that either needs to be registered with the state Department of Business Oversight or the company needs to demonstrate that their securities qualify for an exemption from registration.

## **2. Product Discounts**

Another way to raise capital for your business is to charge a membership fee and offer product discounts in exchange, an example of which is Costco. However, another interesting model is REI. REI is a consumer cooperative that sells memberships to its customers. At the end of the year, REI members receive a “dividend” based on the amount spent at REI during the year. REI takes the position that its memberships are not securities because what members are really buying is the right to receive discounts on the items they purchase – not at the time of purchase like at Costco, but at the end of the year in the form of a rebate check. Similarly, customers can pay for other perks such as purchasing advance tickets to a special event.

## **3. Bartering**

Avoid money all together and exchange services or goods directly. If you need to raise money to pay for something like web design or compostable cups, consider whether you might be able to barter your goods or services to get what you need. Then you won't have to raise so much money!

# **A Few Ways to Raise Capital as Securities:**

## **The 25102(f) Exemption in California**

California Corporations Code Section 25102(f) offers a special securities law exemption to certain kinds of private securities offerings, if they meet the following criteria:

First, you must be exempt from federal securities filing requirements:

- Your company must be formed under California law (i.e., if you are a corporation you filed your articles of incorporation in California, etc.)
- You plan only to offer securities to California residents
- You must include in your contract with your investors that they will not resell the security to anyone outside the state for nine months, and
- Your business is very California-focused – here is a test for this:
  - You get at least 80% of your revenues from California
  - At least 80% of your assets are in California
  - You plan to use at least 80% of the money you raise within California

Then, you must meet the requirements for 25102(f):

- You can sell your securities to up to 35 people as long as they meet one or more of the following criteria:
  - The investors have a pre-existing personal or business relationship with you “consisting of personal or business contacts of a nature and duration such as would enable a reasonably prudent purchaser to be aware of the character, business acumen, and general business and financial circumstances of the person with whom such relationship exists.” These investors can be friends or family;
  - The investors have enough financial experience to protect their interests; or
  - The investors have experienced professional financial advisors.
- You can sell an unlimited number of securities to officers and directors of the company and accredited investors. Accredited investors are either 1) people with \$1 million in net worth (excluding their home) or \$200,000 in annual income, or 2) entities with more than \$5 million in assets.

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- Your securities offering cannot be advertised to the public.
- The investors must sign something saying that they are not investing for the purpose of reselling the securities to someone else.
- You have to file a simple form with the California Department of Business Oversight.

### **Direct Public Offering (DPO)**

Doing a direct public offering is not simple and it will require a lot of help from a lawyer, but it's a nice option if you need to raise a lot of money from local community members. Conducting a DPO usually requires filing some paperwork with and obtaining a permit from the SEC and the Department of Business Oversight. Regulators want to ensure that you are disclosing a sufficient amount of information to your investors, and they also sometimes review the merit of your securities offering to ensure that it will be fair and not unreasonably risky for investors. Some small to medium sized businesses use this strategy to access capital outside the realm of big banks or other institutional and wealthy investors, and so that their company can be owned by customers, fans, and other stakeholders of the business instead of absentee shareholders. Including all the filing fees and attorneys fees, this process can cost several thousands of dollars, depending on the level of complexity involved in the business and investment opportunities.

### **Socially Responsible Investing or Community Investment**

Socially responsible investment organizations have grown rapidly over the past 30 years and continue to expand. Many of them are located right here in the Bay Area:

- Working Solutions' Microloans for Start-Up Businesses offers loans of \$5,000 to \$50,000 to small businesses with significant experience in the same exact industry and with owner's equity injection into the business of at least 20% to 30% of the requested loan amount.
- Oakland Business Development Corporation Small Business Financing is affiliated with the City of Oakland and offers loans to small businesses of \$10,000 to \$250,000 at varying interest rates. They require personal guarantees on loans.
- RSF Social Finance is a private organization that offers food and agriculture-specific programs that include grants and loans.

### **Government Funding**

There are also some decent government financing options, the most notable of which is the Small Business Administration (SBA) Loan.

- The SBA offers the CDC/504 Loan Program. A Certified Development Company (CDC) is a private, nonprofit corporation, which is set up to contribute to economic development within its community. CDCs work with SBA and private sector lenders to provide financing to small businesses, which accomplishes the goal of community economic development.
  - The loan must be used for fixed-asset projects:
    - The purchase of land, including existing buildings;
    - The purchase of improvements, including grading, street improvements, utilities, parking lots and landscaping;
    - The construction of new facilities or modernizing, renovating or converting existing facilities; and
    - The purchase of long-term machinery and equipment.
  - The loan cannot be used for working capital or inventory, consolidating or repaying debt, or refinancing.
- There is also the California Small Business Loan Guarantee:
  - It allows a business to not only acquire a loan it could not otherwise obtain, but to establish a favorable credit history with a lender so that the business may obtain future financing on its own.

- Eligible Applicants include any small business as defined by the SBA (typically businesses that employ 100 people or less).

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- Eligible Uses:
  - Proceeds must be used primarily in California and for any standard business purpose beneficial to the applicant's business, such as expansion into new facilities or purchase of new equipment.

**Resources:**

- SELC's Community Enterprise E-Resource Library – [www.communityenterpriselaw.org](http://www.communityenterpriselaw.org) •  
Appendix: Funding Handbook

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## **TAX AND ACCOUNTING**

Here are a few things that food businesses should know about tax and accounting. Really, there's a lot more to know about tax, so we recommend you look at the book *Tax Savvy for Small Business* by Frederick Daily (Nolo Press), and invest in some sound advice and assistance from an accountant, bookkeeper, and/or tax lawyer.

### **California Seller's Permit**

You'll need a California Seller's Permit if you are doing business in California and intend to sell "tangible personal property that is ordinarily subject to sales tax," even if you are making sales for only a temporary period.

Apply to the California Board of Equalization (BOE): <http://www.boe.ca.gov/sutax/sutprograms.htm>.

For more information:

See Publication 73: Your California Seller's Permit: <http://www.boe.ca.gov/pdf/pub73.pdf>

### **California Sales Tax**

Many food products are exempt from sales tax. But you do have to collect sales tax for hot prepared food. Sales tax also applies to food that is consumed at your facilities, ordinarily sold for consumption near your parking facilities (think drive-ins), or sold for consumption where admission is charged (think concerts or county fairs).

There are many subparts and exceptions to these general rules. For example, whether takeout or "to-go" sales are taxable depends on the "80/80 Rule": unless you separately account for these sales in your records, you will need to collect sales tax if 1) more than 80% of your gross receipts are from the sale of "food products," and 2) more than 80% of your retail sales of food products are considered taxable. Make sure to keep detailed records so you can claim exemptions!

The BOE has prepared a detailed (but still fairly readable!) guide to sales tax on food products. See Publication 22: Dining and Beverage Industry: <http://www.boe.ca.gov/pdf/pub22.pdf>

For the black letter law, see Sales and Use Tax Regulations, Article 8: Food Products. [www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/sales-and-use-tax-regulations-art8-all.html](http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/sales-and-use-tax-regulations-art8-all.html)

### **Business / Personal Property Tax**

When you register your business with the county, the county Assessor-Recorder will ask you to file a Business Property Statement and pay business personal property taxes every year. The statement must list the costs of all supplies, equipment and fixtures at each location for your business. The statement need not list business inventory, which is exempt from taxation.

### **Income Tax**

**Filing state and federal income tax returns:** Unless your business is a sole proprietorship, you will need to file an income tax return for your business. If you are a sole proprietor, then you need only report your business income and expenses on your personal income tax return.

**The entity you chose could affect how much tax you owe:** There are many entities to choose from - cooperative corporations, partnerships, LLCs, S corporations, etc. - and each one is subject to different tax rules. A lawyer or tax specialist can help you determine which structure is ideal.

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**Deduct those businesses expenses:** You can significantly lower your taxes if you keep clear records and track your business expenses. The IRS allows you to deduct "ordinary, necessary, and reasonable" expenses related to your business. This includes costs of travel, vehicles, rent, utilities, advertising, interest, professional fees, entertainment, equipment, supplies...but only if these expenditures are "helpful and appropriate" for your business. The IRS has issued a lot of helpful guidance to help you determine what is

deductible. See <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Deducting-Business-Expenses>.

**Be sure to pay quarterly taxes, if you are required to:** If you are filing as a sole proprietor, partner, S corporation shareholder, and/or a self-employed individual, you generally have to make estimated tax payments if you expect to owe tax of \$1,000 or more when you file your return. If you are filing as a corporation you generally have to make estimated tax payments for your corporation if you expect it to owe tax of \$500 or more when you file its return. If you had a tax liability for the prior year, you may have to pay estimated tax for the current year. See the worksheet in IRS Form 1040-ES, available at [www.irs.gov/pub/irs-pdf/f1040es.pdf](http://www.irs.gov/pub/irs-pdf/f1040es.pdf) for more details on who must pay estimated tax.

### **Bookkeeping and Accounting**

Here are the basics:

Bookkeeping = Keeping track of everything! Accounting = Counting it all up!

That may be an over-simplification, but it's a good reminder that bookkeeping and accounting don't have to be complicated or intimidating. If you have the funds to hire help, it's always easier to hire a bookkeeper to set up your books and a certified public accountant (CPA) to prepare your taxes. But here are some basics to know if you plan to do it yourself:

- Keep records of all business-related expenditures: Keep a ledger of all of your expenses, when they were made, and what they were for. And keep all the receipts!
- Keep records of all business income: Keep a ledger of income and when it comes in. Keep other records of the income, including sales receipts, records of deposits, and invoices.
- Periodically count it all up: Periodically generate reports summarizing your income and expenditures. The most important reason to do this is to know what taxes you will owe. But it's also a good idea to do this so that you can learn about your business – what are your income trends, where might you be able to cut expenses, and so on.

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## **LIABILITY, INSURANCE, AND RISK MANAGEMENT**

Anyone who runs a business or organization, no matter how small, is at risk of being sued. Accidents happen,

even when careful and responsible people are in charge. Attorneys often recommend that any food enterprise hold an insurance policy to cover such expenses, though in certain cases where only extremely small amounts of low-risks foods are involved, an attorney may not advise it as strongly.

Before you decide what kind(s) of insurance to buy, you should identify the risks associated with what you're doing and how you operate:

- Do you have a storefront or sell food at a farmers' market or other public space? If you do, then you probably need general liability insurance to cover you for any accidents that occur in your booth or space.
- Do you use a vehicle? If yes, then you'll need an automobile insurance policy.
- Do you have employees? If yes, then you'll need workers' compensation insurance.
- Do you make and sell a product? If yes, then you'll want product liability insurance.

### **Common Types of Insurance:**

**General liability insurance** covers bodily injuries, property damage, and a handful of losses that could occur as a result of the operation of your business. General liability is also sometimes known as "slip and fall" insurance, and it is particularly important if you have a "premises," like a food stand, cart, or shop, where the public will visit your business. Even if you are leasing your space, it is likely the owner will require you to have this insurance, and may ask you to add him/her to your policy as an "additional insured." You'll need to check with your insurance provider to see how and if you can add another person or organization to your policy.

**Product liability insurance** protects you if a customer gets sick from a food product they got from you. Whether you purchase this type of insurance probably depends on what type of food product you're providing and the level of risk associated with that product. For example, if you're selling bread or granola, your risk may be low enough that you can forego this type of insurance. If you sell vegetables or animal products, product liability insurance is recommended.

**Commercial auto coverage** protects you from losses incurred while employees are using your vehicles for purposes of your business, and for damage done to the vehicles. Most policies address each individual vehicle separately, and coverage and costs vary depending on factors such as vehicle size and intended use.

**Workers' Compensation insurance** is required by law if you have employees, even if you have just one part-time employee, in order to cover costs if an employee is injured while working. Not having workers' compensation insurance is a criminal offense, and you can't require your employees to help pay the cost of the policy. You aren't required to cover volunteers, but you can choose to include them in your coverage. Insurance can be obtained from an agent or broker, the State Compensation Insurance Fund, or you can "self-insure" if you qualify. Policy rates are based on the size of your payroll and the tasks your employees perform. Nonprofit organizations with volunteers do not need worker's compensation coverage for volunteers but some choose to provide it anyway to reduce risk or liability. For more information on workers' compensation requirements for employers, see <http://www.dir.ca.gov/dwc/>.

**Property Insurance and Homeowners' Insurance** protects property owners against lawsuits from visitors to the property as well as damage to the property. Property owners who allow gleaners onto their property are advised to ensure that such gleaning activities are covered under their particular policy.

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**A note on liability for backyard farms and gardens:** Generally, homeowners insurance policies cover injuries that take place on the property if the injured party is the guest of a homeowner and if the activity is not for a

commercial purpose. Typical homeowners insurance policies do not cover incidents related to the sale of fresh produce from the property. However, in many cases, “endorsements” can be added as modifications to the general policy that add or remove provisions to serve particular needs. Some homeowners policies can be amended to include certain home businesses or other activities. If you are unsure whether your providing of fruits or vegetables from your backyard garden to anyone would be covered by your insurance policy, ask your insurance agent.

### **Other ways to protect your business, organization, or yourself from liability:**

**Indemnification agreements:** Indemnification, or “hold harmless” agreements, can provide additional protection by requiring someone else to pay your legal fees and expenses if you are sued by a third party. Whether you can get this type of agreement may depend on your power position in the relationship. For example, a farmers’ market may require a vendor to indemnify the market if the market is sued because of an injury sustained in that vendor’s stall. The indemnified party should also make sure to ask to be named as an “additional insured” on the indemnifying party’s insurance policy – you want the party indemnifying you to have the financial resources to make good on that promise.

**Liability waivers:** Depending on your activities and who is involved, you may also want to ask some participants to sign a liability waiver. For example, if your organization operates a community garden, you could ask volunteers and gardeners to sign a liability waiver, which states that they will not hold you responsible or sue you in the event that they are injured in the garden. The waiver should be very clear in informing gardeners of the risks they are taking and about the fact that they are voluntarily waiving their right to sue you. In practice, courts often refuse to uphold liability waivers, on the grounds that it would be poor public policy for businesses and organizations to waive their duty to be careful. Nevertheless, if you carefully craft your waiver, there is a good chance it will protect you, either in court or in simply setting clear expectations that volunteers should be careful to avoid injury and not sue you.

**Limited liability business structures:** Forming a corporation or forming an LLC for your business can limit your liability, and provide an extra layer of insurance. If you are sued, the claim will be limited to the assets owned by the company, and not your personal assets – such as your home, car, and personal bank accounts. Remember: this “shield” over your personal assets is not absolute. For example, you wouldn’t be protected if you commit intentional fraud, and you can destroy the limited liability protection if you treat the LLC or corporation bank account as your own personal account. So act fairly and legally, fund your LLC or corporation adequately, and keep business and personal finances separate.

### **Tips on Purchasing Insurance:**

**Shop around for coverage.** Find an insurance broker or agent who understands your business and the particular risks associated with what you’re doing. Rates can vary widely from one insurance company to another.

**Ask lots of questions.** Make sure your insurance provider understands what you’re doing, so that you get the coverage you need. For example, a products liability policy might cover your sales of produce, but not meat and dairy. And your policy might not cover “temporary structures” like tents or tables used in your farmers’ market stall. You don’t want to find this out after you submit a claim.

**Ask for referrals.** Ask other similar businesses or organizations what insurance policies they hold and what their experience is like.

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**Note for urban farms:** Some urban farms have found that their insurance policies are unusually expensive, in

spite of the fact that there is a low risk of injury in urban farming. This is because insurers often liken an urban farm to a large commercial farm that involves trucks, tractors, pesticides, repetitive motion activities, or other activities with a higher risk of injury. It's a good idea to call around until you find an insurer or broker that understands urban farms. One suggestion is to tell the insurer or broker that you are a "garden," rather than a "farm." Of course you should still be honest about what activities you are engaged in, including growing food for sale, if applicable. However, reframing the activity as a garden might prompt insurers to choose an insurance policy that better fits your activity.

**Find out if you can associate with or become a member of a larger entity**, who may be able to provide discounted insurance rates. Some larger membership organizations and associations offer special rates on insurance policies to their members. Check with any existing organizational affiliations.

**Be safe.** One of the best ways to manage risk is to adopt safety practices and policies. Train people on safety, remove hazards, post warnings – a little care goes a long way in preventing injury and avoiding liability.

# ORGANIC CERTIFICATION

“Organic” is a regulated labeling term. Since 2002, the U.S. has had a single national standard for organic. The USDA National Organic Program (NOP) oversees independent certifiers that work directly with organic food producers to ensure they all meet the NOP requirements.

There are three labeling categories for certified organic products: “100% Organic,” “Organic,” and “Made with Organic.”

100% Organic	Organic	Made with Organic
<ul style="list-style-type: none"> <li>• Only ingredients certified “100% Organic”</li> <li>• Only organic processing aids</li> <li>• May use USDA organic seal</li> <li>• May use certifier’s logo</li> </ul>	<ul style="list-style-type: none"> <li>• At least 95% organic ingredients</li> <li>• Limited approved nonorganic ingredients and processing aids</li> <li>• May use USDA organic seal</li> <li>• May use certifier’s logo</li> </ul>	<ul style="list-style-type: none"> <li>• At least 70% organic ingredients</li> <li>• Limited approved nonorganic ingredients and processing aids</li> <li>• May NOT use USDA seal</li> <li>• May use certifier’s logo</li> </ul>

## What’s different about the “organic” label?

Many food labeling terms, like “natural” and “sustainable” have no official meaning. Organic is a strictly regulated marketing term, and you must be certified to use it on your products.

For food processors, the organic standards cover three main areas: ingredients, protection against contamination and commingling, and record-keeping.

- **Ingredients:** Organic certifiers review each organic formula and label to make sure it meets the labeling requirements. Suppliers provide their organic certificate to confirm that ingredients are organic. The “National List” is a limited list of nonagricultural ingredients and processing aids that may be used.
- **Contamination & Commingling:** Organic processors make sure that organic products aren’t mixed with nonorganic products and that organic products are protected from contact with cleaning materials or packaging that may have prohibited residues.
- **Record-keeping:** Organic producers have their records inspected every year and must document sales, production, and purchases to show that they have maintained organic integrity.

## How do I become certified?

Any organic producers who sell \$5,000 or more per year in organic products must be certified if they want to advertise their products as organic, even just on the label. The USDA does not certify any organic producers directly – they oversee independent certifiers.

Organic is a practice-based standard, which means you can’t simply test a final product to find out if it is organic. Certification focuses on producers’ practices. New organic producers go through an initial application and inspection process with their certifiers, and they continue to have annual inspections for as long as they remain certified.

Most certifiers charge an application fee and an annual fee that is either based on production value or a set scale.

## Where can I learn more about organic?

The organic regulations can be confusing – beware of misinformation about organic on the Internet, in the media, and in the food industry! The National Organic Program website is the most reliable source for information about organic in the U.S.: [www.ams.usda.gov/AMSv1.0/nop](http://www.ams.usda.gov/AMSv1.0/nop).

Certifiers' websites can provide additional background about organic as well as details about fees and the application process. The largest and oldest organic certifiers in the U.S. are:

- CCOF: [www.ccof.org](http://www.ccof.org)
- Oregon Tilth: [www.tilth.org](http://www.tilth.org)
- QAI: [www.qai-inc.com](http://www.qai-inc.com)

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## **REFERRAL LIST**

**Note:** Sustainable Economies Law Center and Green Collar Communities Clinic provide this list as a resource for clients and workshop attendees, but we do not necessarily recommend or vouch for any of the service providers listed here. It is up to you to evaluate service providers prior to hiring them.

## Legal

Alameda Co. Bar Assoc. Attorney Referral [acbanet.org/lrs](http://acbanet.org/lrs) Or call 510-302-2222 for an attorney referral Nolo Lawyer Directory [nolo.com/lawyers](http://nolo.com/lawyers) Searchable directory of lawyers by specialty Legal Services for Entrepreneurs [lccr.com/lse.shtml](http://lccr.com/lse.shtml) Legal services for low-income people Cutting Edge Counsel [cuttingedgecounsel.com](http://cuttingedgecounsel.com) Social enterprise law Myrrhia Resneck [myrrhieresneck.com](http://myrrhieresneck.com) Small business law Jill Jacobs [jilljacobslaw.com](http://jilljacobslaw.com) Small business, nonprofits, co-ops, shared housing Jenny Loda [jennyloda.com](http://jennyloda.com) Food & agriculture, nonprofits, environmental law Sarah Kaplan [sarahkaplanlaw.com](http://sarahkaplanlaw.com) Cooperatives, shared housing, small business Inder Comar [comarlaw.com](http://comarlaw.com) Intellectual property, small business Janelle J. Smith [stallparker.com](http://stallparker.com) Small business law Cameron Holland [cameronholland.com](http://cameronholland.com) Small businesses and nonprofits Hasmik Geghamyan [geghamyanlaw.com](http://geghamyanlaw.com) Cooperatives, nonprofits, real estate, litigation Elizabeth Burnett [ejmburnett@gmail.com](mailto:ejmburnett@gmail.com) Small business, food enterprise, employment law Will Pasley [willpasleylaw.com](http://willpasleylaw.com) Shared housing, cooperatives, nonprofits Jeremy Chen [jeremychenlaw.com](http://jeremychenlaw.com) Social enterprise, nonprofits, intellectual property Tanya Eliason [eliasonlegalsolutions.com](http://eliasonlegalsolutions.com) Small business, intellectual property, arts law Jesse Palmer [jessepalmer.wordpress.com](http://jessepalmer.wordpress.com) Cooperatives, nonprofits, real estate Frederick Hertz [frederickhertz.com](http://frederickhertz.com) Housing co-ownership Don De Leon [grassrootslawyers.com](http://grassrootslawyers.com) Social enterprise, nonprofits, co-ops Zoe Hunton [hunton-law.com](http://hunton-law.com) Social enterprise and nonprofits Bryan Springmeyer [calstartuplawfirm.com](http://calstartuplawfirm.com) Business law, tech start-ups Philip Heisemann [sustainablefoodlaw.com](http://sustainablefoodlaw.com) Sustainable food law Tiffany Clark [tiffanyclarklaw.com](http://tiffanyclarklaw.com) Small businesses, cooperatives, nonprofits Joseph Morris [josephmorrisslaw.com](http://josephmorrisslaw.com) Small business law Adler & Colvin [adlercolvin.com](http://adlercolvin.com) Nonprofits Rafael Pacquing [rafael\\_pacquing@yahoo.com](mailto:rafael_pacquing@yahoo.com) Business law and litigation Therese Tuttle, Tuttle Law Group [therese@cooplawgroup.com](mailto:therese@cooplawgroup.com) Worker, consumer and agricultural cooperatives Van Baldwin [vanbaldwin@pacbell.net](mailto:vanbaldwin@pacbell.net) Cooperative attorney/CPA

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Neil Helfman [nhelfman28@aol.com](mailto:nhelfman28@aol.com) Cooperative attorney May A. Witaker [may@mayflowerlaw.net](mailto:may@mayflowerlaw.net) Business law, immigration law, legal cannabis law Sushil Jacob, Tuttle Law Group [sushil@cooplawgroup.com](mailto:sushil@cooplawgroup.com) Worker/consumer co-ops and co-op conversions Rob Yanagida [counsel@yanagida.us](mailto:counsel@yanagida.us) Nonprofits and cooperatives

## Food Resources

Alameda Co. Health Dept. [acgov.org/aceh/food/index.htm](http://acgov.org/aceh/food/index.htm)  
Food Safety Certification Classes [acgov.org/forms/aceh/regformenglish.pdf](http://acgov.org/forms/aceh/regformenglish.pdf) Community Alliance with Family Farmers [caff.org](http://caff.org)  
Sustainable Agriculture Education [sagecenter.org/](http://sagecenter.org/)  
La Cocina (incubator kitchen) [lacocinasf.org](http://lacocinasf.org)  
Economy Restaurant Equipment [economyrestaurantequip.com/](http://economyrestaurantequip.com/)  
Chefs First (restaurant supply) [chefsfirst.com/default.asp](http://chefsfirst.com/default.asp)  
Restaurant Depot [restaurantdepot.com/](http://restaurantdepot.com/)  
Big Tray (restaurant supply) [bigtray.com/](http://bigtray.com/)  
California Cart Builder (mobile vending carts) [californiacartbuilder.com](http://californiacartbuilder.com)  
Arrow Tableware (biodegradable tableware) [arrowtableware.com](http://arrowtableware.com)  
Richard's Packaging (containers / food packaging) [richardspackaging.com](http://richardspackaging.com)  
CA Processor's Permits [cdph.ca.gov](http://cdph.ca.gov)

## Entrepreneurial Training

A New America [anewamerica.org](http://anewamerica.org) focus on immigrant entrepreneurs CEO Women [ceowomen.org](http://ceowomen.org) focus on

women immigrant entrepreneurs Hatch Network hatchnetwork.com focus on women entrepreneurs  
Renaissance Entrepreneurship Center rencenter.org small business courses, workshops, training Small Business  
Development Center norcalsbdc.org small business advisement + workshops SCORE score.org small business  
advisement + workshops Women's Initiative womensinitiative.org focus on women entrepreneurs Urban FIRE  
urbanfire.org micro-business training

### **Small Business Finance**

Working Solutions tmcworkingsolutions.org/ Microloans  
RSF Social Finance rsfsocialfinance.org/ Socially responsible investing and loans

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Opportunity Fund opportunityfund.org/ Working capital for working people Oakland Business Development  
Corp. obdc.com/index.php Small business finance Full Circle Fund fullcirclefund.org/ Engaged philanthropy

### **Oakland Resources**

Oakland Business Assistance Center oaklandbac.com One-stop info and referral Oakland Business  
Development Corporation obdc.com/index.php Small business finance

### **Accountants**

Iryna Accountancy, CP irynacpa.com certified public accountants Jeff Brown, CPA jbcpa.net certified public  
accountant Jennifer L. Goodwin, CPA jenniferlgoodwincpa.com certified public accountant Leung, Louie, Ip &  
Co. llicocpa.com certified public accountants Zachary Sahar, CPA capitaltaxaccounting.com certified public  
accountant

Van Baldwin, CPA vanbaldwin@pacbell.net cooperative-specialized accountant Dmitry Kustov  
kustovcpa.com/ cooperative-specialized accountant

### **Architects & Interior Designers**

Sekou G. Cooke, R.A. sekoucooke.com architecture + interior design Theo Revlock, R.A. seadotdesign.biz  
architecture + interior design

### **Banks**

Cooperative Center FCU coopfcu.org/index.html credit union Bank of San Francisco bankofsf.com  
community bank Bank of the West bankofthewest.com community bank California Bank & Trust  
calbanktrust.com community bank Circle Bank circlebank.com community bank Mechanics Bank  
mechbank.com community bank New Resource Bank newresourcebank.com community bank One Pacific  
Coast Bank onecalif.com community bank Scott Valley Bank scottvalleybank.com community bank Umpqua  
Bank umpquabak.com community bank WestAmerica westamerica.com community bank

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The Golden 1 golden1.com/home/default credit union

### **Bookkeepers**

B&T Bookkeeping btbookkeeping.com bookkeeping services Hilliard Management Group hilliardmg.com  
accounting setup + bookkeeping services Keeping Your Balance keepingyourbalance.net bookkeeping + tax

preparation Kereti Tuioti keretituoti.com bookkeeping + tax preparation Phillips Business Consulting pbcfsf.com accounting + bookkeeping Melissa Hoover melissa@usworker.coop cooperative-specialized bookkeeper

### **Business Consultants**

Gabriel Cole fareresources.com food business consultant Lift lifteconomy.com Business Coaching for the Next Economy Project Equity project-equity.org Consulting for cooperatives ES Napa greg@esnapa.com business plans

Jeff Gustafson jgus@yahoo.com part-time or project-based CFO Imagine gpcross@aol.com business plans + coaching Sandler Training joediliberto.sandler.com assessments + coaching + marketing + sales Phillips Business Consulting pbcfsf.com management + strategy Purple Lynx purplelynx.com marketing Roth Consulting consulthoth.com capital + management + strategy The Wright Consultants thewrightconsultants.com business plans + financial analysis + loan packaging

### **Business Services**

Bay Area Green Business Program greenbiz.ca.gov certifies Bay Area businesses to become green CF&P Insurance Brokers cfpinsurance.com commercial insurance brokerage Dharma Merchant Services dharmamerchantservices.com merchant services (*enables businesses to accept credit card transactions/ non-cash payments*) Global Payments globalpaymentsinc.com merchant services including POS systems Marble Bridge Funding Group marblebridge.com factoring (*financing through a/r, p/o, loc*) Sunbelt sunbeltnetwork.com business brokerage TempCFO Solutions tempcfo.com audit preparedness, accounting, tax solutions

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### **Credit Counseling Services**

Consumer Credit Counseling Services ccsebay.org ccssf.org provides credit counseling Money Management International moneymangement.org provides credit counseling Operation Hope operationhope.org provides credit counseling

### **Commercial Real Estate**

Bay Area Development Company baydevo.com commercial real estate purchase via SBA 504 program Capital Access Group capitalaccess.com commercial real estate purchase via SBA 504 program Marcus & Millichap marcusmillichap.com commercial real estate investment services TMC Development tmcd.com commercial real estate purchase via SBA 504 program Green Key Real Estate greenkeyrealestate.com Green commercial and residential real estate

### **Design (Branding + Graphic + Identity + Web)**

AP42 ap42.com full-service branding & web design Conscious Creative consciouscreative.com full-service branding & web design Design Dork designdork.com graphic + web design Unit Design Collective unitcollective.com full-service branding & web design Design Action Collective designaction.org web design and print design Radical Designs radicaldesigns.org web design and programming Allison Ball Consulting alliball.com branding + marketing

### **IT Services**

Linde Group lindegrou.com full-service IT

TECHsperience techsperience.org full-service IT

## Marketing

SCORE score.org no-to-low cost professional business advising Small Business Development Center  
norcalsbdc.org no-to-low cost professional business advising Purple Lynx purplelynx.com full marketing  
services including strategy Sandler Training joediliberto.sandler.com commercial law

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## Appendix: Funding Handbook

### Funding Dreams: How to Finance Your Food Enterprise



*A Guide to the Many Loan and other Financing Options Available to Small  
Businesses and Low-Income Entrepreneurs*

## **Financing A Small Business: Introduction**

### **What is Capitalization?**

Capitalization is the money that a business needs to start and continue running. It is defined as the amount and source of money needed to start and operate a business.

This handbook provides tips for financing your business. However, it does not substitute for the advice of a qualified attorney, business advisor, or financial advisor.

### **Sources of Capital**

One of the keys to success in starting a business is obtaining adequate financing. Traditionally, businesses look to three sources of capital:

1. Contributions from the owners of the business (internal equity)
2. Loans (debt), and
3. Outside investors (outside equity)

Equity capital is one of the measures by which financial institutions will gauge a business' potential for receiving loans. Equity financing is typically received in exchange for an ownership share in the business. By contrast, debt financing is borrowing money that the business will have to pay back. The lender, such as a bank, does not receive an ownership share in the business. When analyzing the creditworthiness of a business, lenders like to see that the members of the business have invested their own money in the business first, before seeking outside funding. Lenders are also more comfortable giving loans if they feel that a business has its own resources to pay the loan back. Banks are not in business to lose money, so you need to convince them that lending to your business is a worthwhile investment. Thus, in the eyes of banks and other lenders, the more equity capital the business holds in the form of capital contributions, the more deserving of the loan it is.

### **Quick Comparison: Traditional Sources of Financing Versus Alternative Financing**

Traditional Sources (Banks and Credit Unions)	Alternative Financing (Micro Loans)
<ul style="list-style-type: none"><li>• Greater funding</li><li>• Potentially higher interest rates</li><li>• May require the business to have 2 to 3 years of operating with profits</li><li>• May require good credit, collateral, or equity</li></ul>	<ul style="list-style-type: none"><li>• Less funding</li><li>• Potentially lower interest rates</li><li>• May invest in startups</li><li>• Credit, collateral, and equity requirements vary by lender</li></ul>

## **Traditional Bank Loans**

You may be interested in attempting to secure a bank loan or other traditional financing methods. The following page outlines best practices when approaching a bank for financing. The goal of this section is to help you understand the difficulties that businesses face when approaching a lender, and, more importantly, preparing you to overcome these challenges.

### **Overview of Bank Loans**

While big banks offer loans for small businesses, they are doing so less often. Small business lending by the country's eighteen largest banks declined by 21 percent since 2009. Further, banks typically have more stringent requirements for business owners—good credit scores, equity, business financial statements and an overview of the business, etc. This does not mean, however, that you should write them off. They offer higher amounts in loans, with longer loan periods, than many microloan organizations. Community banks and credit unions are great resources for loans. Both provide a sizeable portion of funding to small businesses.

But, many commercial banks will not lend to certain types of enterprises, like food enterprises. **It is important to note that most banks will not lend to start-ups.** Interest rates for bank loans are anywhere from 6 to 9%.

### **Overview of Best Practices**

1. Preparation
2. Understanding banks' perspective
3. Attention to detail
4. Follow-up/ keep at it

Research  
Project:  
talk to  
other

businesses!

*Not all banking institutions make public the standards they use to assess loan candidates. Some do, however, and you may be able to find useful information from other businesses in the community. Successful businesses may be willing to share which banks they do business with, and which to stay away from!*

*As someone seeking a loan from a financial institution, you will be well served to realistically consider your business' assets, collectively and individually.*

### **(1) Preparation**

Preparation is a key step in both business development and obtaining funding for your business. Very few people can simply walk into the bank without preparation and obtain a significant loan. To prepare for your interactions with financial institutions, start by evaluating your financial situation and the financial situation of any partners. You will want to collect documents from all founding members and evaluate personal income, credit scores, debts etc. You will then want to decide whether it is in the best interest of your business to obtain funding individually (e.g., one member has outstanding credit and is willing to try and obtain a loan) or collectively (e.g., you all pool your resources and sign together for a loan). You can receive one free credit score

per year at the government sponsored site [www.annualcreditreport.com](http://www.annualcreditreport.com); beware of credit report scams at other websites. You will want to bring all financial documents with you when speaking to financial officers. Be sure to cast a wide net; bringing too many documents is better than bringing too few. Do not neglect any information that is less favorable to you (e.g., a bad credit score or default on loans). You need to realistically consider the pros and cons of your financial situation, individually or as a group, and be prepared to discuss these pros and address the cons where necessary.

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**HELPFUL TIP:** misunderstandings.

If you find something in your credit report that stands out in a negative way (e.g., a creditor noting late payments) then you should be proactive about its removal. Try talking to your creditor about removing the negative comment. If

**(2) Understanding The Bank’s Perspective** A bank is a business. They want to reduce their risk and increase their returns. It is important to understand that bankers, loan officers, or whomever you are dealing with at a financial institution has to follow institutionally determined standards. These standards are not all the same and some are less difficult to overcome than others. Ultimately, a financial institution will be interested in knowing how much money you want, what you plan on doing with it, and how you are going to pay the money back (on time!).

that doesn’t work, try adding your own statement to your credit file. You have the right to put a statement (up to 100 words) in your credit file explaining any failing to point out the strengths of your business are just two important details that might get skipped in the process of obtaining a loan. A financial institution should not have to search for necessary and persuasive information about you or the business. Present all the details of your unique financial circumstances to the bank clearly. Also, being detailed and thorough will only make the process run more smoothly.

**(3) Pay Attention to Detail**

Details are key! Neglecting a negative financial history or

**(4) Follow-Up/Be Creative/Keep At It!**

Receiving financial assistance in the form of a loan is undoubtedly a difficult and time-consuming process; however, persistence is the key. Many small businesses face hurdles when they are just beginning. Do not let a few undesired events get in the way of your business’ success. Be creative when preparing for and communicating with financial institutions and potential investors. Remember not to burn bridges and do not stop trying when one door closes.

**Conclusion**

For most entrepreneurs, applying for a loan is not easy. Remember that although a loan may not be a viable option at the outset of your business’ development, over time your business assets will grow and loans may become a more viable option once your business develops. Despite the difficulties associated with obtaining a financial loan, keep at it and be creative!

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## **Alternative Financing: Overview**

Many entrepreneurs, especially those seeking to start food enterprises, become frustrated at the difficulty and bureaucracy of attempting to secure a traditional bank loan. Such loans require a good credit score, a great deal of paperwork, collateral, and much more in order to signal to the bank that they will get their money back. Fortunately, there are ways to raise capital for a business outside of obtaining bank loans. Here are some great alternatives.

### **Donations**

When people give money without the expectation of receiving anything in return, they are donating. Many entrepreneurs are using so-called *crowdfunding* websites such as Kickstarter.com and Indiegogo.com to raise money for various enterprises. Entrepreneurs that solicit donations often provide non-monetary rewards to donors.

### **Pre-Selling**

If you're an existing business and want to expand your business, one possible way to raise funds is to pre-sell gift certificates. For example, you might sell a \$150 gift certificate that a customer can redeem at your business, but only charge \$100 for the gift certificate. Charging less than the value of the certificate gives the buyer an extra incentive to purchase the gift certificate.

### **Micro Loans**

While traditional banking loans are sometimes difficult for new businesses to obtain, an alternative is a micro loan. A micro loan is a small, low interest rate loan, supplied through various sources. Typically, the organizations that provide micro loans are socially conscious about the difficulties that community entrepreneurs face when trying to secure financing. Two examples of micro lenders are Kiva Zip and Working Solutions.

### **Loans with Return of Principle Only**

Return of principle only means giving back the money that the funder gave, and not offering a return on the investment. Not offering a return means that the business will not offer anything more than the original

investment amount, such as an additional dividend, interest, or appreciation in value. It is important to note that, in California, this is likely considered to be a security, so you should proceed with caution and consult with a lawyer if you choose to utilize this funding method.

### **Direct Public Offerings (DPO) / Crowdfunding**

You can publicly advertise investment opportunities in your business if you get the approval to do so from state and/or federal regulators. This would enable your business to get investments of various sizes from a large group of people. There are several ways to do this in terms of legal strategy. Increasingly, start-ups and small to medium sized community-based businesses are finding that a “direct public offering” made in one or a few US states is a favorable option. If a business is based within one state and wants to raise under \$5 million from residents of that state, or if a business wants to raise up to \$1 million from investors in a small number of states, it could qualify for an exemption from registering the offering with federal regulators and just have to register the offering with the state(s) where it is located and/or wants to raise investments.

To do this, a business needs to complete an application that includes an offering document that describes the company, the investment offered, the risk factors that potential investors need to be aware of, and some other information. Many businesses will choose to hire a lawyer to help with this but it’s not always necessary. The documents are filed with the state and then the state will either grant you permission to conduct your offering or will ask you to clarify some things in your application. Once the state is satisfied that your offering documents disclose enough information for investors to make an informed decision, the business is granted the right to offer securities in that state. There is a fee paid to the regulators in that state based on the size of the offering.

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### **Product Discounts**

Another way to raise capital for your business is to charge a membership fee and offer product discounts in exchange.

### **More ideas**

See the California Financial Opportunities Roundtable Access to Capital Guide:  
<http://www.rurdev.usda.gov/Reports/CA-CalFOR.pdf>

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## **Socially Responsible Investment and Loan Organizations**

**Socially responsible investment and loan organizations have grown rapidly over the past thirty years and continue to expand, even through difficult economic times. Many of them are located right here in the Bay Area. Here, we offer a detailed overview of some of these organizations—what they do, who they serve, and how to obtain a loan from them.**

## Opportunity Fund

### Who They Are:

Opportunity Fund is a not-for-profit social enterprise and one of California's leading microfinance providers. Their mission is to advance the economic well-being of working people by investing in those who do not have ready access to financial resources. Specifically, they target people who are locked out of traditional finance. They use a capital market, so they get investments from large microfinance investors or from traditional banks. Their strategy combines microloans for small businesses, microsavings accounts, and community real estate financing. Since making their first loan in 1995, Opportunity Fund has put more than \$235 million into California communities.

Opportunity Fund is a U.S. Treasury-certified Community Development Financial Institution and an SBA (Small Business Administration) approved lender. Loans are made or arranged pursuant to Department of Corporations California Finance Lenders License.

### What They Offer:

- A small, high interest rate loan for equipment and inventory – up to \$10,000
- A larger loan for working capital, remodels, equipment, etc. – up to \$100,000
- Typically, they send loan officers to meet with borrowers

### **(1) Opportunity Loan:** up to \$10,000

- Use for inventory, equipment, vehicles, and more.
- Loan terms:
  - 12% interest rate
  - Up to two-year repayment
  - No pre-payment penalty
  - No application fee
  - Up to 5% closing cost
- Who qualifies?
  - Time in business= one year
  - Northern or Southern California
  - No minimum FICO score
  - Credit history—no current delinquencies, open tax liens, or bankruptcies
  - Collateral—vehicle title only
    - *“Collateral” refers to hard items that you pledge when taking out a loan. Having collateral lowers the risk of the loan for the bank, because if you default on the loan, the lender can seize the collateral and recapture some of the outstanding loan balance. The collateral then becomes the lender's property.*
    - *Whenever you pledge collateral, you improve your chances of receiving the loan you want. Having valuable collateral makes the loan more appealing to the lender, since their total risk is lessened.*

### **(2) Small Business Loan:** \$10,000 to \$100,000

- Use for working capital, equipment, remodels, and more
- Loan terms
  - 8-12% interest rate
  - Up to 5-year repayment term

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- No pre-payment penalty
- No application fee
- 5% closing cost
- Who qualifies?
  - Time in business= more than one year

- Northern or southern California
- No minimum FICO score
- Credit history—no current delinquencies, open tax liens, or open bankruptcies.

### **(3) Equipment and Vehicle Loans**

- Loans for mobile food carts
- Commercial vehicle loans
- Dry cleaner loans
- Green loans

#### **Who They Serve:**

- People with small businesses—small retail, mobile food, child care, janitorial
- Typically low-income people, but not a requirement
- Mostly people who already have businesses
- Currently, **no funding for start-ups EXCEPT people who want to start mobile food businesses** ○  
i.e. food trucks and pushcarts
- Usually, people must be willing to pledge collateral, but it depends on the financials and the credit ○  
Typically no collateral required of people requesting under \$10,000
- No one with recent bankruptcies, liens, unpaid child support
- People in the Bay Area and the Los Angeles area

#### **Process:**

- Can apply online in order to give them preliminary information
- Then, someone from the office will follow up within 24 to 48 hours
- Next, fill out all required documentation (application, financials) and submit it
- Process takes anywhere from one to four weeks
- The smaller the amount, the faster the process

#### **Get in Touch:**

Phone: (866) 299-8173

Street Addresses:

- San Jose: 111 West Saint John Street, Suite 800, San Jose CA 95113
- San Francisco: 2301 Mission Street, San Francisco, CA 94110
- Los Angeles: 6606 Pacific Blvd, Suite 214, Huntington Park, CA 90255
- San Francisco Market (Appt only): 785 Market St., Suite 1700, San Francisco, CA 94103

## **Working Solutions**

#### **Who They Are:**

Working Solutions is a Bay Area nonprofit organization that supports entrepreneurs in starting or growing successful Bay Area businesses. They provide microloans and small business advising.

#### **What They Offer:**

##### **1. Small Business Loans (Microloans)**

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- **For start-ups and existing businesses**, or those with less than 2 years of full sales history: \$5,000 to \$25,000
- **For businesses in existence at least 2 years, or those with more than 2 years of full sales**

**history:** \$5,000 to \$50,000

- Eligible loan uses:
  - Working capital
  - Inventory purchase
  - Equipment and machinery
  - Leasehold improvements
  - Startup costs
- Ineligible loan uses
  - Debt consolidation or refinance of business debt
  - Personal use
  - Owner's draw or salary

**Loan Details:**

- Interest rates fixed from 6 to 10%
- Up to 5 years, fully amortized
- Application fee: \$50 nonrefundable
- Loan closing fee: 3% of the loan amount
- Additional fees may apply in connection with securing collateral, returned checks, late payments and any prepayments made within three months of loan closing
- For an estimation of monthly payments, try the Loan Calculator on their website

• **San Francisco Revolving Loan Fund**

- \$5,000 to \$25,000 for startup and existing businesses, or those with less than 2 years of full sales history
- \$5,000 to \$50,000 for businesses in existence at least 2 years, or those with more than 2 years of full sales history

**Loan Details**

- Interest rates are fixed from 4% to 6%
- Loan terms are up to to 5 years, fully amortized
- Timing: one month
  - From the time they receive a completed loan application, it takes 7 to 10 days to receive a decision as to whether a loan request is approved or not
  - If a loan is approved, it takes an additional 1 to 3 weeks to fund the loan
- Application Fee: \$50 nonrefundable
- Loan Closing Fee: 3% of the loan amount
- Additional fees may apply in connection with securing collateral, returned checks, late payments and any prepayments made within three months of loan closing

**Basic Eligibility Requirements**

- Have limited or no access to a bank loan
- Business is located in San Francisco
- Create/retain 1 full-time job made available for low/moderate-income individuals

**Who They Serve:**

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- Micro-entrepreneurs within the nine San Francisco Bay Area counties.
  - Alameda

- Contra Costa
  - Marin
  - Napa
  - San Francisco
  - San Mateo
  - Santa Clara
  - Solano
  - Sonoma
  - Entrepreneurs with **limited or no access to a bank loan**
  - At least 1.5 years of industry experience
    - I.e., if you are looking to start a restaurant, need at least 1.5 years of restaurant experience •
- People who meet the following eligibility requirements:
- Start-up Businesses (businesses with less than one year of full sales history)
    - The business has received a written or verbal loan declination from a bank.
    - Owners are current on their personal credit obligations when they apply.
    - The owner has a secondary source of income to cover personal expenses while the business is starting up. This could be from a family member, second job, or other source.
    - A completed business plan.
    - Owner's equity injection of at least 20% of therequested loan amount
      - I.e., owners have to invest at least 20% of the loan amount they are requesting into their business
      - This shows dedication and helps Working Solutions screen out people who will not follow through on payments
    - No minimum credit score, BUT must be current on all payments and have not had a bankruptcy in the last 2 years
    - People interested in receiving ongoing business coaching and mentoring
  - Existing Businesses (businesses with one year or more of full sales history)
    - The business has received a written or verbal loan declination from a bank
    - The business has one year or more of full sales history
    - Owners are current on their credit obligations when they apply
    - Executive summary of the management and operations of the business
    - Owner's equity injection of 10% of the requested loan amount
    - No minimum credit score, but must be current on all payments and have not had a bankruptcy in the last 2 years
    - You are interested in receiving ongoing business coaching and mentoring.
    - All owners of 20% or more are required to provide a personal guaranty on the loan

### **Process**

The Working Solutions website sets forth the process for applying for, and receiving, a microloan, in a user friendly way. You can apply at: <http://tmcworkingsolutions.org/loan-program>. The steps are listed here in order to acquaint you with their process.

#### " (1) Determine eligibility.

- Determine if you are eligible for a loan by visiting Working Solutions' website and clicking the Are You Eligible? tab.

#### " (2) Pre-application form

- If you feel your business meets basic eligibility, fill out the pre-application form on the Apply tab. ○ A Working Solutions staff member will contact you **within 2 business days**.

#### " (3) Telephone Interview

- A Working Solutions staff member will schedule a 15-20 minute telephone interview with you to confirm eligibility and discuss the application process.

**" (4) Microloan Application**

- Upon confirmation of eligibility, fill out the appropriate Microloan Application on their website (either for sole proprietorships, or for corporations, partnerships, and LLCs)

**" (5) Submission**

- Submit the Application Forms, requested documentation, and \$50 non-refundable application fee to Working Solutions by email, mail, or fax.
- Generally, it takes 7 to 15 business days to receive a decision on whether loan request was approved.
- If loan is approved, it takes an additional 1 to 3 weeks to fund the loan.

**" Total time: approximately 1.5 months**

**Get in Touch:**

**San Francisco Office**

440 Pacific Avenue  
San Francisco, CA 94133

**San Rafael Office**

1115 Third Street  
San Rafael, CA 94901

## **Youth Business America**

**Who They Are:**

Youth Business America's (YBA) mission is to find, fund, and mentor young entrepreneurs who need help to start or expand their businesses and whose businesses will generate employment and promote the economic health of local communities.

Youth Business America is a nonprofit based in Oakland, California and currently serves the 9 counties of the Greater Bay Area. YBA aims to roll out its program to other communities in California with the final goal of establishing a national network.

**What They Offer**

- Loans
- Mentoring for the initial two years of business
- Access to technical support from professionals that share their vision

**Who They Serve**

**Applicants for YBA support must be:**

- 18 to 35 years old and committed to starting their own businesses – not limited to food businesses; • A US citizen or permanent legal US resident;
- Recommended by two letters of recommendation: These may come from one of our Community Partners, or someone such as a banker, employer, teacher or client who can provide an opinion on your readiness to start a business. This letter should not come from a friend or anyone who may have a direct conflict of interest in the outcome of your loan decision;
- A graduate or have successfully completed a business orientation course, training program offered by a YBA Community Partner or otherwise convince YBA that they have the business skills and technical competence to successfully execute their business plan and operate their business;
- Prepared to present a viable business plan demonstrating how the required funds will be allocated, the anticipated cash-flow, and the expected capability to make regular payments on the loan: Loan proceeds may not be used to refinance existing debts;

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- Willing and ready to work with a volunteer mentor, approved by YBA, whose role will be to provide ongoing guidance and support on a one-2-one basis (note, those seeking the support of a mentor only without a loan will be considered by YBA if there are sufficient mentors available);
- Working, or intend to work, full time (35 hours or more per week) in their business: Students applying for support while still undertaking a course of study will be considered if they are in the final year of their course at university or college, and if they can demonstrate that the time they are expected to devote to their studies will not interfere with their ability to manage and organize their business affairs;
- Qualifying Applicants must own at least 51% of the business being funded and serve as the operating manager(s): Other owners not qualifying as applicants must be passive owners. Qualifying Applicants will be responsible for 100% of the loans made by YBA.

### **Requirements for businesses:**

- YBA will provide funds to start a new business, or to fund the development of an existing business which has been in full operations for two years or less
- Without exception, either the borrower(s) or the business must be based and operate from within a community where YBA has a program
  - The business being funded, and its trade names and legal entities etc., must be registered in the U.S.

### **Process**

- (1) **Ensure a good fit:** make sure that your business is at the appropriate stage to apply. (2) **Complete introduction:** complete “Introduction to YBA” form and email it to YBA OR have one of their Community Partners send them a referral
- (3) **Apply:** once YBA contacts you directly upon receiving your introduction form or Community Partner referral, they will provide an Application Packet and instructions for formally applying for the program. After the materials have been submitted, YBA will perform a background check, credit check and a reference check and will then assess your business and financial plan for viability.
- (4) **Present your case:** present your case directly to the panel of credit, entrepreneur and business specialists.

### **List of Current YBA Community Partners**

*These entrepreneurial support programs are a great resource to help you get the ball rolling on your business idea. Once you work with one of them, they can also provide referrals to YBA for you. The list is changing and expanding rapidly, so this list may not be exhaustive.*

City and County of San Francisco:

- [San Francisco Small Business Development Center \(SFSBDC\)](#)
- [Urban Solution](#)
- [Renaissance Entrepreneurship Center](#)
- [La Cocina](#)
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [Jewish Family and Children’s Center](#)
- [City College of San Francisco](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at [alkramer@cabrillo.edu](mailto:alkramer@cabrillo.edu).
- [Mission Economic Development Agency \(MEDA\)](#)
- [Women’s Initiative for Self Employment](#)
- [Impact HUB Bay Area | Impact HUB SOMA](#)

Solano County:

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- [The Solano College Small Business Development Center \(SBDC\)](#) – For further information, contact Chuck Eason at [charles.eason@solano.edu](mailto:charles.eason@solano.edu).
- [Solano Community College](#)

Alameda County:

- [Alameda County SBDC](#)
- [AnewAmerica Community Corporation](#)
- [Women’s Initiative for Self Employment](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at [alkramer@cabrillo.edu](mailto:alkramer@cabrillo.edu).
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [Impact HUB Bay Area | Impact HUB Berkeley](#)

Contra Costa County:

- [Contra Costa Small Business Development Center \(CCSBDC\)](#)
- [Women’s Initiative for Self Employment](#)
- [John F. Kennedy University- Institute for Entrepreneurial Leadership](#)
- [AnewAmerica Community Corporation](#)

Santa Clara County:

- [Cogswell Polytechnical College](#)
- [AnewAmerica Community Corporation](#)
- [Women’s Initiative for Self Employment](#)
- [Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at [alkramer@cabrillo.edu](mailto:alkramer@cabrillo.edu).
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [De Anza College](#)

San Mateo County:

- [Renaissance Entrepreneurship Center](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) For further information, contact Alex Kramer at [alkramer@cabrillo.edu](mailto:alkramer@cabrillo.edu).
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.

**Get in Touch:**

Youth Business America  
469 9th Street, Suite 240  
Oakland, CA 94607-4041  
Mainline (510) 444-5511  
Fax (510) 444-5004

Website: <http://www.youthbusinessamerica.org/entrepreneurs/>

## Kiva Zip

**Who They Are:**

A U.S.-based pilot program aimed at making loans available to entrepreneurs in the United States (and Kenya). They are a part of Kiva, a nonprofit that connects volunteer lenders directly to borrowers through the internet

with the goal of alleviating poverty. Kiva Zip is a small, new project to test a more direct lending model than currently used by Kiva. The first loan was disbursed in January 2012. It aims to expand access to

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capital for entrepreneurs and small business owners, to lower costs of capital, and to increase connection between borrowers and lenders.

Entrepreneurs apply for a loan on the Kiva Zip website through the endorsement of a “Trustee,” a Kiva Zip partner. If their applications are successful, the loans are posted on the Kiva Zip website. They are then “crowd-funded” by individual lenders from around the United States. Selecting from the borrowers presented on the Kiva Zip website, lenders can give any amount of money, starting with a minimum of \$25, to any borrower.

Loans are disbursed, and repayments collected, via PayPal.

### **What They Offer:**

- **An alternative to traditional microfinancing**
- **Small loans for a business purpose**
  - Loans start at \$5,000 or less
  - If you repay that loan successfully, with no default or delinquencies, you can come back and apply for a \$10,000 loan. If you repay that loan successfully, you can apply for a \$15,000 loan... and so on until you reach the loan cap.
  - Hard cap on what borrower can take out is \$50,000. This would take several years to work up to.
- Short loan terms (12 months or less)
- **NO INTEREST**
- **Do not consider credit score or credit history**
- Personal connections between borrowers and lenders
- Efficiency—online application forms and electronic payment mechanisms save borrowers time • Easier application process than most microfinancing organizations

### **Who They Serve:**

**People with a strong business concept and sound character who are not heavily indebted and are not millionaires!**

- People who want to raise money for a small business – not limited to food businesses • Targeted to people who have been excluded from financial services (those that have accrued a lot of debt, have low credit scores, etc.)
- The borrower must have a real social and economic need
- The borrower must have a sound business plan
- The borrower must not be in bankruptcy or foreclosure proceedings, or about to enter into them • The trustee must endorse the borrower’s character
- The trustee must determine that the borrower is financially responsible
  - Any individual or organization can be a trustee, so long as they provide strong answers to the questions on the application.

### **Process:**

**Personal reference model** rather than traditional credit history model

- Kiva Zip is an attempt to test different ways of gauging a borrower’s trustworthiness and ability to repay loans, with the belief that financial history and data does not tell the full story. • Model centers on **trustee recommendations**
  - Kiva Zip partners with organizations (or, at times, individuals) called “trustees”
  - Trustees are

mostly small business incubators, small business development centers, or places that offer technical assistance to small businesses

- Trustees recommend people that are looking for a loan to start or grow a business to Kiva Zip

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- (1) Trustees submit an online endorsement to Kiva Zip explaining why the borrower would be a good fit and what they would use the money for.
- (2) Profile for the person seeking a loan is posted on Kiva Zip, along with their idea/ plan •
- (3) Lenders can select whichever borrower they would like to lend to

To date, every person whose loan request has been posted on Kiva Zip has been funded for the amount requested.

### **Get in Touch:**

Register to be a lender, trustee, or borrower online at: <https://zip.kiva.org/>

## **Whole Foods Loan Fund**

### **Who They Are:**

Whole Foods! The natural foods supermarket chain decided they wanted to “walk their talk” in supporting local, sustainable, humane food producers. So, they set up an annual budget of \$10 million to promote local agriculture (especially animal agriculture), wherever they have stores, through long-term loans at low interest rates. This money will be used to help local producers of grass fed beef, goat milk dairies, organic pasture based eggs, animal-compassionate dairy cows, chickens, turkeys, sheep, pigs, etc. The money will also be used to support local vegetable farmers.

### **What They Offer:**

#### **Local Producer Loan Program**

Low-interest loans to help local producers flourish. In addition to featuring local products in their stores, they provide up to \$10 million in low-interest loans to independent local farmers and food artisans. They help small producers make their dreams a reality.

- Targeted loan amounts between **\$1,000 and \$100,000**
- Maximum \$25,000 for start-ups
- Loan amount not to exceed 80% of total project cost
- **Low, fixed interest rates** (currently between 5% and 9%)
- Monthly payments required after termination of grace period
- No penalty for early repayment
- **Collateral required**
- One-time minimal processing fee covers administrative expenses, including credit report •

They do consider credit history and credit score

- Approval and terms dependent on product characteristics, risk assessments, and use of proceeds •
- Opportunity to apply for additional financing if initial loan is in good standing after one year •
- Existing vendor relationship with Whole Foods Market preferred

### **Who They Serve:**

- Small, local, independent food producers—focused on **agriculture and production** rather than food service or packaged food
- Producers that are located a few hours’ drive time (or less) from a Whole Foods store •
- Producers that meet Whole Foods Market’s Quality Standards and standards for animal welfare (i.e., organic and

animal-compassionate producers)

- Producers that already sell to Whole Foods—although this is NOT a requirement
- Producers that will use funds for expansion and capital expenditures (i.e., buying more animals, investing in new equipment and infrastructure, or expanding crops), not operating expenses

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- Producers that have a viable business plan and adequate cash flow to service debt

**Process:**

- Streamlined with fees, interest rates, and paperwork minimized
- \$65 processing fee for applications
- No closing fee
- Applications accepted on a rolling basis
- Can apply online at: <http://www.wholefoodsmarket.com/mission-values/commitment-society/applying-local-producer-loan>

## Slow Money

**Who They Are:**

The Slow Money Alliance provides an alternative to our current financial system, a system they believe to be disconnected from people and place. They believe in fixing the economy from the ground up—starting with food. Slow Money believes in:

- Investing in people and enterprises close to home;
- Building healthy enterprises, communities, and ecosystems rather than simply extracting financial wealth; and
- Measuring return on investment by the tangible world we create rather than just by the profits we make.

**What They Offer:**

- Slow Money itself **DOES NOT provide financing**
- Slow Money **DOES bring investors and entrepreneurs together**, on the basis of Slow Money principles
- You can present your business or project at Slow Food meeting or event, by signing up online at: <http://slowmoneynorcal.org/submission>

**Who They Serve:**

- People who want to start small food enterprises!
- Projects that fit with the mission of Slow Money

**Get In Touch:**

Slow Money  
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