



CHAPTER FOUR

Decisions for Farmers Market Setup and Operation

Market Rules

Farmers markets are unique because they represent multiple, individual vendors under a single name, location, and organizational identity. Before the first selling day, a farmers market will need to do many of the things that each vendor does for their farm. For example, selecting a name and creating a logo for the market. In this sense, starting a new farmers market is similar to starting a new business.

There are local, state, and federal laws that a farmers market may need to be in compliance with. For example, obtaining the proper permits and licenses. Neglecting to prepare for these issues can have negative consequences for a market.

On the other hand, taking time to work through each of these topics will help prepare the market for many successful selling seasons. This chapter will discuss the following tasks:

- Selecting a name
- Developing reliable contact information
- Hours of operation & selling season
- Choosing a location
- Permits & licenses
- Creating a market layout
- Certified scales
- Money management
- Sales tax

Selecting a Name

Selecting a name for a farmers market is an important task. Keep these points in mind when selecting the name:

- Is it easy to say, spell and repeat?
- Does it clearly explain the purpose of your group?

- Can the name last over several years and withstand trends?

Most markets select a name that includes the location of the market. Here are some examples using this method:

- Huron Farmers Market – Huron, South Dakota
- Falls Park Farmers Market – Falls Park at Sioux Falls, South Dakota
- Sioux Empire Farmers Market – Sioux Falls, South Dakota
- Wagner Area Farmers Market – Wagner, South Dakota

After the market organizers have selected a name for the market, they can begin promoting the name in the community and to potential vendors.

Developing Reliable Contact Information

It is important for the market to have contact information for their organization. Contact information should be listed on flyers, social media sites, websites, and any materials the public may receive from the market. Community members, potential sponsors or vendors may have questions about the market. Therefore, contacting a market organizer should be easy and consistent.

Phone

Consider selecting one or two people who are willing to receive calls and answer questions regarding the market. The person selected could be the market manager. Or, if there is not a market manager, the task could be delegated to a specific person or group.

Mailing Address

Consider setting up a post office box for the mail that relates to the market. This can be a useful long-term solution for mail because the address will remain consistent. Generally, volunteers in market leadership positions only serve for a few years. Then, new volunteers move into leadership roles. Passing a key to the post office box from the retiring officer to the new officer is a simple, effective transition. In contrast, the mail would continue arriving at the retired president's residence and this could be confusing. To avoid this, consider setting up a post office box.

Email Address

Create an email account specific for the market, rather than using an organizer's personal account for official market business. One or two individuals could manage this account. This account could also be transferred from one volunteer to another over time. Furthermore, there are multiple email providers that offer free email accounts.

Conclusion

The market's contact information, including the phone number, mailing address and email address should be included on all promotional and informational items. Consistent, professional contact information will help establish the market as a professional business within the community.

Hours of Operation & Selling Season

Most markets in South Dakota open in May or June and run until October or November. The season schedule will depend on the needs of vendors and the community.

To choose the selling days and schedule, seek input from vendors, community members, and market organizers.

One day per week may be sufficient for new markets in small communities. However, two days can help limit having overripe produce for sale. Keep in mind that too many days could be a challenge for the vendors’ schedules. In some cases, vendors may already be selling at other markets, but would be willing to sell at a new market if the times do not conflict.

The window of time for the market hours should be at least two or three hours at a time. The example schedules in Table 4.1 were collected from markets of varying size in March of 2013. These schedules are subject to change.

Table 4.1 Farmers Market Hours and Selling Season

Market & Approximate City Population	Hours of Operation	Season Opening	Season Closing
DeSmet Farmers Market City Population: 1,000	Thursdays; 3-6 p.m.	1st Thursday after July 4th	Last Thursday in September
Huron Farmers Market City Population: 12,500	Saturdays; 8 a.m.-12 p.m. Tuesdays; 4:30-6:30 p.m.	Last week of May or First of June	First week of October
Black Hills Farmers Market, Rapid City City Population: 68,000	June; Saturdays 9 a.m.-3 p.m. July- Oct; Tues/Thurs/Sat 9 a.m. -3 p.m. and some vendors Thurs 3 -6 p.m.	June	End of October

The most important aspects of the hours of operation and selling season are consistency and promotion. Shoppers should have easy access to this information through a social media site, website, or local newspaper ads throughout the growing season. It is important to make the season opener of the market very public. Remind shoppers and community members when the market is opening for the season.

When selecting the season opening, make certain that there will be vendors at each market date; starting one week and then missing a week can destroy customer loyalty.

Year after year, attempt to utilize the same selling schedule that members of the community are used to attending. Coordinate with local newspapers and other community groups to make sure community members are aware of the opening day and hours of operation. This will help drive sales for the vendors early in the season.

Choosing a Location

As the old saying goes, the most important feature of a new business is, “location, location, location.” While selecting a location may be a simple choice in some communities, it may be difficult for others. Community members, city planners and vendors may have different opinions about proposed locations for the farmers market based on their goals and aspirations for the market and the community.

Consider these questions when selecting or comparing locations:

- Does it provide adequate space for the market?
- Is it on public, private, or tribal land?
- Is there protection from the elements – heat or rain?
- Is the location convenient, centralized, and highly visible?
- Is there enough space for both vendors and customers to park vehicles?
- Can vendors and customers move around freely?
- Is there a good, solid ground surface for foot traffic?

- Is waste disposal available?
- Is there access to electricity?
- Is there room for growth and expansion?
- Is it clean and safe for customers, especially children?
- Is it handicap accessible?
- Are there restrooms and drinking water nearby?
- Is it easy to find?
- Does it require a zoning permit?
- What liability policies must be purchased to insure it?
- Will security be a problem?
- Is it appropriate for the market season? Example, an indoor location for markets that continue during the winter?
- Are there benches or a space where chairs and tables could be set up for customers to sit?

Examples of Good Locations:

- Public parks
- Blocked-off section of street between local businesses
- Church, community center or hospital parking lots
- Downtown or main street
- Shopping center
- Vacant lots in or near a business district

Securing a Location

Once a location has been selected, an agreement should be secured with the landowner. If the location is privately owned, the market will need to secure a private property agreement with the owner of the property. If the location is publicly owned, the group should talk with the city or county manager to determine the appropriate steps. An Example Farmers Market Lease Agreement is included in the resources section following this chapter.

Permits & Licenses

Each city may have different policies in relation to permits, zoning and licenses for a farmers market location. If the market is going to be held on land that is publicly owned, the market will need to obtain permission from the city.

Markets in South Dakota experienced the following scenarios due to the unique local laws and regulations in their community:

- One market selected a location that was within city limits, but not zoned for selling activity. The farmers market worked with the city to have the location re-zoned for the farmers market.
- One community required each vendor to obtain a “peddler’s license” in order to sell at the farmers market.
- Another community had to be sure that their market was set back from the road a certain number of feet to be within regulations.

These examples show the variety of situations a market may experience. Keep in mind that each community will be different. Determine what, if any, of these situations apply to the market in your community.

Creating a Market Layout

If time allows, visit the site, and make physical markings of each stall and alley location with chalk, cones, or small flags. While designing the layout consider the following:

- The overall layout should provide for a smooth flow of foot traffic
- Vendors should have easy access to their vehicles for loading and unloading produce
- All vendors must be easily accessible by the shoppers
- Alleys should be wide enough to provide for safe, comfortable space between walking consumers
- Parking for customers and vendors should be planned
- It may be necessary to provide obvious barriers between the vendor area and the parking area to keep customers from accidentally parking in a vendor's stall location.

Once the temporary layout has been set up, step back and view the layout from a distance. After creating the layout, consider drawing up a simple map. The map can simply be drawn to scale with a ruler and pen. The map may be helpful to vendors and market management during set-up.

At a smaller market, a map may not be necessary, but it can still be a good idea to practice before the first selling day. Be prepared to make changes to the market layout over time as fine-tuning of the layout takes place and as the market grows.

Certified Scales

At farmers markets, growers have the option to sell produce by weight. If they choose to do so, they will need to meet the South Dakota laws regarding certified scales.

South Dakota Codified Law requires any device used in a commercial transaction to be an approved NTEP (National Type Evaluation Program) device, meet the requirements of the NIST (National Institute of Standards and Technology) Handbook 44, and to be certified and sealed (inspected) by the State of South Dakota Department of Weights and Measures.

This includes countertop scales, typically found at farmers markets.

Inspecting a scale is beneficial to both the vendor and consumer, as it ensures both parties are receiving fair and equitable treatment. For example, consumers want to feel confident they are “getting what they pay for,” while vendors need to know they are not giving away their hard-earned product.

The South Dakota Department of Public Safety – Office of Weights & Measures is the agency that conducts inspections and seals



Weighing produce at the Brookings Farmers Market. SDSU photo by Terry Molengraaf.

the device for legal use within the State of South Dakota. The Office of Weights and Measures does not sell scales but inspects the scales that the vendor purchases; this office can be contacted at (605) 773-3697.

Vendors should purchase a scale with a NTEP certification. This certificate indicates that the scale demonstrated the ability to be properly calibrated and can hold calibration over time. Keep in mind that no device is perfect and must be adjusted periodically. Scales can be purchased off the Internet, from scale companies in South Dakota, or additional locations you may select.

Once a scale has been purchased, it is your responsibility to contact a South Dakota registered scale company to place the device into service. In 2013, there were more than 80 private businesses that were registered to conduct business within the State of South Dakota. A list of these businesses can be found by contacting the state's Weights and Measures Program.

Once the device has been placed into service by a private, registered service agency, a state inspector will include the device into his or her schedule to be sealed. There are inspectors located across the state, who will coordinate with the vendor or marketer to complete the certification process.

Inspectors utilize calibrated weight kits to validate and certify small scales for commercial transactions within the State of South Dakota. Scales are required to be recertified every two years. Scales that measure less than 1,000 pounds cost \$28/scale to inspect and certify. If the scale is out of tolerance (deemed inaccurate) a scale repair service is required by law to fix the scale or a new scale should be purchased.

If a vendor chooses not to sell by weight, other options of sale include, but are not limited to selling by the bag, piece, or bunch or in pint or quart containers.

Money Management

Keeping Business Records

Accurate, up-to-date records are essential. A new farmers market should begin keeping records of their transactions as soon as possible. These records will be important at tax time and if the organization applies for grants.

According to the South Dakota Ready to Work website, "There are two components in a recording and accounting system. The first is bookkeeping, which involves recording income and expenses in journals or in their computer equivalents. The second component is an analysis or "accounting" of the books."

Markets should establish a record keeping system that documents the outcomes of the market and other information that is of value to the Market Association. The process of record keeping should be guided by the following three questions:

- What do we really want to know?
- How much detail do we need to know about it?



Logging sales at the Brookings Farmers Market. SDSU photo by Terry Molengraaf.

- Is it worth the cost of getting it?

As these questions are answered, the type, quantity and quality of the information gathered will become clearer.

Good records provide historical information as well as prescriptive information. For instance, if you keep information about market numbers, a market might find that the customer base surges at one point in the season but lags in another.

This finding may prompt the market to investigate why the drop in customers occurred. Then, they might determine an alternative response to prevent this outcome the following year.

In addition, record keeping can also be beneficial on the following topics:

- Membership dues
- Stall fees
- Respective vendor data (when they were present, their stall location on site)
- Gross sales receipts of the market
- Number of visitors to the market each week during the season

Developing a Budget

Developing a budget for the new organization will take time and planning. First, determine annual costs for permits, licenses, supplies, property maintenance, insurance, advertising, promotion, or other costs. After determining the annual costs, determine the sources of revenue for the market. Vendor dues, stall fees, grants and fundraising are likely the market's main sources of revenue. Finally, determine projected profit for the year.

Preparing for Audits

A formal review or auditing of the financials should occur within the organization for many reasons:

- Check for errors
- Prevent fraud or theft from the account
- Preparation for taxes

It may be necessary to have an outside reviewing of the records for audit purposes. Markets should keep receipts, bank statements, general ledgers, purchase invoices and copies of tax return files for the past three calendar years plus the present year for audit purposes.

Sales Tax

If a vendor plans to sell any kind of tangible personal property (TPP), products delivered electronically, or provide a taxable service, a sales tax license must be obtained. This includes sales in person, at special events, by phone, internet, or catalog. There is no minimum sales amount required before becoming licensed. No fee is charged for a sales tax license.

If a vendor only sells products during a few months of each year, the South Dakota Department of Revenue may issue a temporary sales tax license. In this situation, at the end of the selling season the license is temporarily canceled. If the vendor continues to sell products the next year, he or she must contact the Department to reinstate the license.

If a vendor sells at only one or two events a year, a tax license is not needed. However, vendors are still responsible for collecting and paying sales tax, and may do so on the Special Event Return that will be available at that event. If a form is not provided, please

call 1-800-829-9188. If market managers have several vendors that only sell a few times each season, the manager can contact the SD Dept. of Revenue to obtain Special Event Returns for the vendors.

In addition to sales tax, vendors may also owe a “use” tax. If a vendor purchases any products or services that will not be resold, and sales tax is not paid at the time of purchase, the vendor must pay the state and municipal use tax on the cost of the product, including shipping charges.

Fertilizer sold in quantities of 500 pounds or more in a single sale is exempt when sold for use in growing food on agricultural land. If the purchaser meets these qualifications, they must give the seller a completed Exemption Certificate.

How do vendors apply for a sales tax license?

Vendors can apply for a sales tax license by visiting the SD Dept. of Revenue website, www.dor.sd.gov, and searching for “sales tax license.” If a vendor cannot apply online, please call 1-800-829-9188 for help. If sales are made on an Indian Reservation or in Indian Country, please contact the Tribal Government’s Revenue office for additional license requirements. In some instances, there may be additional permits or licenses needed.

In conclusion, state law requires that each vendor’s tax license be displayed at all market selling days.

Vendor Taxes

As a seller of products and services, it is the responsibility of the seller to collect and remit the following taxes:

- State Sales and Use Tax rate: 4.5%
 - Applies to all taxable sales delivered in South Dakota.
- Municipal Sales and Use Tax rate: varies from 1 to 2%
 - Applies to all taxable sales delivered inside a city that has a municipal tax.
 - Specific municipal rates can be found by contacting the SD Dept. of Revenue.
- Municipal Gross Receipt Tax rate: 1%
 - Prepared food for immediate consumption is subject to the municipal gross receipt tax because the vendor is now considered an eating establishment. This includes any food mixed or heated by the vendor or any item that requires a plate, bowl, or glass to serve. Examples include; coffee, cookies, cupcakes, and sandwiches. Applies to all sales at concession stands or eating places.
 - Food that generally requires further preparation by the consumer, such as cooking, heating, or combining with other food products is not prepared food for immediate consumption.
 - This tax is in addition to the Municipal Sales and Use Tax. Some cities elect to have a Municipal Gross Receipt tax, while others do not apply this tax. The Municipal Gross Receipts Tax may apply to any or all of the following depending on the community: alcoholic beverages; eating establishments; lodging accommodations; and admissions to places of amusement, athletic and cultural events.
 - For more information on prepared foods and taxes, visit this link, <http://>

www.state.sd.us/drr2/businessstax/publications/publications.htm

- Tourism Tax: 1.5%
 - Vendors do not owe tourism tax on products sold at a Farmers Market, unless the market is at a visitor attraction or a spectator event, such as a concert, rodeo, or craft show. In those situations, the vendor would owe the tourism tax.

Market Applicable Taxes

- Stall Fees or Dues
 - If a market collects a fee from their vendors for stalls or dues for market membership, they may owe sales tax on the fees or dues. To determine the tax liability, contact the SD Dept. of Revenue or the Regional Revenue office in the area. The process may be unique for each market situation.
- Entertainment
 - Entertainment, such as musicians, clowns, or DJs, is sometimes provided at a farmers market. If a fee is charged for admission to the entertainment, these funds are subject to state sales tax, municipal sales tax, and municipal gross receipts tax.
 - If no admission is charged, but entertainment is furnished, the fee charged by the entertainer is subject to the state and municipal sales tax but is not subject to the municipal gross receipts tax.

When do taxes not apply?

The municipal tax does not apply when the product is sold and delivered outside of city limits. All sales sold and delivered in South Dakota, but outside city limits are subject to state sales tax.

Tourism Tax does not apply to sales at a Farmers market unless the market is part of a visitor attraction or spectator event.

Sales for Resale: If a vendor has a sales tax license and purchases a product with the intent to resell the item to the end consumer, the product may be purchased without sales and use tax. Vendors must provide the supplier an Exemption Certificate. To obtain an Exemption certification, contact the SD Dept. of Revenue. Suppliers need to keep the Exemption Certificate as documentation for three years.

Who can purchase without tax?

According to South Dakota state law, the sales of products and services to the following entities are exempt from state sales and use tax:

- Tribal governments
- United States government agencies
- State of South Dakota
- Public or municipal corporations of the State of South Dakota
- Municipal fire, volunteer fire, or ambulance departments
- Public schools, including K-12, universities, and technical institutes that are supported by the State of South Dakota or public or municipal corporations of South Dakota.

Government entities, including Tribal Governments, must provide a Certificate of Exemption to the vendor or the vendor must keep documentation to show the purchase

was paid from government funds. Documentation may include a purchase order or a copy of a check.

In South Dakota, churches are not exempt from sales tax. Additionally, sales to tribal members are subject to sales tax, unless they provide an Exemption Certificate.

How do I file?

- Special Event Form
 - After the event, complete the form and send it with payment of taxes due to the Department of Revenue at the address provided on the form.
- Sales Tax License
 - If a vendor has a sales tax license, file by following the directions from the SD Dept. of Revenue. These directions vary by situation. Instructions were explained when the license was originally issued. Depending on how often a vendor sells and the selling season length, the reporting requirement may differ. Vendors will be sent a preprinted return form when it is time to report.

Keep track of all receipts for each location in which sales were made. State and municipal taxes are reported on the same form. When filling out the form, each city has a unique code for their municipal tax rate and for the municipal gross receipts rate. Report receipts from each city under the appropriate codes for that city.

How do I calculate and collect the sales tax?

The sales tax is collected at the time of sale. It may be added to the price of the product. For example, when a product sells for \$5.00, add 6% sales tax for a total of \$5.30.

Or vendors may decide to price products so that the sales tax is included in the price. This can make the process of making change for customers quick and simple. If a vendor decides to use this method post a sign saying, “All prices include sales tax” or “Tax Included.” Then, remember to remove or “back out” the sales tax when filing and paying sales taxes.

Calculation Examples

Example One: ‘State Sales & Use Tax’, ‘Municipal Sales & Use Tax’, and ‘Municipal Gross Receipt Tax’ for city of Pierre

Product sale price: \$100
State Sales and Use Tax: .04
Pierre Municipal Sales Use Tax: .02
Pierre Municipal Gross Receipts Tax: .01
Total Tax Rate: .07 or 7% ($\$100 \times .07 = \7 tax)

Collect \$107 from the customer. Report \$100 on line 1 of the tax return, under the Pierre municipal tax code and the Pierre municipal gross receipts tax code and pay \$7 tax.

Example Two: Tax included in price

If taxes are included in the price, receipts should include the product price and the sales tax. To determine how much to report as sales, remove the sales tax from the receipts.

Product sale price: \$500.00, including sales tax.

(4% state sales tax, plus 2% Pierre municipal sales tax) To remove the 6% tax, divide \$500.00 by 1.06

Taxable receipts = \$471.70

Tax due on \$471.70 at 6% = \$28.30

Collect \$500 from the customer. The vendor should report \$471.70 on line 1 of the tax return and under the Pierre municipal sales tax code and pay \$28.30 tax.

Do not include receipts from nontaxable sales when subtracting tax out of receipts.

Conclusion

Completing many of these tasks for a farmers market will be similar to starting a new business. These details will be important for making the market selling days successful and smooth.

Over time, operational details will change, becoming more refined with each selling season. Considering these details will take time and effort, but the market will enjoy the benefits for many years to come.



Memorandum of Agreement

This agreement is entered into and executed by _____, herein referred to as Lessee, and _____, herein referred to as Lessor, for the purpose of securing a space for Lessee to operate a farmers market on Lessor's property;

Whereas the Market Location, owned by the Lessor, is located at _____.

Whereas the Market Season (the lease period) shall be from _____ until _____ and special market weekends may be scheduled with the consent of both parties;

Whereas the Market Days shall be _____ each week during the Lease Period;

Whereas the Market Hours shall be between the times of _____ and _____;

Whereas the Market Fee, payable by Lessee to Lessor, shall be \$ _____, paid weekly/biweekly/monthly.

Now, therefore, in consideration of the foregoing and mutual covenants and agreements contained herein, the parties have agreed to the following:

Section I: Lessee shall:

- Supply, set up, and take down the equipment used at the market.
- Administrate the financial and record-keeping aspects of running the market.
- Pay the Market Fee in a timely manner.
- Supply personnel to set up, manage, and clean the market area.

Section II: Lessor shall:

- Keep the leased premises reasonably safe.
- Allow access to the Market Location to farmers/vendors, market managers, and to the public. Such access shall be permitted before and after Market Hours for farmers/vendors and market managers to set up and take down the market.
- Permit reasonable adjustments to the Market Season, Market Days, and Market Hours if Lessee chooses to extend or shorten the market season, days, or hours based on weather or other considerations.
- Allow public use of Lessor's dumpsters, restrooms, electrical outlets, and other facilities.

Section III: Lessee and Lessor agree that:

- The term of this agreement shall be _____ year(s), beginning _____ and ending on _____. It may be extended or revised with the consent of both parties.
- Both parties will promote and advertise the market before and during its season, at their discretion.
- Notwithstanding any other provisions of this agreement, if funds anticipated for continued fulfillment of the agreement are, at any time, not forthcoming or insufficient, then both parties shall have the right to amend

or terminate this agreement without penalty by giving the other party not less than thirty (30) days' written notice.

- If either party fails to fulfill its obligations under this agreement in a timely and proper manner or if either party violates any terms of this agreement, the aggrieved party shall have the right to terminate this agreement and withhold further services by giving the other party not less than thirty (30) days written notice.

WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

By: _____ Date: _____

Position & Organization: _____

By: _____ Date: _____

Position & Organization: _____

Source: Harvard Law School Mississippi Delta Project sample lease agreement retrieved from <http://blogs.law.harvard.edu/foodpolicyinitiative/files/2012/02/Legal-Manual-2011-Update-FORMATTED.pdf> on December 5, 2013.