

Doing Business in Washington as a Farmers Market

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Regardless of whether your farmers market is a nonprofit or for profit entity, there are certain legal requirements you will likely need to follow. From the government's perspective, a farmers market is expected to comply with all applicable licenses, taxes, laws, codes, rules and permitting, regardless of how it is incorporated.

Registrations and Licenses

Washington State requires businesses and organizations to register and have certain licenses, as do many cities.

- Washington State Business License information is available from the Department of Revenue: <http://dor.wa.gov/content/doingbusiness/>
- Markets may also need to file an annual report and have a registered agent with Secretary of State: www.sos.wa.gov
- Some nonprofit organizations will also need to register with charity's division: www.sos.wa.gov/charities/
- City Business License. Not all cities require this; check with yours to find out. There is a fairly good list online: <http://bls.dor.wa.gov/citycounty.aspx>
- Federal Employee Identification Number. Like other businesses, most farmers markets need an EIN and must submit federal tax forms.

Governance

All entities require certain documents to operate legally. These documents must be available upon request. Whether a nonprofit or for profit, the Board of Directors is responsible for Meeting Minutes; Maintaining Budgets; and establishing Policies and Procedures. The board is also responsible for creating internal checks and balances to prevent problems and any conflict of interest.

	For Profit	Nonprofit
Organizational Documents	<ul style="list-style-type: none"> ▪ Articles of Incorporation/Bylaws ▪ Who are the shareholders? ▪ Operating Agreements ▪ Resolution 	<ul style="list-style-type: none"> ▪ Articles of Incorporation/Bylaws ▪ Board Member Agreements ▪ Indemnification coverage ▪ Resolutions/Meeting Minutes
Responsibilities	<ul style="list-style-type: none"> ▪ Duty of Loyalty ▪ Duty of Care ▪ Duty of Good Faith 	<ul style="list-style-type: none"> ▪ Duty of Loyalty ▪ Duty of Care ▪ Duty of Good Faith

The Three “D’s”

The main legal responsibilities of a nonprofit board are often summarized in the "three Ds":¹

- **Duty of care:** Board members are expected to actively participate in organizational planning and decision-making and to make sound and informed judgments.
- **Duty of loyalty:** When acting on behalf of the organization, board members must put the interests of the nonprofit before any personal or professional concerns and avoid potential conflicts of interest.
- **Duty of obedience:** Board members must ensure that the organization complies with all applicable federal, state, and local laws and regulations, and that it remains committed to its established mission.

In addition, the board has a fiduciary responsibility to maintain oversight of the market's finances and accountability. Board members must evaluate financial policies, approve annual budgets, and review periodic financial reports to ensure that the organization has the necessary resources to carry out its mission and remain accountable to its donors and the general public.

Limiting Liability

The world is full of potential lawsuits where someone feels aggrieved by the actions of someone else. Unfortunately, farmers markets are not immune to that. Fortunately, there are resources to help boards of farmers markets make sure they have systems and procedures in place to help them make disciplined decisions that make sense and are considered fair. The liability arises when someone perceives a board member, director, staff or volunteers has made a decision that is unfair in some sort of way.

There are several things markets can do to limit their liability.

¹ <http://grantspace.org/tools/knowledge-base/Nonprofit-Management/Boards/legal-duties-of-the-nonprofit-board>

- Farmers markets should have written agreements (e.g., release of liability/waiver) and policies for employees, contractors and volunteers. The market is liable for the acts of its employees, contractors and volunteers.
- Create organizational structures processes with the intent to limit liability in mind.

Clarify and document who can act as agent of organization (i.e. acting in capacity as owner)?
Be sure to sign contracts appropriately. For example, <i>John Smith, Owner/President/Managing Member/Board Member/, WSFMA Association</i>
Maintain separate bank accounts
Keep up with required annual filings with the Secretary of State, any Business Licenses, and local Licenses or Permits. One insider tip is to put it on your calendar.

Your market should also be consider getting insurance for Directors and Officers (D & O), General Liability, Errors and Omissions, and Special Events.

In addition, the board should ensure the market itself has policies and procedures so that vendors, staff and volunteers understand the framework within which they are operating.

Market Day: The market should have general policies and procedures to cover market day operations, decision making and the myriad decisions that can affect a vendor. Most of these should be included in the Market Rules.

Social Media: The market should have a designated person overseeing all social media, including the website. The board should clarify protocols to have in place to ensure appropriate content is displayed online.

Photos: Farmers markets are exciting places to take beautiful photos. If you take photos or have a photographer that takes photos at the market, consider a “Waiver of Use” policy. What about folks who post their pic and tag the market? Do you have a photo release form?

For more information and prior to making any decisions, please consult your professional legal counsel.