

# Insurance Options for Farmers Markets and Vendors

No matter what business you're in there is always risk involved. This is especially true for farmers markets given the physical demands of setting up and breaking down each market day, managing an ever-changing group of independent businesses, community partners, employees, volunteers and shoppers, working with food, participating in federal food programs, and -- let's not forget -- full exposure to the wind, rain and whatever else the day brings. Insurance is one way to protect yourself and your market from these risks. The goal is to minimize your liability, legal fees, and any possible interruption of business or negative publicity.

## Thinking about Risk for Farmers Markets

Sorting through the many types of insurance can be overwhelming, especially if you don't know the technical jargon. Typically, a business starts by doing some sort of "risk assessment." This means thinking about where you may be exposed, prioritizing risk in terms of severity and potential frequency, and deciding what you can do. For farmers markets, a typical risk assessment may evaluate:

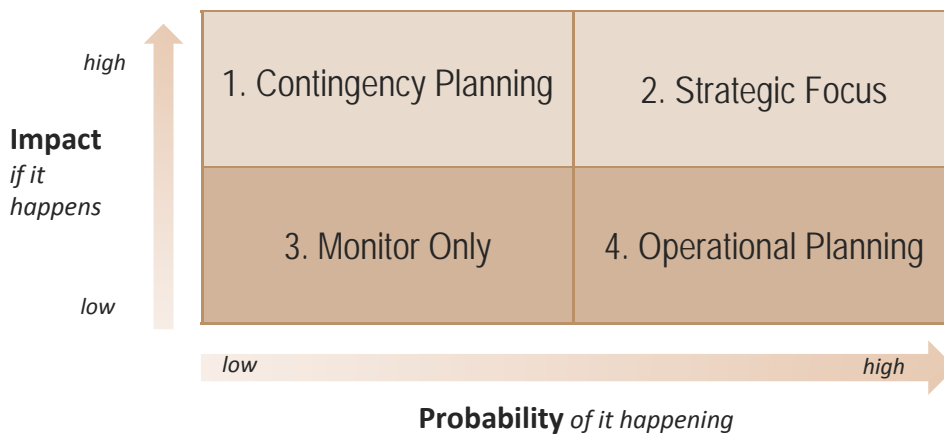
- Physical and structural safety concerns for public, vendors, staff, volunteers and shoppers;
- Ingress, egress and traffic flow;
- Policy and procedure manuals, employee handbooks, vendor rules and regulations;
- Market and board insurance policies;
- Documentation and record-keeping systems;
- Financial impact if new expenses arise or an expected source of funding doesn't come through;
- Security issues and emergency access, response and communication systems;
- Food safety and sampling practices; or public health issues, and
- Cash handling procedures and precautions.

Once you have a sense of your most critical risks, the next step is to decide what to do about them. From a business perspective, there are four ways to handle risk (adapted from Calmes, 2007<sup>1</sup>):

1. **Eliminate the risk.** For example, you might create a rule that doesn't allow vendors to drive into the market until after it closes and all shoppers should have left the market.
2. **Reduce the risk.** For example, the requirement to have canopy weights reduces the risk of a tent flying over and hitting someone or damaging property. Specific expectations are spelled out in vendor agreements and market policies. *It is also key to log or document any inspections, cleaning, and employee or volunteer training you do to proactively reduce your risk.*
3. **Retain the risk.** If there is a low chance of something happening or the cost of insurance is too high, you may choose to simply monitor a risk.
4. **Transfer the risk.** This is where insurance comes in. You are transferring your risk to the insurance company.

Another way to look at risks is to think about their “impact” and “probability.” Ask yourself:

- What are all the possible “risks” that could disrupt my market?
- What would the *impact* be if this happened? High? Low?
- What is the *probability* that this risk will actually happen? High? Low?



Then put each risk in one of the four boxes above<sup>2</sup>:

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<sup>1</sup> Calmes, J. Ed. 2007. “How to Start a Business in Washington,” Second Edition. Entrepreneur Press ([www.entrepreneurpress.com](http://www.entrepreneurpress.com)).

<sup>2</sup> Adapted from the Fred Pryor “Fundamentals of Project Management” (2012).

1. If something big were to happen like an earthquake or if a shopper has a heart attack (high impact), but it is not very likely to happen (low probability), then consider **Contingency Planning**. What would your market do, if X happened? Another example might be: what if your manager quits in July?
2. If something big were to happen like a cold, wet spring that delayed harvest for all your farmers (high impact), and is fairly likely to happen (high probability), then consider making it a **Strategic Focus**. This might mean intentionally connecting farmers with programs that can help them build hoop houses. Or whatever proactive, strategic steps you can take as a market. Another example might be that the price of gas spikes again. In this case, what can you do to help shoppers and vendors get to your market (assuming they are used to driving)?
3. Has anyone ever just shown up at your market with a box of puppies to sell? This might be an example of a situation that isn't a huge deal (low impact), and is not very likely to happen (low probability). In this case, consider setting up a way to simply monitor the situation: **Monitoring Only**.
4. What if a vendor doesn't show up as planned or arrives late (relatively low impact), and is fairly likely to happen (high probability), then consider incorporating this situation/scenario into your **Operational Planning**. For example, you may need a policy in your market rules outlining expectations about vendor attendance and consequences if there is a chronic problem.

Keep in mind that not everyone in your market may have the same "list of risks" or the same assessment of each risk. Doing this exercise together can help share ownership of the plans and get everyone on the same page.

## Insurance for Farmers Markets

Generally, there are two big, broad classifications of insurance: *property-casualty insurance* and *life insurance*. In the context of farmers markets, the focus is on *property-casualty insurance* which includes **property insurance** (fire and other hazards), **workers' compensation**, **auto liability**, **general liability**, **credit insurance** and other various casualty types of insurance (Calmes, 2007).

### General liability insurance

Liability generally occurs through either negligence, statutory law, or assumption by contract (Calmes, 2007). There are all sorts of legal definitions that are well beyond the scope of this overview. General liability insurance is sometimes known as a "slip and fall" policy. This insurance covers incidents that result in physical injuries and/or property damage resulting from regular farmers market activities and incidents caused by negligence on the part of market management. Premiums are typically based on total market revenue, vendor sales, market size and number of days open per year, or a

combination of these factors. Typically, premiums for farmers markets in Washington run from about \$275 to \$650 per year.

Additional insurance policies, such as Workers Compensation (Washington State Department of Labor and Industries), Directors and Officers Liability, Business Owner's and/or special event riders are available to markets. Under certain circumstances, special event riders may be available in conjunction with the general liability policy for an extra charge.



**Get Forms.** *Develop procedures and standardized forms for handling any incident that occurs at your market. This will help staff know how to respond if an incident happens, to collect the needed information at the time, and to create a “paper trail” documenting each step of the response.*

The Michigan Farmers Market Association has an excellent “Emergency Procedures at Farmers Market” workbook with ready-to-go templates: [www.mifma.org/wp-content/uploads/2010/11/Final-Flipchart.pdf](http://www.mifma.org/wp-content/uploads/2010/11/Final-Flipchart.pdf)



**Protect Volunteers.** *Generally speaking, the actions of market volunteers are covered by the market's Commercial General Liability policy. However, they are not covered if they are injured while volunteering. Some coverage for volunteers is available through Workers' Compensation in Washington State. This coverage only applies in certain situations and must be purchased by the market organization. It's important for insurance purposes (and to show community support) to document volunteers and the hours they work by using a “sign-in” sheet for each market day.*

For more information on the state coverage, visit [LNI.wa.gov/claimsins/insurance/learn/volunteers/default.asp](http://LNI.wa.gov/claimsins/insurance/learn/volunteers/default.asp)



**Know Your Site Boundaries.** *Be sure to clearly demark the market site (preferably in writing) with the owner of the market site. This helps you know literally where your responsibility starts and what you need to manage in terms of pot holes, curbs, wet grass, or other potential/perceived safety hazards. At the beginning of the season, review the market-site boundaries with property owner to clarify who is responsible for maintaining what.*

### Insurance requirements for WSFMA member markets

The WSFMA requires all member farmers markets to have commercial general liability (CGL) insurance. They must also provide the WSFMA with a copy of their Liability Certificate and the WSFMA must be named as an Additional Insured on the policy. Liability limits must be equivalent to (or greater than) \$1 million per occurrence, with an annual aggregate limit of \$2 million and the insurance carrier must be AM Best “A” rated.

## Campbell Risk Management

Campbell Risk Management worked with the Farmers Market Coalition to develop a national Farmers Market Liability Insurance policy. This insurance covers regular market day activities and incidents caused by negligence of market management. It is obtained through an admitted insurance company with an AM Best “A” rating. The policy covers up to \$1 million per occurrence, with an annual aggregate limit of \$2 million. Policy premiums for most Washington markets cost between \$275 and \$475 (in 2016).

The Campbell policy generally does not automatically cover special events such as petting zoos, beer or wine gardens, large fundraising events or parades. It also excludes coverage for most injuries to market staff, theft of market property and the actions of a market’s Board of Directors. However, Campbell does offer riders to cover special events and other market needs. To save money, try to purchase your coverage for special events and activities when your market purchases its annual policy. For more information, please call Larry Spilker at (800) 730-7475 Ext. 203 or visit [www.campbellriskmanagement.com](http://www.campbellriskmanagement.com).

## Product liability insurance

Product liability insurance covers the risks related directly to the products a market or a vendor sells, especially food. It provides coverage for the policy holder against claims stemming from products made, sold, or distributed. For markets, this type of insurance is typically included in a commercial general liability policy and known as “Products/Completed Operations Liability.” The completed operations part refers to damage or injury that occurs off premises due to manufacturing defects, failure to warn about usage or product malfunction resulting in harm. Product liability insurance may be advisable if your market sponsors chef demos, chili cook-offs or other similar events and/or sells or gives away products such as market bags, pins or buttons, toys, etc.

## Directors and Officers insurance (D & O)

If a market operates with a board of directors, Directors and Officers Liability Insurance (D & O) is available to protect the board of directors and officers from damages resulting from allegations of wrongful acts, financial mismanagement, mistakes or errors in judgment and negligence in carrying out their duties. D & O coverage is for both non-profit and for-profit organizations. In general, a policy covers legal defense expenses as well as financial damages or settlements. Most directors and officers do not want to risk their own personal assets if the market board is sued. Coverage limits are often set at \$1 million. Typically, annual premiums are based on gross market revenue and typically run from \$400 to \$800 for non-profit organizations. As with other insurance, for-profit organizations typically have significantly more expensive premiums than non-profits. The Farmers Market Coalition has partnered with Campbell Risk Management to offer fact sheets on D and O insurance as well as a policy for FMC member markets. Note: WSFMA member markets receive a FMC membership when they join the WSFMA. For more information, please visit <http://www.campbellriskmanagement.com>

## Employment Practices Liability insurance (EPL)

Since employment practice suits (i.e. harassment and discrimination) are both common and very costly, farmers markets with employees may want to look into Employment Practices Liability (EPL) coverage as well. With increasing diversity the norm across Washington, including and enforcing strong written policies prohibiting discrimination and harassment helps create a fair and equitable market environment and minimizes exposure to related claims, as does training and practice in cultural competency.

### Hold Harmless & Indemnity Agreements

“Hold harmless agreements” are where one party assumes the liability inherent in a situation, thereby relieving the other party of responsibility. Hold harmless agreements can be written in favor of one party or another, or they can state neutrality between parties. An “indemnity agreement” spells out the compensation or reimbursement for loss or damage that another party might suffer.

In the farmers market world, claims can be made against a market or market manager for a third party’s alleged actions or harm caused.

For example, a claimant can assert that market management was negligent in allowing a vendor to sell a bad product, for his/her failure to secure a canopy properly or to cover an electrical cord running through their booth.

Requiring vendors to sign a hold harmless agreement as part of their vendor application can help to shift the cost of legal defense in such a situation to the vendor’s liability insurance policy (if they have one).

#### Sample Hold Harmless Agreement

from **Mercer Island Farmers Market** (MIFM) vendor application, 2011

*By signing below, Vendor agrees to defend, indemnify, keep and hold harmless the Mercer Island Farmers Market, MIFM Board of Directors, MIFM Manager, and FarmCity Alliance, their agents and representatives from and against, any and all claims and demands, whether for injuries to persons, loss of life, or damage to property, on or off the premises, arising out of the use or occupancy of the premises by Vendor. Vendor further agrees to defend, indemnify, and save harmless the City of Mercer Island, its appointed elective officers and employees, from and against all loss of expense, including but not limited to judgments, settlements, attorney’s fees and costs by reason of any and all claims and demands upon the City of Mercer Island, its elected or appointed officials or employees directly or indirectly arising out of the permit issued for the Mercer Island Farmers Market. It is further provided that no liability shall attach to the City of Mercer Island, by reason of issuing the Permit for the MIFM.*

Consider adding language in your market policies, rules and vendor applications that explicitly says discrimination and harassment will not be tolerated and follow through with fair and equitable treatment of employees, vendors and customers.

## Insurance for Farmers Market Vendors

All farmers market vendors should consider finding a way to be covered by both commercial general liability and product liability insurance for their farmers market activities. If a vendor or vendor's product is alleged to have injured a "person or property" at the farmers market, the vendor will be responsible for his or her legal defense and any claim.

Currently, most farmers markets in Washington require their vendors to carry general liability insurance. In these cases, the market also requires that the farmers market is listed as an "additional insured" on the vendor's policy. The market needs to be listed as an additional insured on the vendor's policy because the market will most likely be directly affected by any claim against a vendor. If the farmers market is listed as an additional insured, then the vendor's policy should cover any legal and other expenses.

Currently, most farmers markets in Washington do not require their vendors to carry product liability insurance. However, many markets are adding this requirement as public concern about food safety and other issues grow. The good news is that Campbell's vendor liability insurance policy includes both commercial general and product liability coverage.



*Should Farmers Market Vendors Carry Product Liability Insurance? Why should you care?* by Cookson Beecher, November 20, 2012, in Food Safety News.

<http://www.foodsafetynews.com>

Unfortunately, requiring vendors to carry insurance may mean some vendors cannot afford to participate in the farmers market. This is a hard decision to make as a market. Farmers market organizations typically don't want to negatively impact a vendor's business. However, the market also needs to be responsible to the whole market entity and manage the risk for the organization so that the market doesn't run into financial trouble, especially in today's litigious environment.

### Commercial general liability insurance for vendors

The commercial general liability (CGL) insurance typically covers the vendor for any real or perceived harm done to people or property at the farmers market. This may include having his or her tent blow over on a vehicle (or another vendor), a display malfunction that lands on a shopper, "trip and fall" incidents, or any other type of general accident that can potentially damage property or injure someone at the market. The industry standard for a general liability policy typically starts at \$1 million; however, some markets allow lower minimums for certain vendor types. Unfortunately, the risk is for all types of vendors, regardless of what they are selling.



If a vendor already has another form of general liability insurance, he or she should check to be sure it covers their business activities *at the farmers market*. Typically, a home owner's policy will not insure off-site activities. So, once the vendor leaves the curb of his or her house, they may no longer be covered by that insurance policy. The same principle may apply to farm policies also. The key is to check the details of the general liability policy to make sure it includes business activities at the farmers market. If not, it may need to be added.

### Product liability insurance for vendors

Product liability insures vendors from any claim made against them on the basis of their product. Typically, we are trained to think that the primary risk is someone getting a food borne illnesses after eating a vendor's product. However, the claim could be an allergic reaction to a health care product, or a small piece of jewelry being swallowed, or any number of scenarios. The possible perceptions of harm caused by vendors' products are seemingly endless.

### Insurance options for vendors

Product liability insurance is sometimes included in or added to a business policy. As with the CGL, the key for vendors is to make sure their insurance policies cover their business activities at the farmers market. Note that underwriters may exclude products from specific policies if they are not comfortable insuring them.

**Campbell Risk Management** has worked closely with the national Farmers Market Coalition to develop a National Farmers Market Vendor Liability Insurance Program. It provides \$1,000,000 per occurrence in *both* commercial *and* product liability coverage with no deductible and a \$2,000,000 annual aggregate limit. Premiums typically run from \$275 to \$425 per policy year, depending on gross annual farmers market sales. The policy includes coverage for all farmers markets at which a vendor sells and automatically covers the market as an additional insured (for no extra charge). For more information, please see: <http://www.campbellriskmanagement.com>



*It is critically important for both markets and vendors that farmers markets maintain and enforce policies that require applicable vendor licensing and permitting and that vendors follow them. Insurance coverage may be voided if a vendor is not appropriately licensed and permitted to operate his or her farmers market business.*

Be safe! And be sure to consult with your insurance and legal professionals when making decisions for your farmers market.