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KANSAS FARMERS MARKETS

# A Guide to Operating Farmers Markets in Kansas

Interest in farmers markets is growing across Kansas, with the number of these markets increasing more than four-fold in the past two decades. The growth of farmers markets is closely tied to community efforts to support local producers (sources of fresh, local, and healthy foods) and grow local economies. The resources included in this guide provide direction to local communities seeking to support the development, growth, and success of local farmers markets in Kansas.

## Why is this information important?

Certain laws and policies may strengthen and encourage the operation of farmers markets within a Kansas community, while others can burden or hinder the success of a market. As the needs of each farmers market vary based on the community's needs, there is not a one-size-fits all approach to operating a farmers market or implementing local ordinances impacting these markets. Understanding the regulatory environment of a community's market can help identify potential policy changes or empower a community to anticipate the needs of a new or existing market.



This fact sheet is part of a series funded by the Kansas Health Foundation to increase the availability of healthy foods in Kansas.



## What is this?

This resource packet provides a guide for those interested in enhancing and supporting the growth and vitality of farmers markets throughout Kansas.

These resources can be used by Kansas communities, local governments, and state regulators to support and promote farmers markets throughout Kansas.

These resources include:

- **State Laws Impacting Farmers Markets in Kansas:** A brief discussion of specific Kansas state laws and regulations that may impact specific aspects of a particular market or vendor;
- **Local Government Regulation of Farmers Markets in Kansas:** A guide for communities and government bodies on local laws impacting farmers markets;

- **Farmers Market Vendor and Market Rules:** A guide of considerations available to individual farmers markets in drafting their own internal rules; and
- **Organizational Structure of a Farmers' Market:** A discussion on the benefits of the Central Registration of Kansas Farmers Markets, non-profit status in Kansas, and potential tax exemptions available to farmers markets.

These resources can be used individually or collectively, depending on the needs of the specific community or farmers market. Policy considerations - at the state and local level - may impact a farmers market. As a result, these resources cross-reference each other to show the relationship between state, local, and market considerations as follows:

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Policy/Legal Area Identified</b> — RELATED QUESTIONS			
■ Kansas state law, local law, and market rules may all impact the identified area.			
■ Market rules may impact the identified area.			
■ Local law and market rules may impact the identified area.			
■ Kansas state law may impact the identified area.			
■ Local law may impact the identified area.			
■ Local law and state law may impact the identified area.			
■ State law and and market rules may impact the identified area.			

## Who should use this?

- Those involved in the operations of farmers markets, including:
  - Market managers, farmers market board members, and market vendors.
- Those involved in regulating farmers markets, including:
  - City administrators, city/county employees, policy makers, and county managers.
- Community members and organizations interested in increasing access to healthy food or economic growth through farmers markets.

## How should this information be used?

This information provides a general guide, recognizing that each community will need to evaluate how best to support its community farmers market. These resources can be used as a guide to navigate different considerations impacting a specific market. The resources often pose questions in order to provide a foundation to gather information about a community farmers market and identify issues worth discussing and evaluating through conversations with local government, farmers market management, or individual vendors.

The information is organized to indicate the potential impact local governance, state governance, and vendor and market rules may have on the specific issue or question identified.

## What is the source of this information?

The information discussed in these resources was obtained from Kansas state law, local Kansas municipal ordinances, or existing vendor and market rules. Several municipal codes were reviewed and analyzed in regards to how the local law may impact a local farmers market.

Further, several market and vendor rules were reviewed and analyzed in a similar manner.

## What should happen next?

These resources provide a comprehensive overview of the regulatory and operational landscape of community farmers markets in Kansas. Use this information to identify strengths and weaknesses of an individual market and determine appropriate next steps to develop new markets or strengthen and support existing markets.

- For questions regarding state law, please visit the websites of the [Kansas Department of Agriculture](#) and the [Kansas State Legislature](#).
- For questions regarding licensing, please contact the specific municipality's local planning and zoning department or local licensing administrator. For specific questions about a community's laws, please see the municipal code for that city or county.
- For questions regarding the development of vendor and market rules, please contact a market's manager or board.

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The Public Health Law Center thanks research assistants Michelle Hersh and Anna Ayers Looby for their assistance in conducting background research and developing these resources.



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# State Laws Impacting Farmers Markets in Kansas

State laws can impact what happens to food as it travels from the farm to a consumer shopping at a farmers market in Kansas. From the State Legislature to the Kansas Department of Agriculture, several state government bodies have a role in creating policy that will impact the ease, affordability, and quality of products eventually reaching the consumers. It may be intimidating to consider how these state laws may impact your farmers market. Understanding how state laws impact a farmers market will help ensure that your community farmers market follows state law and optimizes state programs promoting farmers markets, while also making your market a safe place for vendors and customers.



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## What is this?

This resource identifies key Kansas state laws that may impact local farmers markets. In the following chart, please note that not every state law impacting farmer's markets is included. The left-hand side of the chart summarizes the general content of the specific law listed; the right-hand side provides the legal citation. This document is meant to be used as a companion piece to "Local Government Regulation of Farmers Markets in Kansas" and "Farmers' Market Vendor and Market Rules."

## What to do next?

Review the laws in the chart. For the actual regulatory language, please visit the [Kansas Legislature website](#). The Kansas Department of Agriculture also has several resources addressing different state laws impacting farmers markets, available at [their website](#).

## Kansas State Law Impacting Farmers Markets

### FARMERS' MARKET STRUCTURE AND GOVERNANCE

#### Central farmers market registry

Farmers' market organizations may register with the Central Registration to receive state assistance in promoting their markets.

K.S.A. 2-3803 "Central registration of farmers markets; authority of secretary."

#### Insurance and liability

The legislature has created specific liability protections for farmers markets participating in the Central Registration.

K.S.A. 2-3804 "Buying or selling at registered farmers markets' assumption of risk; limitations on liability."

#### Taxes

- Some non-profit organizations are subject to different tax implications.
- Retail sales tax set at 6.15%.
- Local governments may increase the retail sales tax rate.
- Vendors are responsible for collecting sales tax and liable for payment of the uncollected tax.

K.S.A. 79-3606 "Exempt Sales"; see also I.R.C. 501 "Exemption from tax on corporations, certain trusts, etc."

K.S.A. 79-3603 "Retailers' sales tax imposed; rate."

See "Local Sales Tax Information — Quarterly Updates," Kansas Department of Revenue, <http://ksrevenue.org/salesratechanges.html>.

K.A.R. 92-19-61a "Retailers responsibility to collect sales tax; presumption of taxability."

#### Administration of food stamp benefits and EBT

Indicates that state of Kansas will assist in implementing federal social welfare programs.

K.S.A. 75-5364 "Electronic funds transfer remittance plan for cash, food stamp and medical assistance; approval; implementation."

#### Behavior of food handlers and employees

- Food handlers may only eat or use tobacco in designated areas.
- No pets near food processing and consumption.
- Employee health.

K.A.R. 4-28-8 "Adoption of Kansas Food Code" (hereinafter Kansas Food Code).  
 Kansas Food Code at 2-401.11 "Eating, Drinking, or Using Tobacco."  
 Kansas Food Code at 2-403.11 "Handling Prohibition"; 6-501.115 "Prohibiting Animals" (exceptions for patrol dogs, service animals, and in the common dining areas of instructional care facilities such as nursing homes, group homes, etc.).  
 Kansas Food Code at 2-2 "Employee Health."

#### Kansas Indoor Clean Air Act

- Prohibits smoking in enclosed public places, including food service establishments and public buildings.
- Grants municipalities and employers the power to create more restrictive laws and policies.

K.S.A. 21-6109 through 21-6116

### FOOD ESTABLISHMENTS AND FOOD PROCESSORS

#### Does not include establishments selling whole fruit, vegetables, or nuts

Kansas Food Code at 1-201.10 "Statement of Application and Listing of Terms."

#### Food establishments are regulated by state Food Code

K.A.R. 4-28-8 "Adoption of Kansas food code."

#### Food establishments require a license to operate

See Food Safety Licenses, Kansas Department of Agriculture, <http://agriculture.ks.gov/divisions-programs/food-safety-lodging/food-safety-licenses>.

#### Food establishments are inspected by the KDA

K.S.A. 65-688 "Retail food establishments and food processing plants; inspection fees; rules and regulations;" see also Kansas Food Code at 8-4 "Inspection and Correction of Violations."

FOOD ESTABLISHMENTS AND FOOD PROCESSORS	
<p><b>Sampling</b></p> <p>A person who provides food samples, without charge, to promote, advertise or complement the sale of food or associated food preparation equipment does not need a license.</p>	K.S.A. 65-689 "Retail food establishments and food processing plants; License requirements".
<p><b>Transportation of the food to farmers market</b></p>	K.A.R. 4-28-32 "Vehicles used in transportation."
<p><b>Food storage</b></p>	Kansas Food Code at 3-302.12 "Food Storage Containers, Identified with Common Name of Food"; 3-305.11 "Food Storage."
<p><b>Temperatures of food</b></p>	Kansas Food Code at 3-202.11 "Temperature."
<p><b>No home-made food goods allowed for sale (except jams and jellies)</b></p>	Kansas Food Code at 3-201.11 "Compliance with Food Laws;" <i>see also</i> Food Safety for Kansas Farmers Market Vendors: Regulations and Best Practices, <a href="http://www.ksre.ksu.edu/bookstore/pubs/MF3138.pdf">http://www.ksre.ksu.edu/bookstore/pubs/MF3138.pdf</a> .
FOOD PRODUCTS FOR SALE TO PUBLIC	
<p><b>The sale of food and food products</b></p> <ul style="list-style-type: none"> <li>■ Labeling and marking.</li> <li>■ Packaging.</li> <li>■ Subject to weights and measures law.</li> </ul>	<p>Kansas Food Code at 3-601 "Accurate Representation", 3-602 "Labeling;" 3-604 "Consumer Advisory"; <i>see also</i> 21 C.F.R. 131-169 "Food Standards."</p> <p>Kansas Food Code at 3-302.11 "Packaged and Unpackaged Food — Separation, Packaging, and Segregation."</p> <p><i>See</i> Weights and Measures, Kansas Department of Agriculture, <a href="http://agriculture.ks.gov/divisions-programs/weight-measures">http://agriculture.ks.gov/divisions-programs/weight-measures</a> ("Essentially, all consumer goods are subject, in one way or another, to the weights and measures law").</p>
<p><b>Display of food</b></p>	Kansas Food Code at 3-306.11 "Food Display."
<p><b>Food storage</b></p>	Kansas Food Code at 3-305.11 "Food storage."
<p><b>The sale of meat and poultry</b></p> <ul style="list-style-type: none"> <li>■ Labeling and marking.</li> <li>■ Inspections.</li> </ul>	<p>Kansas Food Code at 3-201.11 "Compliance with Food Law;" <i>see also</i> 9 C.F.R. 317.2(1) "Labels," 9 C.F.R. 381.125(b) "Special handling label requirements."</p> <p>K.S.A. 65-6a30 "Meat and poultry inspection program established; personnel; inspection duties; rules and regulations;" <i>see also</i> 21 U.S.C.A. § 606. "Inspection and labeling of meat food products."</p>
<p><b>The sale of eggs</b></p> <ul style="list-style-type: none"> <li>■ A license is required for some larger producers and sellers of eggs.</li> <li>■ Rules governing the standard size and quality of graded eggs.</li> </ul>	<p>K.S.A. 2-2501 "Kansas Egg Law."</p> <p>K.S.A. 2-2508 "Licensure of place of business, fee, exemptions; record retention;" <i>see also</i> "Egg Fact Sheet for Farmers Market" <a href="http://agriculture.uat.ks.gov/docs/default-source/rc-food-safety/egg_factsheet_farmersmarkets2006.pdf?sfvrsn=2">http://agriculture.uat.ks.gov/docs/default-source/rc-food-safety/egg_factsheet_farmersmarkets2006.pdf?sfvrsn=2</a>; "Application for Egg License," Kansas Department of Agriculture, <a href="http://agriculture.uat.ks.gov/docs/default-source/rc-food-safety/egg_factsheet_farmersmarkets2006.pdf?sfvrsn=2">http://agriculture.uat.ks.gov/docs/default-source/rc-food-safety/egg_factsheet_farmersmarkets2006.pdf?sfvrsn=2</a>.</p>
<p><b>The sale of wine</b></p> <p>A license is required and a tax is administered for those interested in selling table wine at farmers markets.</p>	<p>K.A.R. 14-11-24 "Bona fide farmers market sales permit."</p> <p>K.S.A. 41-308a "Farm winery license; authority of licensee, percentage of Kansas products."</p> <p>K.A.R. 14-11-29 "Record retention; reporting requirements."</p>

FOOD PRODUCTS FOR SALE TO PUBLIC	
<p><b>License &amp; fees</b></p> <p>A city may require a producer or grower engaged in the sale of agricultural, farm, garden, or aquacultural products grown by such growers within Kansas to obtain a peddler’s, vendor’s, or transient merchant license.</p> <p>No city may impose a fee.</p>	<p>K.S.A. 12-1617 “Farm and aquaculture products; peddler’s license or permit; fee.”</p>
FOOD SAFETY AND INSPECTIONS	
<p><b>Food establishments and food processing plants</b></p> <ul style="list-style-type: none"> <li>■ A license required.</li> <li>■ Certified kitchens are required.</li> <li>■ KDA is responsible for all licensing, inspection, and enforcement.</li> </ul>	<p>Kansas Food Code at 8-301.11 “Prerequisite for Operation.”</p> <p>Kansas Food Code at 2-101.11 “Assignment;” <i>see also</i> “Food Safety Licenses,” KDA, <a href="http://agriculture.ks.gov/divisions-programs/food-safety-lodging/food-safety-licenses">http://agriculture.ks.gov/divisions-programs/food-safety-lodging/food-safety-licenses</a>.</p> <p>Kansas Food Code at 2-102.11 “Demonstration.”</p> <p>K.S.A. 74-560 “Kansas department of agriculture; creation; appointment of secretary of agriculture; annual public information meeting.”</p>
<p><b>Inspection and enforcement of violations</b></p> <ul style="list-style-type: none"> <li>■ Food establishments.</li> <li>■ Meat and poultry.</li> </ul>	<p>K.S.A. 65-688 “Retail food establishments and food processing plants; inspection fees; rules and regulations;” <i>see also</i> Kansas Food Code at 8-4 “Inspection and Correction of Violations.”</p> <p>K.S.A. 65-674 “Free access to establishments and vehicles for inspections and samples.”</p> <p>K.S.A. 65-6a30 “Meat and poultry inspection program established; personnel; inspection duties; rules and regulations;” <i>see also</i> 21 U.S.C.A. § 606. “Inspection and labeling of meat food products.”</p>
<p><b>Sanitation and cleanliness</b></p>	<p>Kansas Food Code at 7-204.12 “Sanitizers, Criteria;” 5-202.12 “Handwashing Sink, Installation.”</p>
<p><b>Exotic game &amp; inspection</b></p> <p><b>Sale of exotic game animals (reindeer, elk, deer, antelope, water buffalo, or bison)</b></p> <p>Voluntary inspection administered by USDA.</p>	<p>K.S.A. 47-1832 “Animal health commissioner to establish rules and regulations on farm and exotic animals.”</p> <p>9 C.F.R. 352 “Exotic Animals and Horses; Voluntary Inspection.”</p>

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KANSAS FARMERS' MARKETS

# Local Government Regulation of Farmers Markets in Kansas

The growth of farmers markets in Kansas is closely tied to community efforts to support local producers and grow local economies, while also providing an important source of fresh, local, and healthy foods. Understanding the laws and policies impacting farmers markets is critical to ensure market success and vitality.

Local governments regulate farmers markets in different ways, depending on the needs of their communities. Some local governments use very specific language and regulatory provisions to address the unique attributes of farmers markets, while others include farmers markets in broader regulatory language, regulating farmers markets in the same way that other types of food establishments or businesses are regulated. Notably, certain laws and regulations may strengthen and encourage the operation of farmers markets within a certain community, while others burden or hinder the prosperity of farmers markets.

## What is this?

This resource provides a guide for those interested in working with local Kansas governments to use local laws to enhance and support the growth and vitality of local farmers markets. Please consider the questions posed in the guide in order to understand how to

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move forward and develop, refine, and enhance your community’s farmers market.

**Who should use this?**

The information provided below is meant as a general guide, recognizing that each community will need to evaluate how best to support its farmers market based on its unique local and legal context. Use the questions below as a way to gather information about your farmers market. The chart, below, identifies the relationship between state and local laws and market rules for each issue presented and provides questions to guide an assessment of how local regulation may impact a local farmers market. The following list shows a range of ways local governments may regulate

farmers markets. See attached “Farmers’ Market Vendor and Market Rules” and “State Laws Impacting Farmers Markets in Kansas” for further information on any questions regarding state law or internal rules.

**What should happen next?**

Please use this resource as a worksheet by answering each question to the best of your ability. The goal is to identify needs and areas of strengths and weaknesses in both your community farmers market and local regulatory landscape. If you have questions or concerns about the local laws in your community, please see your municipal code. If you are interested in making policy changes in your community, follow up with your local elected representative or planning/zoning department.

**Local Regulations Impacting Farmers Markets in Kansas**

The areas listed below were identified through a review of city and county municipal codes in Kansas. This analysis found that, in addition to local ordinances, state laws impact some issues related to these markets; while other considerations are addressed by the markets’ own policies.

Use this key to identify which state and local laws or market rules may impact a market’s operation.

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Farmers’ market structure and governance</b>			
Who is the operator?			
<ul style="list-style-type: none"> <li>Is it the local government or a private organization?</li> </ul>			
How is the farmers market governed?			
<ul style="list-style-type: none"> <li>By a board? If so, what are the board’s responsibilities?</li> <li>By a market coordinator? If so, what are the market coordinator’s responsibilities?</li> </ul>			
Who owns the property on which the farmers market operates?			
<ul style="list-style-type: none"> <li>Is the land public or private?</li> <li>If the market does not own the land, is there a formal contract between the parties granting the market permission to use the land?                             <ul style="list-style-type: none"> <li>Memorandum of understanding (MOU)? Lease?</li> <li>How long does the contract last?</li> </ul> </li> </ul>			
Is the farmers market incorporated as a non-profit organization?			
Has the farmers market been added to the Central Registration of Kansas Farmers Markets?			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Farmers' market structure and governance</b> <i>(continued)</i>			
Does the farmers market have formal vendor laws? By-laws? Articles of incorporation?			
Who can be a vendor?			
<ul style="list-style-type: none"> <li>■ How are vendors chosen?</li> </ul>			
<ul style="list-style-type: none"> <li>– Are there geographic limitations, i.e., distance from the market?</li> </ul>			
<b>Food safety</b>			
Does the local law reference the Kansas Food Code?			
<ul style="list-style-type: none"> <li>■ Does the local law reference a specific Kansas Food Code (1999 or 2012)?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Is there a mechanism in place to ensure the local laws are updated as the state Food Code is updated?</li> </ul>			
Can farmers market vendors sell prepared/processed foods? Beverages?			
<ul style="list-style-type: none"> <li>■ Do all the vendors selling processed foods and/or meat use a certified kitchen?</li> </ul>			
<ul style="list-style-type: none"> <li>■ May vendors sell wine? Alcohol?</li> </ul>			
Any restrictions on the products available for sale? I.e., creams, meats, eggs?			
<ul style="list-style-type: none"> <li>■ Does the local government reiterate the state law that prohibits sale of home-made goods that are potentially hazardous without a food license?</li> </ul>			
Food safety and cleanliness requirements? Possible considerations include:			
<ul style="list-style-type: none"> <li>■ Hand washing stations?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Food sampling?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Prohibition on pets in market?</li> </ul>			
<b>Local licensing, zoning, and operation</b>			
How is "farmers market" defined by local law?			
<ul style="list-style-type: none"> <li>■ Is it a special event? A seasonal, temporary business? Other designated business?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Are there special laws applicable to that categorization?</li> </ul>			
<ul style="list-style-type: none"> <li>– Limitations on how many days the farmers market may operate?</li> </ul>			
<ul style="list-style-type: none"> <li>– Restrictions regarding permanent structures or vendor stand construction?</li> </ul>			
Are there zoning and licensing laws?			
<ul style="list-style-type: none"> <li>■ Signage requirements or laws?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Limitations on operating markets in certain zones?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Fees?</li> </ul>			
<ul style="list-style-type: none"> <li>■ Insurance?</li> </ul>			
<ul style="list-style-type: none"> <li>– Does the farmers market have liability insurance?</li> </ul>			
<ul style="list-style-type: none"> <li>– Does the local government require liability insurance?</li> </ul>			
<ul style="list-style-type: none"> <li>– For the farmers market? For vendors?</li> </ul>			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Local licensing, zoning, and operation (continued)</b>			
– Indemnification of the government for injuries resulting from market activities?			
■ Hours of operation?			
■ Odors, pollution requirements?			
■ Parking requirements?			
■ Emergency and public safety planning?			
■ Do the vendors need licenses to operate?			
■ A restriction on where the farmers market can be held — indoors or outdoors?			
Is there a specified application or application process for approval of a farmers market?			
■ Is there a public approval/comment process for reviewing farmers market applications?			
■ Is there any appeal process if an application is denied?			
■ Background check required?			
Who is responsible for issuing licenses?			
■ License to operate — City clerk? Planning department?			
Who is responsible for inspecting the site? Possible considerations include:			
■ Sanitation and safety?			
■ Accessibility? Possible considerations include:			
– Can a wheelchair use the space?			
– Can an emergency vehicle access the space?			
Smoke-free and tobacco-free considerations:			
■ Restrict the use of tobacco at farmers markets			
■ Restrict smoking at market (see sample ordinance language from <a href="#">Americans for Nonsmokers' Rights</a> )			
■ Restrict the sale of tobacco products at farmers markets			

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# Farmers' Market Vendor and Market Rules

Farmers markets often have handbooks or specific rules for vendors that guide market operation. These requirements, however, vary greatly between different markets, depending on the unique characteristics of a specific market, as well as the needs of the individual vendors and local communities involved.



## What is this?

This assessment of vendor and market rules provides a variety of policies across locations in Kansas, including urban and rural communities, as well as both private and public markets. This resource provides a checklist and guide for those interested in working with local Kansas communities to establish a new market or support the development of an existing farmers market.

## How should this information be used?

This information provides a general guide to the different operational rules a farmers market might want to consider for the market, recognizing that each community will need to evaluate how best to support its markets based on its own unique local and legal context. This information can be used to facilitate a conversation about the current state of a community farmers market and develop potential goals and objectives. Feel free to write answers to

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these questions directly on the document to serve as a template for action. The chart, below, identifies specific areas that could be included in the internal rules a farmers market creates for its operations. See

attached “Local Government Regulation of Farmers Markets in Kansas” and “State Laws Impacting Farmers Markets in Kansas” for further information on any questions regarding state or local law.

## Farmers Markets Vendor and Market Rules

This information was compiled through a review and analysis of several Kansas farmers market handbooks and internal rules. Use this key to identify which state and local laws or market rules may impact a market’s operation.

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Establishing a farmers market</b>			
<b>FEES TO PARTICIPATE</b>			
Is there a single day fee vs a seasonal pass? Discount for seasonal vendors?			
Are there variants in prices, i.e., a sliding scale fee?			
<ul style="list-style-type: none"> <li>■ Corner stall vs middle stall? Discounted second stall price?</li> <li>■ More expensive for prepared food vs produce?</li> <li>■ Are these fees discounted for particular community partnerships?</li> </ul>			
Is there a way for farmers to participate if the fee cannot be met (i.e., volunteering hours)?			
Is there an advertisement fee?			
Is there a fee for electricity?			
<b>FARMERS’ MARKET ORGANIZATIONAL STRUCTURE</b>			
Who composes the organizational team?			
<ul style="list-style-type: none"> <li>■ Market Manager/Coordinator? A Market Board with voting members?</li> <li>■ What is the process for contacting them?</li> </ul>			
Are the vendors voting members (with an annual fee for membership)?			
Does this market want to partner with or incorporate food assistance programs?			
Who owns the property on which the farmers market operates?			
<ul style="list-style-type: none"> <li>■ Is the land public or private?</li> <li>■ If the market does not own the land, is there a formal contract between the parties granting the market permission to use the land?                             <ul style="list-style-type: none"> <li>– MOU? Lease?</li> <li>– How long does the contract last?</li> </ul> </li> </ul>			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>ESTABLISHING A FARMERS' MARKET (continued)</b>			
<b>VENDOR APPLICATION PROCESS</b>			
How are vendors chosen? Is there an application process?			
<ul style="list-style-type: none"> <li>Can the Market Manager refuse vendors in the application process?</li> </ul>			
Where is the vendor application found? To be returned?			
<ul style="list-style-type: none"> <li>Is there a deadline?</li> <li>Who reviews them?</li> <li>What else must be turned in with the application (i.e., fee, sales tax status, proof of insurance)?</li> </ul>			
Are there market guidelines/forms that vendors must sign when applying?			
Do vendors need to reapply annually?			
<b>VENDOR REQUIREMENTS</b>			
Who is eligible to apply/participate as a vendor?			
Only vendors from Kansas? Only vendors from a certain mile radius?			
<ul style="list-style-type: none"> <li>Are vendors required to also be the procurer/grower of the produce/product being sold?</li> </ul>			
Do the vendors need to be over 18 years old?			
Can vendors have a staff?			
<ul style="list-style-type: none"> <li>Are vendors responsible for educating their staff about market regulations?</li> </ul>			
<b>TAXES</b>			
Signage?			
<ul style="list-style-type: none"> <li>Do the vendors need to display a Kansas State retail tax certificate when selling?</li> <li>Do vendors need to display signs indicating "tax included" or "plus tax" at stall?</li> </ul>			
Are vendors required to obtain a sales tax #/ID before being accepted into the market?			
Who is responsible for paying the sales tax for individual vendors?			
<b>INSURANCE</b>			
Is insurance a requirement? Market insurance? Product liability insurance?			
Does proof of insurance need to be submitted to the market?			
Do vendors need to submit proof of car insurance for the vehicles that will be in the market?			
<ul style="list-style-type: none"> <li>Is there a requirement to the cap on the insurance for both Commercial General Liability and Automobile Insurance? I.e., \$250,000?</li> <li>Are these proofs kept on file?</li> </ul>			
<b>INSPECTION</b>			
Is there a regular inspection? How often?			
<ul style="list-style-type: none"> <li>For the farm/place of procurement? Stall? Certified kitchen?</li> </ul>			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Establishing a farmers market — INSPECTION (continued)</b>			
<ul style="list-style-type: none"> <li>To see if following licensing practices?</li> </ul>			
Who inspects?			
Can inspections be unannounced?			
<b>Operating a farmers market</b>			
<b>SET UP, HOURS OF OPERATION, AND MARKET OPENING</b>			
Is this a morning, afternoon, or evening market?			
Does the market just stay open until sellout?			
Do the hours vary with the season and/or day?			
Are there rules around whether a vendor can leave early (i.e., if they have sold out)?			
Is there a bell to signify market opening?			
Are early sales permitted?			
Who is permitted to be in the market before it opens?			
What is the minimum setup time? Maximum?			
Are cars allowed into the market? Can products be sold from a trunk/truck bed?			
Is there a time by which a vendor must show up for the day?			
<ul style="list-style-type: none"> <li>Will vendors be fined if they do not notify the Market Manager of absence?</li> <li>Can their spot be given to a different vendor if they do not show up by certain time?</li> </ul>			
Are there barricades that restrict cars from exiting/entering after the market opens?			
<b>STALL SPACE AND EQUIPMENT</b>			
Are there specific dimensions for the stall space?			
Are the stalls marked or painted?			
Are the spaces assigned or first come, first served?			
How far are stalls permitted to extend out of the stall space?			
What equipment is provided by the market?			
<ul style="list-style-type: none"> <li>Tents? Tables? Displays?</li> <li>Are the tents and displays adequately weighted for the weather conditions?</li> </ul>			
Who is responsible for tear down?			
Are vendors allowed to share stalls?			
<b>VEHICLES</b>			
Are vendor cars allowed to be parked within the market?			
<ul style="list-style-type: none"> <li>Is there a barricade that prevents this during market hours?</li> <li>Can vendors sell out of cars?</li> </ul>			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Operating a farmers market — VEHICLES (continued)</b>			
■ Must cars be clean?			
Is overnight parking allowed?			
Rules regarding the transportation of food or food products?			
<b>SIGNAGE AND LABELING REQUIREMENTS</b>			
Are there requirements that must be met for certain claims?			
■ Homegrown? Organic? Locally purchased?			
Do vendors need to post all prices?			
Label with expiration dates?			
Are vendors required to indicate the origins of their products?			
■ Are vendors willing to share the growing information with market patrons?			
■ Do they have receipts from the sales?			
<b>HOW CAN ITEMS BE SOLD?</b>			
By weight? Volume? Count?			
With price clearly listed?			
■ Can prices be bargained?			
■ Is price fixing allowed?			
Must vendors use official USDA weights and measures?			
<b>WHAT ARE THE RULES ON CLEANLINESS AND SANITATION?</b>			
Who is responsible for the cleanliness and neatness of stall?			
Are there requirements around the storage/display of products?			
■ I.e., does produce need to be kept clean and cool? In a covered container?			
Who is responsible for the removal of trash and waste within the stalls?			
Who provides the trash containers?			
Must produce be "a reasonable distance" above the ground? I.e., 12 inches?			
What are sanitation expectations around preparation area?			
■ I.e. For knives, cutting boards and washing practices?			
What about vendors with communicable disease?			
What are the requirements of hand washing?			
<b>WHAT IS EXPECTED BEHAVIOR?</b>			
Are there regulations around noise or odors?			
Are there regulations around vendors' children? Must they stay in the stall or are they free to roam?			
What restrictions exist for pets in the market?			



	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Operating a farmers market — WHAT IS EXPECTED BEHAVIOR? (continued)</b>			
How can the vendors themselves act?			
<ul style="list-style-type: none"> <li>Restrictions on hawking and/or barking at customers?</li> </ul>			
<ul style="list-style-type: none"> <li>Use of profane language? Inappropriate clothing?</li> </ul>			
<ul style="list-style-type: none"> <li>Interaction with other vendors (i.e., threaten, harass, intimidate, etc.)?</li> </ul>			
Is smoking permitted in the market?			
<ul style="list-style-type: none"> <li>By vendors? In general?</li> </ul>			
<ul style="list-style-type: none"> <li>Any restrictions on other tobacco products?</li> </ul>			
Restrictions around using tobacco products in the market?			
Restrictions around the selling and/or consumption of alcohol within the market?			
Are bikes allowed in the market?			
Rules about discrimination due to race, religion, color, sex, national origin, age, disability, orientation, ancestry, veteran status, or low income?			
<b>WHAT ARE THE RULES AROUND SAMPLING?</b>			
Is sampling permitted? For all foods? Can vendors charge for samples?			
Is there a restriction on the number of times in a calendar year that sampling may occur?			
What are the sanitary rules required for sampling?			
<ul style="list-style-type: none"> <li>Are there certain temperatures? Requirement of shade? Toothpicks?</li> </ul>			
<b>WHO ADDRESSES GRIEVANCES?</b>			
Are they directed to the Market Manager?			
If there is a market board, do they have any role in assuaging complaints?			
Is there a Grievance Form for larger violations? Is there an outlined process for this?			
Is there some type of "3 Strikes" rule for vendors?			
Are there fines for misconduct?			
Who is responsible for litigation brought against the market? Against a vendor?			
<b>MUSIC, WEB RELEASE, AND PHOTOGRAPHS</b>			
Will there be live music at the market?			
<ul style="list-style-type: none"> <li>If so, are vendors required to contribute part of their profit to them?</li> </ul>			
Are vendors permitted to play their own music?			
Are any claims to photographs taken at the market and/or of the vendors waived?			
<ul style="list-style-type: none"> <li>Is this listed in the registration?</li> </ul>			

	STATE LAW MAY HAVE IMPLICATIONS	LOCAL LAW MAY HAVE IMPLICATIONS	MARKET RULES MAY HAVE IMPLICATIONS
<b>Food &amp; product considerations</b>			
<b>WHICH PRODUCTS MAY BE SOLD?</b>			
Is there a required regional restriction? A certain mile radius? Within the county? State?			
Are potentially hazardous products (i.e., eggs, meat, milks, cheeses, etc.) permitted?			
<ul style="list-style-type: none"> <li>What safety requirements must be met for these?</li> </ul>			
Packaging and storage requirements?			
<ul style="list-style-type: none"> <li>Are local food ingredients required to be used within prepared food?</li> <li>Does prepared food follow KDA Rules and Regulations?</li> <li>Does the vendor have a food license for prepared food?</li> <li>Is the maintenance of temperature important for safety?</li> </ul>			
Does the market require a certified kitchen for the production of the prepared food?			
Are sales of live plants and/or animals permitted?			
Are there certain categories of products permitted at the market?			
Are hand-crafted items permissible?			
<ul style="list-style-type: none"> <li>Do they require the use of local supplies? Allotted number of vendors that may sell crafts?</li> </ul>			
Can produce be sold as halves/portions (i.e., full vs halved melon)?			
Does the market allow wholesale and/or certified business?			
Are vendors allowed to sell tobacco products?			
<b>WHAT ABOUT ITEMS NOT PRODUCED BY VENDOR?</b>			
Are they permitted at all? Is there a percent of vendor products or sales that are allowed?			
<ul style="list-style-type: none"> <li>Is it permitted so long as it is not in competition with other vendors' products?</li> </ul>			
Do they need regular approval by the board of directors?			
<b>WHAT LICENSING RULES MUST VENDORS FOLLOW?</b>			
License and/or rules for certain foods? I.e., eggs, meat?			
License and/or rules for processed or baked foods?			
<ul style="list-style-type: none"> <li>Preparation requirements?</li> </ul>			
License and/or rules for live plant sales?			

his resource incorporates information from the rules of the following Kansas farmers markets. The selection

of these specific market rules was based on information provided by the Kansas Department of Agriculture.

Kansas Farmers Markets	City	City Population	County Population
Allen County Farmers Markets	Iola	5,698	13,319
Cottin's Hardware Farmers Markets	Lawrence	89,512	112,864
KCK Green Market	Kansas City	147,268	159,129
Lawrence Farmers Markets	Lawrence	89,512	112,864
Leavenworth Farmers Markets	Leavenworth	35,815	77,739
Medicine River Farmers Markets	Medicine Lodge	2,006	4,861
Overland Park Farmers Markets	Overland Park	178,919	559,913
Shawnee Farmers Markets	City of Shawnee	63,622	559,913
Topeka and Shawnee Public Library Monday Farmers Markets	Topeka	127,939	178,991

*Last updated: May, 2014*

The Public Health Law Center thanks research assistants Michelle Hersh and Anna Ayers Looby for their assistance in conducting background research and developing these resources.



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# Organizational Structure of a Farmers Market

## *Kansas State Registration, Non-Profit Status, & Tax Exemptions*

As farmers markets continue to grow and evolve in Kansas, many markets are considering how to best structure their organization for liability, governance, and tax purposes. The organizational structure of a farmers market impacts how federal, state, and local governments treat that market. This resource provides information on organizational considerations a Kansas farmers market may want to evaluate, including:

- Participating in the Central Registration of Kansas Farmers Markets;
- Applying for Non-Profit Status under Kansas law; and
- Seeking federal and state tax exemptions.

Navigating non-profit status and tax exemptions can be complicated because the rules and outcomes are extremely fact-specific to the organization. The information provided in this resource is merely an introduction to these areas and is not meant to provide in-depth information.



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## The Farmers' Market Promotion Act

### Central Registration of Kansas Farmers' Markets

In 2013, the Kansas Legislature enacted the Farmers' Market Promotion Act to encourage the development and growth of farmers markets across Kansas.<sup>1</sup> Central to this legislation was the creation of a registry of the state's farmers markets, which is maintained by the *From the Land of Kansas* agricultural trademark program within the Kansas Department of Agriculture. Participating in the central registration of Kansas farmers markets connects markets with business and technical assistance, provides access to funding opportunities, and offers limited liability coverage for registered markets. A farmers market operator can voluntarily register a market for free by submitting an application online at [From the Land of Kansas](#).

### Limited Liability Coverage

The Farmers' Market Promotion Act created limited liability coverage for all farmers markets registered in the central registry. The Act declares all individuals at a registered farmers market assume the risk of attending, buying, and selling goods at the market. Further, the Act provides liability protection for the farmers market operator in the event of injury to a participant arising out of the operation of the farmers market. While this limited liability coverage does not protect against all claims, the protection is attractive especially because farmers markets have so many unique characteristics, such as the sale of food and goods, distinct vendors, indoor or outdoor vending, and temporary or seasonal operational practices. Participating with the central registry and capitalizing on the statutory advantages created by the Kansas Legislature may provide important protections and services to farmers markets.

Email [farmersmarkets@kda.ks.gov](mailto:farmersmarkets@kda.ks.gov) with any questions or concerns about the central registration of Kansas farmers markets or liability coverage.

## Non-Profit Status for Kansas Organizations

Kansas farmers markets may be able to benefit from non-profit status under federal and Kansas law if the market meets certain legal requirements.<sup>2</sup> Federal and Kansas law may recognize charity or service organizations as non-profits if the organization uses its revenues to achieve the organization's charitable goals or mission (i.e., maintain the organization and serve the community) rather than distributing profits to owners of the organization.<sup>3</sup> Because non-profits do not have the same economic incentives as other

### Can a farmers market make a profit, but still be a non-profit organization?

Yes! A non-profit organization may make a profit, and should use its financial gain to pay employees and management, as well as fund the operation of the organization. However, non-profits cannot use excess profit to benefit owners. Further, non-profit organizations do not have shareholders. Therefore, a non-profit does not have the same economic incentives motivating its actions as a for-profit corporation and can use its profits to further its mission.

### Can the vendors make a profit?

Yes, vendors are legally separate from the farmers market (i.e., pay their own sales tax) and can make a profit. The farmers market organization and its excess profits are the focus of the non-profit status. Therefore, if the vendors are required to submit a participation fee to the non-profit farmers market, that market would not be able to distribute that profit for a private benefit.

corporations or organizations, non-profits may receive special tax status by the state and federal government and special treatment under the law.<sup>4</sup>

For pre-existing non-profits, some additional considerations may be needed. However, the focus of this resource is organizations yet to receive non-profit status.

### **What does it mean to have non-profit status under Kansas law?**

A non-profit organization is most easily defined by the restrictions on how the organization may distribute excess profits. Specifically, an organization that has received non-profit designation by the Kansas Secretary of State (KSOS) as required by Kansas law may not give financial gains to its members, directors, officers, or other individuals, and may be “mission-driven.”<sup>5</sup> Further, non-profit organizations in Kansas are often considered to have the “greater public” as the organization’s primary stakeholder. In comparison, for-profit corporations distribute excess profits to their shareholders and have legal obligations to seek profit on behalf of those shareholders.

Corporations, associations, and trusts may legally become non-profit organizations if the work of the organization meets specific federal and/or state requirements of serving the greater public good.<sup>6</sup> To be incorporated as a non-profit, a Kansas farmers market must have some level of market governance or structure prior to filing for non-profit status.<sup>7</sup> Notably, most non-profits are incorporated. Further, the federal government does not determine whether an organization is a non-profit under state law, only a state can grant that status. In Kansas, an organization must apply for non-profit status and file the organization’s articles of incorporation and by-laws with the Kansas Secretary of State in order to be granted non-profit status.<sup>8</sup>

### **How to register for non-profit status in Kansas**

- 1 Choose board of directors and “name” for non-profit organization.
- 2 Prepare and file the articles of incorporation with Kansas Secretary of State (KSOS).
  - KSOS has created a standard form for an organization’s articles of incorporation.
  - Declare organization is not authorized to issue stock or have capital stock (K.S.A. 17-6002).
  - Declare conditions of membership (K.S.A. 17-6002).
  - If organization will seek federal tax exemption status under § 501(c)(3), articles of incorporation or by-laws must declare upon resolution, all assets will be distributed for an exempt purpose (i.e., to a public entity).
  - If organization will seek federal tax exemption status under § 501(c)(3), articles of incorporation or by-laws must limit the purposes of the organization to one or more of the exempt purposes under the law (i.e., charitable, educational, scientific) (I.R.C. 501).
- 3 Prepare by-laws.
  - Determine the rights and duties of the director, officers, and members.

### **What are the advantages and disadvantages of a farmers market becoming a non-profit in Kansas?**

There are several advantages to a farmers market becoming a non-profit in Kansas. First, a non-profit organization exists as a legal entity.<sup>9</sup> Non-profit organizations can enter into contracts, apply for grants and funding, and are afforded certain protections.<sup>10</sup> Further, non-profit status provides an additional layer of legitimacy (and even exclusive

eligibility in some cases), particularly when seeking grants, funding, or financial assistance. Finally, non-profit organizations are often eligible for special treatment by the local, state, and federal government or tax exemption (please see discussion below).<sup>11</sup>

At the same time, there may be disadvantages to a farmers market becoming a non-profit in Kansas. Most obviously is the cost and time needed to prepare and file the required documents to the state. Further, in order for an organization to maintain its non-profit status and privileges, the state requires financial reporting. For example, the Kansas Secretary of State requires non-profits to submit an Annual Report.<sup>12</sup> Additionally, non-profits are subject to public scrutiny over its finances — meaning that the organization's finances must be made available to the public for inspection. Lastly, Kansas non-profits are subject to the specific Kansas laws and regulations that govern non-profit organizations.<sup>13</sup> Overall, the organization must determine its short and long term goals before deciding whether to seek non-profit status.

### **How do the articles of incorporation impact the operation of a farmers market as a non-profit organization in Kansas?<sup>14</sup>**

Articles of incorporation that meet the minimum legal standards under Kansas law are an essential component of a farmers market establishing non-profit status in Kansas. (These articles of incorporation are also needed if the market plans to file for federal tax-exempt status under Section 501(c)(3).<sup>15</sup>) The articles of incorporation must be filed with the Kansas Secretary of State to establish non-profit status. The articles of incorporation would generally protect the board of directors or an individual board member from liability for injuries or damages associated with the operation of the incorporated farmers market, unless the board or individual board member knowingly engaged in wrongful misconduct that leads to the injury or damage thereby negating this legal protection.<sup>16</sup> The articles of incorporation do not protect the organization, itself,

from liability for injuries or damages caused by the operation of the farmers market.

## **Tax Exemptions**

Non-profit status and tax exemptions are often spoken about at the same time. That is because many non-profit organizations are exempt from local, state, and federal taxation. However, an organization with non-profit status under state law does not automatically receive federal tax exemption. Therefore, if an organization is interested in becoming a non-profit and seeking tax exemptions, it should draft its articles of incorporation and by-laws in a manner that is consistent with the state and federal requirements. For example, an organization that is filing for non-profit status at the state-level should include the organization's mission and charitable purpose (discussed below) within its articles of incorporation and/or by-laws, which can also be later submitted to the Internal Revenue Service (IRS) as “evidence” that the organization should be exempted under Section 501(c)(3) of the Internal Revenue Code.

### **Federal Income Tax**

*What does 501(c)(3) tax exemption under federal law mean?*

Federal law provides a tax exemption for charitable organizations that meet the requirements included in Section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) tax exemptions are the most common tax exemptions for non-profit organizations. Section 501(c)(3) tax exemptions are granted and governed by the IRS. If an organization is eligible under this section, that organization does not have to pay federal income taxes and is eligible to receive tax-deductible charitable contributions.<sup>17</sup> The federal Internal Revenue Code establishes a list of entities that are exempt from federal tax. Section 501(c)(3) exempts corporations organized and operated



for charitable, scientific, and educational purposes (among others) from having to pay federal taxes.

*Who is eligible for tax exemptions under § 501(c)(3)?*

The IRS requires that an organization be “organized” and “operated” “exclusively for exempt purposes.” Further, none of the organization’s profits may benefit a private interest (this requirement is the same as when an organization seeks to receive non-profit status at the state-level). Lastly, the organization may not be an “action organization” because a different set of rules apply to organizations that engage in political and legislative activities.<sup>18</sup>

Most commonly, organizations apply for § 501(c)(3) tax exemption as a charitable organization,<sup>19</sup> under one of the established “exempt purposes.” The test regarding whether an organization is “organized” and “operated” for a charitable purpose is whether the organization is providing a public benefit (rather than a private benefit).<sup>20</sup>

*Is my non-profit market eligible for tax exemption under § 501(c)(3)?*

Maybe! It is likely that a non-profit farmers market could argue it should be tax exempt under Section 501(c)(3) as an organization organized and operated for a charitable purpose because farmers markets provide a public benefit by establishing an economic marketplace for producers to sell their produce; offering consumers a source for local and quality produce and goods; and enhancing the community.<sup>21</sup>

When requesting federal tax exemption, it is important that the organization’s documents, such as the articles of incorporation, affirm that the organization is “organized and operated for a charitable purpose.” Therefore, in addition to including statements and documents supporting an exempt purpose, the organizing document must also limit an organization’s purposes to just the exempt purpose:

i.e., “Smallville’s Farmers Market is organized exclusively for charitable



purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code...”

Lastly, within the organizing document, the organization should also declare that the organization’s assets will be permanently dedicated to an exempt purpose in the case of dissolution:

i.e., “Upon dissolution of this organization, assets shall be distributed for one or more exempt purpose within the meaning of § 501(c)(3) of the Internal Revenue Code...or shall be distributed to the federal government, or to a state or local government, or for a public purpose.”

*When do most organizations apply for exemption under § 501(c)(3)?*

Most organizations must file a Form 1023 (“Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code”) before the 27th month after which that organization was incorporated or legally formed.<sup>22</sup> An organization that files its application before the “deadline” may be recognized as tax exempt from the date of incorporation or creation, if it meets the exemption requirements. Once an organization has applied, the IRS may seek additional information in order to make its determination.

*What are the advantages and disadvantages of applying for the 501(c)(3) tax exempt status?<sup>23</sup>*

First and foremost, those organizations that qualify for a federal tax exemption under § 501(c)(3) are able to take advantage of funds that would otherwise be paid as federal income tax. Further, this status may help efforts to receive grants or funding, as well as encourage other businesses or organizations to donate to the exempt organization because their donations will be tax deductible.<sup>24</sup> The disadvantages to applying for this exemption are that the application may be costly and time consuming for some organizations.<sup>25</sup> Further,

## How do you file to become tax exempt under federal law?

- 1 Establish farmers market as a trust, corporation, or an association
- 2 Include appropriate provisions/statements in organizing document(s), i.e., articles of incorporation ([Sample IRS Draft](#))
- 3 Receive an Employer ID Number (EID)
- 4 Complete and sign the correct application forms ([Form 1023](#))\* and pay required fee ([Form 8718](#))
- 5 Provide required financial information
- 6 Mail application to IRS

\*As of June 2014, certain organizations may be eligible to file a [Form 1023-EZ](#), a streamlined application with the IRS

(See “Application Process,” Internal Revenue Service, <http://www.irs.gov/Charities-&-Non-Profits/Application-Process>.)

those organizations granted the exemption will be required to keep records and final financial reports each year.<sup>26</sup> Lastly, exempt organizations will be limited in the type of political activity permitted.<sup>27</sup>

## Kansas Sales Tax

There are several types of Kansas state taxes that may be imposed on a farmers market, but this fact sheet will just focus on the Kansas sales tax.

Kansas law declares all retail sales of goods, including food, are considered taxable unless specifically exempt.<sup>28</sup> This means that every sale item purchased by the farmers market organization itself includes a sales tax. Likewise, individuals purchasing items from farmer’s market vendors, must also pay a sales tax on those purchases. The current sales tax rate for Kansas is 6.15% (effective July 1, 2013). Notably, municipalities are also able to establish additional sales tax.<sup>29</sup>

*Will my Non-Profit Farmers Market be eligible for Kansas's Tax Entity Exemption Certificates?*

Probably not. The Kansas Legislature has established an exemption certificate which allows certain organizations to be exempt from paying sales tax when purchasing certain things, such as the exemption from retailers' sales tax of an item at the time of purchase.<sup>30</sup> While Kansas does

exempt several non-profit and 501(c)(3) exempt organizations, it does not grant exemption certificates to all non-profit organizations or all organizations that are exempt from federal income tax under Section 501(c)(3). Further, non-profit 501(c)(3) charities are not listed as organizations exempted by the Kansas Legislature. (See [Kansas Department of Revenue website](#) for more detailed information).

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## Endnotes

- <sup>1</sup> KAN. STAT. ANN. § 2-3801 et seq. (“Kansas Farmers Market promotion Act”).
- <sup>2</sup> See I.R.S., *Exemption Requirements — 501(c)(3) Organizations*, [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations) (last visited May 27, 2014); see also Kansas Office of the Sec’y of State, *Charitable Organizations*, [http://www.kssos.org/business/business\\_charitable.html](http://www.kssos.org/business/business_charitable.html) (last visited May 27, 2014).
- <sup>3</sup> I.R.C. § 501(c) (“Exemption from tax on corporations, certain trusts, etc.”); KAN. STAT. ANN § 17-1760 (“Religious, Charitable, and Other Organizations; Definitions”).
- <sup>4</sup> See I.R.S., *Exemption Requirements — 501(c)(3) Organizations*, [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501(c)(3)-Organizations) (last visited May 27, 2014); Kansas Dep’t of Revenue, *Tax Entity Exemption Certificates*, <http://www.ksrevenue.org/pecentitylearnmore.html> (last visited May 27, 2014).
- <sup>5</sup> See Mod Nonprofit Corp Act § 26 (1964).
- <sup>6</sup> See I.R.S., *Application Process, Internal Revenue Service*, <http://www.irs.gov/Charities-&-Non-Profits/Application-Process> (last visited May 27, 2014) (“For the Internal Revenue Service (the IRS) to recognize an organization’s exemption, the organization must be organized as a trust, a corporation, or an association”).
- <sup>7</sup> See Mod. Corp. Checklist § 25:2 (“Procedures to organize not-for-profit corporation”).
- <sup>8</sup> KAN. STAT. ANN. § 17-1763 (“Definitions”). See also Kansas Office of the Sec’y of State, *Form CN 51-02*, (“Not-For-Profit Corporation Articles of Incorporation”), [http://www.kssos.org/forms/business\\_services/CN.pdf](http://www.kssos.org/forms/business_services/CN.pdf).

- <sup>9</sup> See I.R.S., *Application Process*, <http://www.irs.gov/Charities-&-Non-Profits/Application-Process> (last visited May 27, 2014) (“For the Internal Revenue Service (the IRS) to recognize an organization’s exemption, the organization must be organized as a trust, a corporation, or an association”). Specific legal protections are created for an organization (and sometimes its board of directions) when the organization becomes organized as a trust, corporation, or association.
- <sup>10</sup> *Id.*
- <sup>11</sup> For example, the State of Kansas has declared several types of charitable organizations exempt from paying specific state taxes. See Kansas Dep’t of Revenue, *Tax Entity Exemption Certificates*, <http://www.ksrevenue.org/pecenti-tylearnmore.html>. (last visited May 27, 2014).
- <sup>12</sup> KAN. STAT. ANN. § 17-1764 (“Registration of charitable organizations”); Kansas Office of the Sec’y of State, *Form NP 50* (“Not-for-Profit Corporation Annual Report Instructions”), [https://www.kssos.org/forms/business\\_services/NP.pdf](https://www.kssos.org/forms/business_services/NP.pdf).
- <sup>13</sup> KAN. STAT. ANN. § 17-7504 (“Not-for-profit corporations; annual report; annual report fee”); 17-1760 (“Definitions”); 17-1761 (“Registration of charitable organizations”).  
KAN. ADMIN. REGS. § 81-4-4 (“Registration requirements for not-for-profit issuers”); 92-19-67 (“Sales by corporations, businesses, organizations, and associations organized not-for-profit”).
- <sup>14</sup> KAN. STAT. ANN. § 17-1763 (“Definitions”). See also Kansas Office of the Sec’y of State, *Form CN 51-02*, (“Not-For-Profit Corporation Articles of Incorporation”), [http://www.kssos.org/forms/business\\_services/CN.pdf](http://www.kssos.org/forms/business_services/CN.pdf).
- <sup>15</sup> See I.R.S., *Applying for 501(c)(3) Tax-Exempt Status*, <http://www.irs.gov/pub/irs-pdf/p4220.pdf>.
- <sup>16</sup> 8 Fletcher Cyc. Corp. § 3737 (explaining “Under the Revised Model Business Corporation Act, corporate existence begins when the articles of incorporation are filed. Without such organization, the corporation as such can do no corporate act, can receive no corporate property, and can incur no corporate liability, regardless of the rules governing corporate liability on preorganization contracts after organization under the doctrines of ratification or estoppel, or the rules governing the individual liability of directors, incorporators or promoters on such preorganization contracts.”)
- <sup>17</sup> See I.R.S., *Applying for 501(c)(3) Tax-Exempt Status*, <http://www.irs.gov/pub/irs-pdf/p4220.pdf>.
- <sup>18</sup> See I.R.S., *Political and Lobbying Activities*, <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Political-and-Lobbying-Activities> (last visited May 27, 2014).
- <sup>19</sup> Charitable organization means “any person who engages in the activity of soliciting funds or donations for, or purported to be for, any fraternal, benevolent, social, educational, alumni, historical, humane, public health or other charitable purpose. Charitable organization does not include political parties, political candidates or committees formed in support of political candidates or political parties.” KAN. STAT. ANN. 17-1760 (“Religious, Charitable, and Other Organizations; Definitions”).
- <sup>20</sup> *Northern California Cent. Services, Inc. v. U.S.*, Ct.Cl.1979, 591 F.2d 620, 219 Ct.Cl. 60.
- <sup>21</sup> Similar language utilized by “The Constitution” and “By-Laws” for the Glen Falls Farmers’ Market Association.
- <sup>22</sup> I.R.S., *Applying for 501(c)(3) Tax Exempt Status*, <http://www.irs.gov/pub/irs-pdf/p4220.pdf>.
- <sup>23</sup> See generally, I.R.S., *Tax Information for Charitable Organizations*, <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations> (last visited May 25, 2014).
- <sup>24</sup> I.R.S., *Organizations Eligible to Receive Tax-Deductible Charitable Contributions*, <http://www.irs.gov/Charities-&-Non-Profits/Organizations-Eligible-to-Receive-Tax-Deductible-Charitable-Contributions> (last visited May 27, 2014).
- <sup>25</sup> See generally, I.R.S., *Life Cycle of a Public Charity/Private Foundation*, <http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity-Private-Foundation> (last visited May 27, 2014).
- <sup>26</sup> I.R.S., *Exempt Organizations — Required Filings*, <http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations---Required-Filings> (last visited May 27, 2014).
- <sup>27</sup> I.R.S., *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations) (last visited May 27, 2014).
- <sup>28</sup> KAN. STAT. ANN. § 79-3603 (“Retailers’ sales tax imposed; rate”); 79-3606 (“Exempt sales”).
- <sup>29</sup> KAN. STAT. ANN. § 12-187 (“Countywide and city retailers’ sales taxes; procedures for imposition; election required; rate; use of revenue; validation of certain elections; continuation in effect of certain taxes; authority to imposition; statement of purpose”).
- <sup>30</sup> See Kansas Dep’t of Revenue, Pub KS-1520 (Rev. 12/12), available at <http://www.ksrevenue.org/pdf/pub1520.pdf> (“Kansas Exemption Certifications”).