

Certain rules work for all farmers' markets

By Trina Pilonero

Silver Heights Farm

Farmers' markets come in all sizes, have a multitude of purposes, are organized by many different groups and individuals and serve many different kinds of communities. Without guidance, markets can become highly disorganized and fall apart.

The role of rules is to keep a market intact, define its purpose and make it possible to administer effectively. There are no universal guidelines for "the best" set of rules for every market, but there are some general guidelines that every market can consider for developing and enforcing rules.

Before developing any rules, the organizers of a market need to answer several questions. Why is this market being created? What is the purpose or philosophy of this particular market? Who will benefit from the market? A mission statement for the market is appropriate for this purpose. Not-for-profit groups need to develop a mission statement for legal reasons, including mentioning what will happen to funds if the group disperses. A mission statement simply identifies why the market is being created and who benefits from its existence.

Such a statement should be very simple:

- (This market) is here to serve (this locality) by providing locally grown, fresh, high quality produce and products and to provide an opportunity for local farmers, producers and artisans to have an economic outlet within (this locality).
- (This market) is a showcase for (locally) (regionally) grown food and other farm-related products, providing an alternative marketing opportunity that allows farmers and consumers to interact directly with each other (rather than through a third party).
- (This market) provides the opportunity to preserve the connection between farmer and consumer and to educate consumers about the benefits of preserving local agriculture and the benefits of using locally produced foods.
- (This market) strives to enhance the quality of life of (this community) by creating a social opportunity to gather and interact.
- (This market) further strives to bring more foot traffic to the downtown, providing local merchants the opportunity to strengthen their businesses and keep the downtown economically viable.
- (This market) serves as (name of association) marketplace for excess produce from local gardeners. Local value-added food producers and cottage industries will be provided opportunity to directly interact with consumers in (this neighborhood) as well. Educational programs will be conducted about nutrition on a regular basis.
- The (marketplace) will provide a social outlet for (this community).

Notice that in all of these mission statements both providers and consumers of products are identified. The market organizers should understand whom the market will be serving on the consumer end.

Market rules define more precisely who is eligible to participate as a vendor. Will this market be a producers-only market? Will "carrying" be permitted (re-selling another's products)? Will value-added products be allowed? Will artisans or cottage industries be allowed? Will drop-in vendors be permitted? Will local groups such as churches, not-for-profits and 4-H be permitted to participate on an occasional basis? Will take-home foods be permitted? Will there be entertainment or education? Some markets define what locality the vendors must come from – within a 50-mile radius, within the

county or multi-county area, within the state, within a 3-hour drive, etc. A statement of who qualifies as an eligible vendor must be clear so that enforcement cannot be easily challenged.

Market rules also provide the opportunity to define eligible products.

Some markets are very specific about what produce and products can be sold. Is the market a produce-only market? Can more than one vendor offer the same produce? Are plants (herbs, bedding, landscape) and cut flowers allowed? Will eggs, meat, honey, maple syrup, jams and jellies, baked goods, wine, soaps and cosmetics be allowed? The larger the market, the more important this parameter becomes. A market with three vendors or four vendors needs as much product as possible to remain economically viable. A 20-plus vendor market needs to ensure all vendors have the opportunity to make money without allowing overly intense competition when everyone is selling the same products. So a 20-plus market could benefit from having a value-added aspect beyond produce only.

Market rules need to create certain provisions that address effective operation of the marketplace:

1. Identify the sponsor or organizer of the market.
2. Identify the day-to-day decision maker (market manager) and define that individual's responsibilities.
3. Enumerate the rules for market operation. Agreeing to abide by the market rules should be part of a legally binding agreement between the vendor and the market or rules cannot be enforced. Have the applicant sign an agreement to abide by the rules and regulations in the application process. (See 8 for specific kinds of rules.)
4. Vendor and product eligibility are defined. Carrying rules or producer-only requirements are defined. Other terms should be defined (farmer, other eligible vendors, organic, locality).
5. Location of markets are identified. Set out hours and days of operation.
6. Membership fees to the market are stated. Space fees and payment requirements are stated.
7. The application process needs to be clear-cut. The vendor should know who or what group reviews each application. Are there any privileges extended to prior vendors, such as space assignment or preference in the acceptance process?
8. Guidelines for selling should include signage for the farm and products; posting of prices and pricing guidelines; whether or not pre-market sales are acceptable; whether a vendor can leave early or arrive late on a market day; arrival times for set-up and times for departure; providing vendors own displays; pets in the marketplace; who are acceptable representatives of the vendor at the market; cleanliness of the selling space; quality of the product sold; courtesy toward customers and other vendors and the market manager; deceptive advertising/packaging not permitted; parking; sampling; hawking; smoking; non-attendance and notification of inability to attend; use of legal scales; specific rules for food handling that may not be covered by regulations of the locality or state; participation in FMNP or Food Stamps; allowance for end of market discounting (not recommended); allow producers to buy from other vendors before market opens; and require vendors to comply with local, state and federal regulations and laws.
9. Necessary licensing and permits are to be submitted to the organizers as well as displayed at market. (This fits the regulatory aspect of markets for localities and the state.)
10. Violations of rules and regulations need to be dealt with. Define a clear-cut procedure. Enforce the rules, otherwise the rules become meaningless. Establish how to report violations (how and to whom), and how to notify vendors about the violations (informal spoken, formal

written) and develop a procedure for enforcement (suspension or removal after X number or severity of violations for one or more or all market days, financial penalties). Compliance with rules should be incorporated into the application approval. Can vendors complain about others violating rules? Is there an appeal process?

11. Insurance requirements need to be defined. Does the market itself carry insurance? Is it enough that vendors have farm insurance, or should they also name the market as an additional insured?
12. Are there provisions for changes in ownership of a vendor's farm or business? Are there waiting lists for eligibility (and seniority on such lists)? Is there a seniority list for space assignments?
13. Develop a hold harmless and indemnification clause acceptable to whoever gives the market legal advice. Decide whether the locality should be included. As part of the application process, the vendor should agree that the market organizers and other sponsors are protected from legal and financial liability in accidents and other incidents at the marketplace.
14. Provide for and conduct farm/business inspections to verify that vendors are producing what they are selling. (This is already required by New York state for participating vendors of FMNP.) Decide if a detailed farm plan is necessary for this process. Is there a fee if violations are found with inspection of facilities? Who conducts the inspections?
15. If there is a board of directors or a directing committee for the market organization, how they are "tapped" to serve should be defined. Terms and limitations of offices and types of administrative committees should be defined.

Make a provision for a regular review of rules so that rules remain effective. Rules can be dropped, changed and added as needs present themselves. And keep rules as simple as possible. Complicated rules are confusing, often not understood and hard to enforce if vendors get a headache trying to interpret their meaning. For instance, if absolutely no selling is allowed before market is open, say so. If there are exceptions to selling before market opens, be specific:

Sales before market opens are allowed in the following instances only:

- Sales to other vendors.
- Sales to customers who have placed an order at a prior market and the market manager is notified before the customer is allowed to get the order.
- Sales with market manager approval only.
- Violations to these rules will result in a written notification, which can lead to (suspension, expulsion, tarring-and-feathering, etc.)

Enforcement of a market's rules need to be fair and consistent.

Sullivan County Area Farmers Market has not had a procedure for enforcement until recently. However, the need for enforcement has been present since the very beginning. Vendors tried to sell before the market opened, even though this was not permitted. A tough market manager put a stop to most early sales. Vendors tried to be completely packed up by the official end of a market, when rules required that they have their product displayed until the end of advertised selling hours.

It is discouraging to vendors to keep the wares on display when there are few customers around. But, advertised hours mean that their products should be available to their customers, should they choose to come to market. Vendors are now allowed to consolidate their displays, but complete packing up is allowed only after the market officially closes. Again, a persistent, tough market manager has made the difference. In both cases, early sales and early packing up, verbal warnings have sufficed. Discipline has yet to be a real problem in these areas.

However, SCAFM has had vendors that tried to sell products they misrepresented as grown by them, when the products were actually carried. When faced with a farm inspection, those vendors voluntarily withdrew from the market. A vendor spit tobacco juice into the strolling area of the marketplace. The threat of calling the health department put a stop to that. Another vendor placed baked goods on the ground (market rules require food items to be at least a foot off the ground) and refused to cover other baked goods (health department regulations). After too many requests to comply, the vendor was expelled. Another vendor strolled through the market before opening and re-priced his product with considerably lower prices. The market manager stopped that practice (undercutting of prices not allowed).

Quite a few minor infractions of rules and regulations occurred, until the board of directors finally decided to institute a disciplinary procedure. The procedure is still new and probably needs refinement.

Basically, the market manager is given the discretion to issue verbal warnings that have no “teeth” so that the vendor can fall back into compliance without being penalized, as long as compliance is immediate. (People do forget rules and regulations and a reminder is usually all that is necessary.) However, if the market manager decides the vendor is not responding to the verbal warnings or the violation is blatant and important; two written warnings in a market season are issued before true financial impact to the vendor is enforced. With the issuance of a third written warning, the vendor is not allowed to attend the market the following week. With the issuance of another warning, the vendor cannot attend any of the four markets they are in during the next two weeks. With the issuance of a final warning, the vendor is expelled from the market for the remainder of the season. The vendor continues to owe fees for stall space when suspended. If you stop and think about rules violations, some violations are considerably more important than others. For instance, not posting prices is not as important as selling spoiled meat. The type of penalty should meet the nature and importance of the violation. Forgetting to post prices does not potentially kill a customer, while salmonella in spoiled meat can kill the customer – and the marketplace. Rules should provide a sliding scale of penalties based on number and severity of violations. Markets need to decide if fines should be paid or suspension and expulsion are appropriate.

Furthermore, markets need to provide an opportunity for non-frivolous complaints to be filed by other vendors and by customers without threats of recriminations. Usually, a “heads-up” stated to a market manager should be sufficient, if there is an appropriate enforcement policy handy. Some markets attach a fee that is refundable only if the violation is proven and results in discipline of the offender. This helps cut down on frivolous complaints.

Vendors also must have the right to defend themselves against accusations in front of whatever enforcement group is set up by the market. And those found in violation ought to have the opportunity to appeal decisions. Not all individuals are “nice” to be around and managers and sponsors may disfavor certain individuals enough to the point of persecution. The right for a hearing helps keep management abuses in line.

When SCAFM was being set up in 1995, we reviewed copies of rules and regulations from other farmers’ markets throughout the state. We earmarked every rule we thought would be pertinent to our market in each set of rules we found. Then, we re-ordered the rules into the following framework:

1. Mission statement
2. General rules (how the organization is run)
3. Items for sale (day to day operations in the marketplace)
4. Regulatory guide (state, local, SCAFM legal requirements)
5. Insurance
6. Sanitation
7. Products
8. Deceptive advertising is not acceptable
9. Deceptive packaging is illegal (with phone number for agencies)
10. Definitions

The rules are reviewed and revised every January by the newly elected board of directors. State and local regulations and contact phone numbers are reviewed and updated. Rules also can be revised or added anytime during the year by the board of directors.

The application is revised every year. On the application, we have added size of vehicle to help the market manager decide where to assign appropriate spaces. We also have requested permission to post appropriate vendor Web sites or e-mail addresses on the SCAFM website.

The application asks for appropriate information for our database. It includes a checklist so that we receive a complete application from the get-go:

\_\_\_\_\_ Completed application

\_\_\_\_\_ Completed listing of produce and products

\_\_\_\_\_ Membership fees

\_\_\_\_\_ Two-week stall deposit fee

\_\_\_\_\_ Photocopy of sales tax certificate if you sell taxable items

\_\_\_\_\_ Copy of certificate of insurance for general (premises and product) liability naming SCAFM, Inc., as an additional insured

(Name and phone of SCAFM insurance agent included.)

The application also includes a Vendor Compliance and Indemnity Agreement with a required signature:

I (we), the undersigned, have read the Rules and Regulations of SCAFM, Inc., and do agree to abide by all these rules and regulations.

I (we) further agree to operate my (our) stall in accordance with these rules and regulations and to pay all applicable fees as set out in the rules and regulations. I (we) do understand that the stall fee,

length of season and hours of operations are set in the rules and regulations, and I (we) will abide by them.

I (we) further understand that failure to comply with the rules and regulations of SCAFM, Inc., could mean dismissal from the market.

As a vendor wishing to participate in SCAFM, Inc., located in [names of the communities], I (we) agree to SAVE, HOLD HARMLESS AND INDEMNIFY, SCAFM, Inc., (Cornell Cooperative Extension of Sullivan County) and the Town(s) of [names of various local Towns] from any and all liability or responsibility pertaining to any damages to person or property on the site assigned to me (us) by SCAFM, Inc., when such damages or liability arise out of acts of my (our) own, or of my (our) employees or associates, located at such site.

The applicant's signature represents a legally binding agreement markets. They help interested parties identify the purpose or philosophy of a market. They set up a framework for day-to-day administration. They provide for disciplinary procedures. The application process creates a legal binding agreement between market and vendor.

Rules that are kept simple, are pertinent to a particular market and are reviewed from time to time can guide a market to success.

For a copy of SCAFM rules and regulations, go to [www.scafm.org](http://www.scafm.org). For more information about farmers' markets, visit [www.attra.org/attar-pub/farmmrkt.html](http://www.attra.org/attar-pub/farmmrkt.html).

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