

LEGAL EATS

Legal Resources for Food Justice Enterprises



Created by:



**Sustainable
Economies
Law Center**



**EAST BAY
COMMUNITY
LAW CENTER**

PLEASE NOTE: The content of this book should not be relied on as legal advice. Information in this booklet could become outdated, or laws could vary from place to place. Furthermore, although we tried to collect accurate information, some information in this booklet could even be wrong! We sure hope that's not the case, but, what can we say? Law is complicated stuff!

Last Revised March 2024

Table of Contents

INTRODUCTION	3
CHOICE AND FORMATION OF AN ENTITY	4
OTHER ENTITY FORMATION ISSUES	7
Business Names and Business Licenses	7
Cooperatives and the Food System	10
Cooperative Principles	14
Nonprofits and the Food System	15
EMPLOYMENT LAW	17
Part I: Who Is an Employee?	17
Part II: Responsibilities of an Employer	22
CONTRACTS	26
Commercial Leases Checklist	27
UNDERSTANDING ZONING: WHERE YOU CAN OPERATE YOUR BUSINESS	29
FOOD SAFETY LAWS FOR CALIFORNIA FOOD BUSINESSES	35
What Stores, Restaurants, and other Food Retailers Need to Know about Selling Food	36
Food Safety Laws for Gardens, Urban Farms, and Small Farms	39
LOWER-COST, ALTERNATIVE WAYS TO SELL FOOD	45
Mobile Food Facilities (MFF) and Temporary Food Facilities (TFF)	47
Catering Operations	52
Selling Homemade Food through "Cottage Food Operations"	54
Microenterprise Home Kitchen Operations (MEHKO)	56
Certified Farmers' Markets & Farm Stands	58
FINANCING YOUR BUSINESS – SECURITIES LAW PRIMER	60
Ways to Raise Capital NOT Regulated by Securities Law:	61
A Few Ways to Raise Capital as Securities:	62
TAX AND ACCOUNTING	64
LIABILITY, INSURANCE, AND RISK MANAGEMENT	66
ORGANIC CERTIFICATION	69
REFERRAL LIST	70
Appendix: Funding Handbook	77
Financing A Small Business: Introduction	77
Traditional Bank Loans	79
Alternative Financing: Overview	81
Socially Responsible Investment and Loan Organizations	82

INTRODUCTION

This manual provides an overview of some of the various aspects of the law that are involved with starting and operating a small-scale food business. We've compiled information into brief chapters with the goal of getting you up to speed on the basic legal requirements. Generally speaking, knowing everything in this handbook will provide a good foundation for you to move forward with your food business idea, but it's not a substitute for individualized legal advice for your specific situation. We hope that you feel more empowered to take the next step in starting or expanding your food business and meeting the needs of your community.

Food Justice and Enterprise: What is the Connection?

It's not immediately apparent why people who are passionate about food justice should also care about enterprise. After all, business and enterprise are often viewed as the cause of the problem, particularly with the domination of the food industry by a few mega-corporations. And yet, we believe that creating socially responsible, community-accountable enterprises is a potent means of achieving food justice. So what do we mean by food justice? Let's start with some definitions.

Food justice: A movement that attempts to address hunger by addressing the underlying issues of racial and class disparity and the inequities in the food system that correlate to inequities in economic and political power.¹

Enterprise: A business, company, or undertaking that is difficult and complicated.

Why connect these two terms?

Food justice is a vision that one day all communities will have control over their food systems, including the land base required to produce the food. Further, enterprises are not just businesses, but also community-scale projects that are complicated and risky for sure, but that can also create opportunity and ownership for the communities that most need it. We're connecting the two terms because we see the need for more food justice enterprises to realize our vision of a just food system.

A movement for food justice enterprises envisions an economy in which food businesses are not only traditional for-profit businesses but can encompass a broad range of organizations and ventures, including cooperatives, land trusts, community-supported agriculture, urban gardens, farmers' markets, and nonprofit organizations. The common theme uniting all of these enterprises is that they are engaging in transactions involving food, whether it is growing food, bartering or selling it with local community groups, or running farmers' markets and community-supported agriculture projects. These transactions of food raise a host of important legal issues to be aware of before you start doing "business," so you can save yourself a lot of headaches (and perhaps fines) down the line!

How can access to local, healthy food impact broader social equality?

Food is the most basic of human needs, and access to it has significant human health, social,

¹ See *Food Justice*, FOODPRINT (Feb. 28, 2024), <https://foodprint.org/issues/food-justice/>.

economic, environmental, political, and moral dimensions. Here in the U.S., approximately 23.5 million Americans live in low-income areas that are more than one mile from a supermarket.² This physical distance has detrimental social consequences, including increased crime rates³ and incidents of disease.⁴ Existing food production and distribution practices – dependent on national and international food conglomerates rather than local producers – furthers this systemic inequity. However, when local communities take control of their own food systems, they can not only improve the local economy, but also positively affect social change.

² MICHELE VER PLOEG, ET AL., ECON. RESEARCH SERV., FOOD AND NUTRITION SERV., COOP. STATE RESEARCH & EDUC. AND EXTENSION SERV., U.S. DEP'T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES (2009).

³ See, e.g., Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL'Y 1 (2009).

⁴ See, e.g., Barbara L. Atwell, *Obesity, Public Health and the Food Supply*, 4 IND. HEALTH L. REV. 3 (2007).

CHOICE AND FORMATION OF AN ENTITY

Why form an entity?

People form business entities for several reasons. Some do it to limit their legal liability—that is, to limit the ability for outsiders to sue them personally for any problems that the business may cause. Others do it to facilitate getting grants (as a nonprofit) or getting investments (such as a for-profit). Still others do it because there may be tax advantages to forming certain types of enterprises.

Whatever reasons you may have for forming a legal entity, once you have decided that you are going to start a food enterprise there are many issues you should think through and we recommend you first make a business plan. You may want to consult with a business counselor at this stage of the start-up process.

There are free business planning resources available through organizations such as the U.S. Small Business Administration and the local county Small Business Development Center (SBDC). Above all, your plan should help clarify in your mind the following: your product or service, the market (or your community's needs), the plan to reach your market, the financial projections including your profit and loss, and other information related to who you are and why you would run a good business. Many people use business plans to attract funds to their enterprise in the form of grants, loans or investments.

In choosing a legal entity, there are several questions you will need to answer, such as:

- Will your enterprise have an owner, or will it be dedicated to the public?
- Will it have more than one owner?
- How will the enterprise be managed? Democratically or hierarchically?
- Will you need to protect the owners from being personally liable for anything that goes wrong with the business?
- Do you want to create a separate taxable legal entity, or do you want income and deductions to pass through to the owners?
- And so on...

Once you have thought through these questions, you can begin to consider which legal entity may be right for you.

Different types of legal entities:

Sole Proprietorships: This is the simplest type of business structure, in which an individual decides to go into business as the sole owner. There are no formal requirements for the formation or operation of a sole proprietorship and ownership and management can exist in the sole owner. A major drawback of this form of business is that the sole proprietor or owner is personally liable for the obligations of the business. An individual who starts a business but does not form any type of LLC or corporation will by default be considered a sole proprietorship.

Partnerships: A partnership is a group of two or more people who want to operate a business for profit. A partnership is comprised of its owners and each owner is personally liable for the

debts and obligations of the partnership, similar to a sole proprietorship. A partnership requires no formal action or written agreement. Similar to a sole proprietorship, two or more individuals who start a business but do not form any type of LLC or corporation will by default be considered a partnership. Thus, two individuals acting together to run a business could have a legal partnership without even knowing it! So it's a good idea if you're going to have a partnership to have a written agreement between the partners detailing how the partnership will operate and reimburse people for the debts the business may incur. This is called a Partnership Agreement.

Limited Liability Companies (LLCs): A limited liability company is a flexible form of enterprise that blends elements of partnership and corporate structures. LLCs are popular for small businesses because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC, but like a partnership, LLCs have pass-through taxation (meaning the LLCs profits and losses are passed through to its owners who incur most of the LLC's tax burdens) and do not need to practice formalities of corporations such as electing a board of directors, appointing officers and holding regular meetings. Most states require that LLCs have an Operating Agreement, although in California it can be oral. An Operating Agreement formalizes the relationship between the members and can also override default statutory rules that would otherwise govern the entity.

Corporations: To form a corporation, one must file articles of incorporation with the state, create Bylaws, hold elections for a board of directors and hold annual meetings for shareholders. A lawyer is often needed for the formation process, although it is possible to do it yourself with the use of books from Nolo Press. A corporation is viewed as a separate legal entity, distinct from its owners, who are called shareholders. Because it is a separate entity, a corporation is able to incur its own debts and liabilities and the owners (the shareholders) are, with some exceptions, shielded from personal liability.

Nonprofit Public Benefit Corporations: A California Nonprofit Public Benefit Corporation is a corporation that has no "owners" and may not distribute its profits to private individuals. Like a for-profit corporation, a nonprofit corporation is a separate legal entity, which is created by filing articles of incorporation with the Secretary of State, and must have a board of directors. Similar to owners of for-profit corporations, the participants in a nonprofit are generally protected from personal liability. Most nonprofit public benefit corporations also obtain tax exemption from the IRS under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Tax exemption under 501(c)(3) makes the corporation eligible to receive grants from many foundations and to allow individuals to donate to the corporation and receive a tax benefit for doing so. For more information, see the Nonprofits section of this handbook, starting on page 15.

Cooperative Corporations: The legal structure of cooperatives varies considerably from state to state. In California, cooperative corporations are organizations that are democratically controlled by and operate for the benefit of their members. One significant difference between a cooperative and a standard corporation is that, in cooperatives, there can be no more or no less than one vote per member, whereas in traditional corporations voting rights are generally proportional to the amount of money one has invested in the company. Another significant difference lies in the way that a cooperative distributes its net income. Whereas a

typical corporation distributes profits to the shareholders on the basis of the number of shares they hold, in a cooperative, surplus income is distributed to members on the basis of the value or quantity of each member's patronage. In a consumer cooperative, a member who made a greater number of purchases will receive a larger patronage dividend. In a worker cooperative, a member who worked a greater number of hours will receive a larger patronage dividend. For more information, see the Cooperatives section of this handbook, starting on page 12.

Filing or registering your company:

After choosing a business entity you need to figure out how to register or file your entity with the State of California and sometimes with the IRS. For more information, see <http://www.sos.ca.gov/business/be>.

OTHER ENTITY FORMATION ISSUES

Business Names and Business Licenses



Naming Your Business

You'll need to file a Fictitious Business Name Statement with the county, unless the name you will use for your business includes your own last name or it is the same name you registered with the state when you formed a corporation or LLC. If you plan to operate under multiple different business names

- County of San Francisco (\$63 fee + \$16 per additional owner and/or additional name): <https://www.sf.gov/file-your-fbn-statement-form?>
- County of Alameda (\$40 fee + \$7 per additional owner and/or additional name): <https://www.acgov.org/auditor/clerk/filefbn2.htm>

Applying for a Business License

In order to operate a business in your city, you'll need to apply for a business license. This is primarily a means of collecting taxes for the city. You'll need to register your business every time you:

- Open a new business
- Take over an existing business
- Open an additional location for your business, or
- Move your business to a new location

San Francisco	Oakland	Berkeley
Annual registration fee of \$46 or more depending on business's annual revenue	Annual tax of \$60 or more depending on type of business and business's annual revenue	Annual \$25 registration fee, plus \$26-\$77 business license tax, and \$4 state-mandated fee
<ul style="list-style-type: none"> • Apply at: http://sftreasurer.org/registration • Renew by May 31st each year 	<ul style="list-style-type: none"> • Apply at: https://ltss.oaklandnet.com/Apply/GettingStarted/BusinessLicense • Renew by March 1st each year 	<ul style="list-style-type: none"> • Apply at: https://berkeleyca.gov/sites/default/files/documents/business-license-new-with-calcs_0.pdf • Renew by March 1st each year

The Corporate Transparency Act

Effective January 1, 2024, many companies in the U.S. must report information about their beneficial owners—the individuals who ultimately own or control the company—to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. The report covers information about the company itself and two categories of individuals: (a) beneficial owners and (b) company applicants. In general, a beneficial owner is an individual who owns or controls at least 25% of a company or has substantial control over the company, and a company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company. Be sure to review FinCEN's [Small Entity Compliance Guide](#), which provides information to help small businesses comply with this reporting requirement.

Who has to report?

Your company may need to report information about its beneficial owners if it is:

- (1) a corporation, a limited liability company (LLC), or was otherwise created in the U.S. by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe; or
- (2) a foreign company and was registered to do business in any U.S. state or Indian tribe by such a filing.

Companies required to report are called reporting companies. Reporting companies may have to obtain information from their beneficial owners and report that information to FinCEN.

Are you exempt from the reporting requirements?

Many types of entities are exempt from the beneficial ownership information (BOI) reporting requirements, including publicly traded companies, tax-exempt entities (like nonprofits), and certain large operating companies. FinCEN's [Small Entity Compliance Guide](#) includes checklists that may help determine whether your company qualifies for one of the exemptions.

How do you report?

Filing is free of charge. Reporting companies report beneficial ownership information electronically through FinCEN's website: www.fincen.gov/boi. The system provides a confirmation of receipt once a completed report is filed with FinCEN.

When do you report?

Beneficial ownership information reporting is not an annual requirement. Unless a company needs to update or correct information, a report only needs to be submitted once. FinCEN began accepting reports on January 1, 2024.

If your company was created or registered prior to January 1, 2024, you will have until January 1, 2025 to report. If your company is created or registered in 2024, you must report within 90 calendar days after receiving actual or public notice that your company's creation or registration is effective, whichever is earlier. If your company is created or registered on or after January 1, 2025, you must report within 30 calendar days after receiving actual or public notice that its creation or registration is effective.

Any updates or corrections to beneficial ownership information that you previously filed with

FinCEN must be submitted within 30 days.

Where can I find more information about BOI reporting?

- (1) Additional information about the Reporting Rule and guidance materials are available at www.fincen.gov/boi.
- (2) FinCEN has issued and will continue to issue frequently asked questions to address specific questions on the topic: www.fincen.gov/boi-faqs.
- (3) If you have any questions regarding BOI reporting obligations, you should contact FinCEN at www.fincen.gov/contact.

Cooperatives and the Food System

Cooperatives play a critical role in enabling small-scale food producers to compete in a marketplace dominated by enormous food companies. Producing and selling food is costly, labor intensive, and equipment intensive, and there are many regulatory hurdles. Cooperatives are often able to place the needs of members (e.g. workers, consumers, or farmers, depending on the type of cooperative) above profit motivations.

What Are Cooperatives?

Cooperatives are entities that are 1) owned by their members, 2) governed by their members, and 3) operated for the benefit of their members. A couple of qualities, in particular, make cooperatives unique among other business structures:

1. **Democratic Control:** Cooperatives are democratically controlled on a one-member one-vote basis, meaning no member will have a larger vote because they invested more money in the cooperative.
 - To ensure democratic control, the “California Worker Cooperative Act”⁵ requires that worker-owners of a worker cooperative corporation maintain a controlling interest in the business: 51% of workers must be worker-owners or be on track for worker-ownership.
2. **Method of Profit-Sharing:** Cooperatives generally distribute their surplus earnings on the basis of patronage (more info below), rather than on the basis of capital contribution. In a worker cooperative, for example, this means that the largest profit distribution for the year will go to the worker that put in the most hours. This is in contrast to most corporations, where the largest dividends go to the people who own the largest number of shares.
 - Distribution of surplus from patronage of the cooperative is limited to worker-members. However, under AB 816, cooperative corporations are permitted to distribute earnings to investors in the form of capital dividends as long as the earnings are capped at 15%.

Cooperatives manifest themselves at a few levels:

1. **Cooperatives, as a legal entity:** “Cooperative” may refer to a type of legal entity, which you can choose to form in any U.S. state. The legal requirements for forming a cooperative vary. In California, cooperatives generally form as a Cooperative Corporation, as described in the Corporations Code provisions beginning with Section 12200. In California, you cannot have the word “cooperative” in your business name unless you have formed a cooperative corporation, with a few narrow exceptions for housing cooperatives.

⁵ AB 816, passed in August 2015 and effective January 2016, amended the California Corporation statute to provide a statutory definition of worker cooperatives and ease some burdens to their operation and financing. For more information, see http://www.theselc.org/governor_brown_signs_california_worker_cooperative_act.

2. **Cooperatives, as a legal structure:** Many organizations operate like a cooperative, but, for a variety of reasons, may have formed an entity other than a cooperative corporation. For example, some cooperatives form as a Limited Liability Company (LLC) or a Nonprofit Mutual Benefit Corporation, and build cooperative principles and practices into their Operating Agreement or Bylaws. The AB 816 bill creates an election under the existing law to form as a worker cooperative. Existing California worker cooperatives incorporated under the current California cooperative statute will be able to amend their articles of incorporation to elect worker cooperative status.
3. **Cooperatives, as a set of practices and values:** Some organizations or groups call themselves "cooperatives," even without having formed a cooperative legal structure or entity. For example, groups of tenants sometimes form housing "cooperatives," simply by adopting highly participatory and democratic ways of operating.

Consumer, Producer, and Worker Cooperatives – What’s the Difference? And What Is Patronage?

Whether an entity is a consumer, producer, or worker cooperative depends on the type of business or transactions the members have with the cooperative. Patronage is determined by measuring the value or quantity of a member’s transactions with the cooperative. See the examples below.

Consumer: If the members of the cooperative are people who purchase and consume products and services from the cooperative, then it is a consumer cooperative. There are many grocery stores in the U.S. that are operated as consumer cooperatives. If a consumer cooperative pays patronage dividends to its members, the dividends should be determined based on the quantity or value of products purchased by the member.

Producer: If the members are independent producers of products that are sold by the cooperative, then it is a producer cooperative. For example, Organic Valley is a cooperative of dairy farmers; the cooperative purchases the products of many farmers and sells them under one label. Patronage dividends are paid to farmers on the basis of the quantity or value of the products sold by the producer to the cooperative.

Worker: If the members are people that are employed by the cooperative, then it is a worker cooperative. For example, Arizmendi Bakeries, in the Bay Area, are cooperatively owned by the people who work in the bakeries. Patronage dividends are generally paid on the basis of the number of hours worked by the member, or they can be allocated in proportion to a worker's wages or salary, or the number of jobs or tasks completed.

In the context of low-income communities, many community economic development organizations are promoting worker-owned businesses as a model of building wealth and pulling people out of poverty. Organizations such as Mandela Marketplace are using the cooperative model to build cooperative food enterprises. Mandela Foods, a worker-owned cooperative, is the only grocery store in West Oakland, and is an example of a food justice

enterprise.

Cooperatives Have a Special Tax Status!

Thanks to Subchapter T of the Internal Revenue Code, cooperatives get special tax treatment. Typical corporations are subject to double taxation, meaning that the corporation pays tax on its net profits and the shareholders are taxed again when the profits are distributed as dividends. For cooperatives, the profits are taxed when they are allocated or distributed to the cooperative members as patronage refunds (aka patronage dividends); the patronage refunds are treated like a tax-deductible expense for the cooperative. To be taxed under Subchapter T, a cooperative must operate on a "cooperative basis," which means that distributions of net profits are based on the "quantity or value of business done with or for such patron."

Cooperative Resources

- Co-opLaw.org: The Coop Legal Resource Library (www.co-oplaw.org)
- US Department of Agriculture, Rural Development (http://www.rurdev.usda.gov/LP_CoopPrograms.html)
- California Center for Cooperative Development (www.cccd.coop)
- US Federation of Worker Cooperatives (usworker.coop)
- Democracy at Work Institute (<http://institute.coop>)
- Democracy at Work Network (<http://www.dawn.coop/>)
- National Cooperative Business Association (www.ncba.coop)
- Worker Cooperatives: Pathways to Scale (<http://www.project-equity.org/worker-cooperatives-pathways-to-scale/>)
- www.Community-wealth.org
- www.Cultivate.coop

Examples of Bay Area Worker Cooperative Food Enterprises

- Rainbow Grocery
- Cheeseboard Collective / Arizmendi Bakeries
- Juice Bar Collective
- Other Avenues

Examples of Worker-Owned Businesses in Low-Income Communities and Communities of Color

- Mandela Foods in West Oakland
- Prospera, all over the Bay Area
- TeamWorks in San Jose
- Evergreen Cooperatives in Cleveland, Ohio
- AK Press in Oakland

Cooperative Principles

From the website of the International Cooperative Alliance: www.ica.coop

1. **Voluntary and Open Membership:** Cooperatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. **Democratic Member Control:** Cooperatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organized in a democratic manner.
3. **Member Economic Participation:** Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.
4. **Autonomy and Independence:** Cooperatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.
5. **Education, Training and Information:** Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their cooperatives. They inform the general public -- particularly young people and opinion leaders -- about the nature and benefits of co-operation.
6. **Cooperation among Cooperatives:** Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.
7. **Concern for Community:** Cooperatives work for the sustainable development of their communities through policies approved by their members.

Nonprofits and the Food System

Nonprofit Organizations and the Food System

Nonprofits participate in the food system in many ways, such as by operating urban farms, farmers' markets, food stands, soup kitchens, seed libraries, and commercial kitchens. At the same time, nonprofits' abilities to take part in these activities are limited by the rules governing tax exemption. In particular, when a nonprofit seeks to earn income from these activities – by selling food or by selling spaces at a farmers' market, for example – it is important to determine whether such activity will be acceptable within the limits of the organization's tax exemption.

Tax Exemption Under 501(c)3

The most familiar type of tax exemption falls under section 501(c)3 of the Internal Revenue Code. To obtain tax exemption under section 501(c)3, the organization must be organized and

operated for a limited set of purposes, the most common of which are charitable, educational, scientific, or religious.

Producing food, in and of itself, is not a tax-exempt purpose under 501(c)3. A 501(c)3 nonprofit that is producing and/or selling food needs to show that the primary purpose of the activity is to further its tax-exempt purposes. What you think is “educational” or “charitable” may not be the same things the IRS considers to be “educational” or “charitable.” The IRS has interpreted the term “charitable” to mean:

- relief of the poor,
- lessening the burdens of government,
- promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination or combat community deterioration and juvenile delinquency.⁶

However, the only way to know with any certainty whether the IRS would accept your activity as tax-exempt is to look at rulings where the IRS has examined similar activities. These rulings can be found in Private Letter Rulings, Revenue Rulings, and tax court decisions.

Also, it’s not just what you do WITH the money, it’s also what you do TO EARN the money. Many organizations believe that their food business should be tax-exempt simply because they reinvest all profits into the nonprofit organization. However, this is a given with any nonprofit – the earnings should not be distributed to private individuals. What matters to the IRS is the nature of the activity that earns the money, and whether the activity is operated with the primary purpose of achieving tax-exempt status.

Beyond 501(c)3: Note that beyond 501(c)3 there are many types of tax exemption under section 501(c) of the Internal Revenue Code. Tax exemption under section 501(c)3 has a unique benefit, in that the donations to the organization are tax deductible to the donors. However, tax exemption under sections 501(c)4, 501(c)5, 501(c)6, 501(c)7, or another section may afford an organization greater flexibility and allow a broader range of purposes. It is also possible for a nonprofit corporation to operate without obtaining tax exemption, in which case the corporation would be taxed like a normal business.

Related Versus Unrelated Business

The law allows nonprofits to operate income-generating businesses of two sorts: 1) related business (this income IS NOT taxed) and 2) unrelated business (this income IS taxed).

Related Business: A “related” business is one in which the activities are substantially related to the tax-exempt purpose of the organization. The primary purpose of the activity must be to further the exempt purpose, and it must have a substantial causal relationship to achieving those purposes. The primary motivation behind the activity and its primary impact should be the furtherance of the tax-exempt purpose; the primary motivation should not be to earn money. The money that you earn must be incidental to, and not the primary goal of the project. When the nonprofit makes decisions about the business activity, it should be with the question: “What will most help us achieve our educational or charitable goals?” and not “How can we earn the most money?”

⁶ IRS Regs. 1.501(c)(3)-1(d)(2).

Because nonprofits are exempt from income tax, the IRS is especially concerned with preventing nonprofits from unfairly competing with for-profit businesses. Thus, a nonprofit's business activity should not be operated on a scale that is larger than necessary to achieving the tax-exempt purposes. The IRS has stated that the following activities tend to show a "nonexempt", or commercial purpose:

- Competition with commercial firms
- Lack of voluntary financial contribution from the public
- Presence of net profits
- Failure to offer any free or below-cost services
- Failure to limit clientele to exempt organizations.⁷

Food Store Example: For example, it is incredibly rare, but not impossible, for the IRS to grant tax exemption to a food store. Some nonprofits have formed small stores or food stands as a forum to educate people about food and health, or as a space to provide job training to unemployed or at-risk individuals. For example, a farm stand that operates to provide temporary job opportunities to recently released prisoners, and which serves as an educational forum to teach about nutrition, could, in theory, obtain tax exemption. The store or stand should not be operated on a scale larger than is necessary for the achievement of the exempt purpose of providing job training and educating the community. If the store starts to look and make decisions like a regular grocery store, then the IRS may ultimately conclude that it is not operating for tax-exempt purposes.

Unrelated Business: In contrast to a "related" business, an "unrelated" business can be operated with the primary goal of earning money for the nonprofit, so long as it is a small portion of the nonprofit's total activities. Income from such a business is subject to Unrelated Business Income Tax (UBIT), and must be reported in the organization's annual 990 filing. The purpose of UBIT is to ensure that nonprofits do not gain an unfair advantage if they are competing in a regular market. The most important thing to remember about unrelated business is that it should not become substantial in relation to the nonprofit's total activities. There is no bright-line rule for determining when the unrelated business has become "substantial," but the safest thing to do is to keep it at less than 10% or 15% of the organization's activities or income. If the activity grows and is successful in generating income, the organization may want to create a for-profit subsidiary.

For-Profit Subsidiaries

If a nonprofit would like to generate a substantial amount of income from an unrelated business, the organization may want to consider forming a for-profit subsidiary. For more information on how to do this, see the following resource:

<http://ww1.insightcced.org/uploads/publications/legal/707.pdf>.

Tax Exemption and Farmers' Markets

Unless a farmers' market is operated by a public entity or by the farmers themselves, the market must be operated by a nonprofit organization in order to become a Certified Farmers' Market in California. Ironically, while state law requires formation of a nonprofit, at the federal

⁷ See *B.S.W. Group, Inc. v. Comm'r*, 70 T.C. 352 (1978).

level, the IRS is somewhat inconsistent in its willingness to grant tax exemption to nonprofits that operate farmers' markets. Many farmers' markets have obtained 501(c)3 status on the grounds that they are operating the market to serve low-income communities, to provide opportunities to disadvantaged farmers, or to provide an educational forum for the community. For most farmers' markets, however, it would be hard to make the case that the market is a "related" business (see above), especially for markets in middle-to-upper income communities. Furthermore, the IRS has denied tax exemption to some farmers' markets on the grounds that they are inappropriately operating for the benefit of a limited group of farmers. See Priv. Ltr. Rul. 200818028 (Feb. 8, 2008).

If you are organizing a farmers' market, you may want to consider seeking tax exemption under 501(c)4. Also, some farmers' markets have obtained tax exemption under 501(c)5, 501(c)6, and 501(c)7. These categories of exemption can be limiting, however, so do your research before applying under these sections.

EMPLOYMENT LAW

Part I: Who Is an Employee?

Why is it important for urban farmers and food businesses to understand employment law issues?

Employment law issues may be one of the most common legal barriers that both nonprofit and for-profit food organizations will encounter, especially considering that small-scale and organic agriculture often relies on volunteer labor. These issues are becoming increasingly important as the state's regulatory bodies step up enforcement. We've heard of many examples of small family farms being fined for having volunteers helping with the farm work; some farms have been fined \$22,000 or more! Even getting occasional volunteer help from family members is considered illegal for a for-profit farm or food business and that barrier alone has made the operation of small farms unviable in some cases. Even consensual contracts between an employer and an intern, worker, or volunteer can be deemed illegal if they do not adhere to statutory and regulatory requirements. Employment laws apply to businesses in all contexts, so all owners need to know about them!

Who enforces employment laws?

At the California state level, the Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE) is the primary body that enforces wage and hour laws, child labor laws, etc. The Division of Occupational Health and Safety (Cal/OSHA) and the Division of Workers' Compensation (DWC) also play a role in enforcing employment-related laws and regulations. The Department of Fair Housing and Employment protects employees from discrimination. In addition to the state-level agencies, agencies operate at the federal level to enforce similar laws.

Any disgruntled individual who provides labor could bring a claim for back wages, health and safety violations, or some other complaint. In addition, even without a complaint by a worker, the DLSE may audit a business and issue fines for violations, sometimes even showing up unannounced.

Having employees comes with a list of obligations and requirements, including:

- Registration with the CA Employment Development Department;
- Compliance with standards for wages, hours, and working conditions;
- Payment of payroll taxes;
- Maintaining workers compensation insurance;
- Complying with occupational safety and health laws. Cal/OSHA provides free consultations with employers to help develop Injury and Illness Prevention Plans;
- Verifying eligibility to work in the U.S. (by viewing proof of U.S. Residency, for example);
- Posting of certain kinds of notices and posters related to employees rights; and
- Recordkeeping requirements.

What is the legal definition of a volunteer?

A person who donates services without contemplation of payment for humanitarian, public

service or religious purposes is not considered an employee and therefore is not subject to the wage-hour laws. *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 295 (1985). The DLSE considers the intent of the volunteers to be controlling in making this determination of whether someone is a volunteer. Thus, if someone is providing free labor on an urban farm with the intent of eventually getting paid or receiving free food, that person may not meet the legal definition of a volunteer.

Can a for-profit urban farm or food business have volunteers?

Generally, volunteers may work in nonprofit food organizations, like community gardens, but not in for-profit organizations or businesses. What many people are surprised to learn is that a for-profit farm or food stand could be fined thousands of dollars for having volunteers, even if the volunteers are friends or extended family members, and even if they are volunteering for a very short period of time. These laws exist to prevent companies from nefariously or unfairly using free labor to increase their profit, but well-meaning businesses have also been fined for technical violations.

Generally, anyone working at a for-profit business would be legally considered an employee, unless that person is an owner/officer of the business (with some exceptions) or meets the definition of an intern or independent contractor. There are otherwise very few examples of situations where people have been able to legally work on for-profit businesses without pay. In the urban farm context, spending an hour picking berries on a U-Pick farm does not seem to make you an employee.

How can nonprofit urban farms and food organizations use volunteers?

The rule that nonprofits may have volunteers does not apply across the board. For example, according to one DLSE opinion, "when religious, charitable, or nonprofit organizations operate commercial enterprises which serve the general public, such as restaurants or thrift stores, or when they contract to provide personal services to businesses, such enterprises are subject to the Industrial Welfare Commission Orders and volunteers may not be utilized." (See: <http://www.dir.ca.gov/dlse/opinions/1988-10-27.pdf>)

Interpreting this DLSE opinion will be very important for urban agriculture nonprofits, since many such organizations operate related businesses (selling plants and produce). In particular, it will be necessary to determine what the DLSE means by "commercial."

In addition, someone who is an employee of a nonprofit organization may not also volunteer for the nonprofit, unless the volunteer activities are separate from what the employee does on a day-to-day basis. For example, someone who is a grant-writer and fundraiser for a community garden may not volunteer to help with a fundraising event for the nonprofit; however, that person may volunteer in the gardens from time to time, so long as helping in the gardens is not part of that person's normal job description.

Also, to the extent that volunteers come to economically depend on a charitable, religious, or nonprofit food organization in some manner - being paid in food, given shelter - they may also be deemed workers under federal labor law.

What is the definition of an intern, and how does this apply to the urban farm context?

Having an internship program is one way that a for-profit farm or food business can have unpaid individuals take part in the farming, food sales, or other activities. However, the legal definition of “intern” is very limited, and many farms that have interns may be violating employment laws without realizing it. An intern is defined in California by the following six criteria:

1. The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, but work under their close observation;
4. The employer derives no immediate advantage from the activities of trainees or students, and on occasion the employer's operations may be actually impeded;
5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

For more details on the definition of an intern, see:
<http://www.dir.ca.gov/dlse/opinions/2010-04-07.pdf>.

What work may an independent contractor do for a food organization?

Independent contractors have been in the news in recent years because some companies try to avoid complying with laws that apply only to employees, like minimum wage and overtime, by misclassifying them as independent contractors. Real independent contractors, however, can be a valuable resource for small businesses so it is important to know what they are.

Independent contractors are people who operate as an independent business providing services to other businesses. The classic example is a plumber who fixes the pipes in a restaurant. The plumber provides a service that the restaurant needs to operate, but is not central to the restaurant's day-to-day business. Many other restaurants, homes, and businesses hire the plumber to do plumbing work. It is clear to all parties involved that the plumber is their own business, not the restaurant's employee.

That is a very easy example, but it can become complicated very quickly. What if the plumber only does plumbing for that restaurant? What if the restaurant acts as the liaison through which the plumber gets all of their jobs and gets paid? What if the plumber had never done plumbing until the restaurant hired them to fix its pipes?

The California Supreme Court created a new, simplified test for determining whether someone who works for your business is an independent contractor in a 2018 decision called *Dynamex*.⁸ The “ABC test” established in *Dynamex* was also enacted as a state law in 2020.⁹ Under this test, when someone claims they were misclassified as an independent contractor when they should have been treated as an employee, an employer has to prove the worker was an independent contractor by showing three things:

⁸ *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903.

⁹ Cal. Lab. Code § 2775(b)(1).

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. The worker performs work that is outside the usual course of the hiring entity's business; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

If the employer cannot show all of these things, then the worker is an employee. The language of the test is confusing, but the Labor and Workforce Development Agency (LWDA) explains each part with examples [on their website](#).¹⁰

If someone meets the definition of an independent contractor, they may set the terms of their work arrangement with the employer, which may include working for free. However, in the agricultural context, it is risky to classify workers as independent contractors, especially in light of the new test. Pretty much everyone working on your farm, except for people who clearly work for another legitimate business that has other clients and is performing a task that is not a part of the main production of your farm, is an employee, not an independent contractor. The test assumes that anyone who claims they were misclassified is an employee and makes the employer prove otherwise. If, as an employer, you cannot meet all parts of the ABC test above, you must treat the worker as an employee by fulfilling the responsibilities listed in the next section.

Part II: Responsibilities of an Employer

Being an employer comes with a lot of responsibility – both to employees and to the government. Most employment laws set minimum standards for the way employers can treat their employees; it is both legal and encouraged to go above and beyond those requirements where possible.

The major federal law regulating working conditions is the Fair Labor Standards Act (FLSA),¹¹ which you can learn about from the U.S. Department of Labor's Wage and Hour Division website here: <https://www.dol.gov/agencies/whd/flsa>. FLSA manages minimum wage, overtime rules, and other minimum working standards. The California [Division of Labor Standards Enforcement \(DLSE\)](#), also known as the Labor Commissioner, promotes and enforces the California state employment laws contained in the [California Labor Code](#). The DLSE website is a good resource for learning about state-level employment laws that will apply to your business.

Employment laws at the local, state, and national level change frequently. Businesses must pay attention to these developments in minimum wage, overtime, classification, and other employment laws. For a more thorough guide to your responsibilities as an employer, we

¹⁰ Labor and Workforce Development Agency, *ABC Test* (last accessed Mar. 8, 2024), <https://www.labor.ca.gov/employmentstatus/abctest/>.

¹¹ 29 U.S.C. § 206.

recommend the book “The Employer’s Legal Handbook,” published by Nolo Press. In the meantime, here are a few of the basic responsibilities:

Register with the CA Employment Development Department (EDD)

If you pay over \$100 in wages in a calendar quarter, you must register with the CA EDD. You can register online at:

[http://www.edd.ca.gov/About EDD/Employer Services Online Enrollment.htm](http://www.edd.ca.gov/About_EDD/Employer_Services_Online_Enrollment.htm).

For more information on your obligations with EDD, see this webpage:

[http://www.edd.ca.gov/Payroll Taxes/Am I Required to Register as an Employer.htm](http://www.edd.ca.gov/Payroll_Taxes/Am_I_Required_to_Register_as_an_Employer.htm).

Comply With Minimum Wage and Overtime Laws

The current statewide minimum wage in California is \$16, but because many cities have adopted a higher minimum wage, businesses in those cities need to pay the higher minimum. For example, in San Francisco the minimum wage is \$18.07 as of July 1, 2023. In Berkeley the minimum wage is \$18.07, subject to increase on July 1 every year to adjust for inflation. In Oakland the minimum wage went up to \$16.50 as of January 1, 2024, and will also be increased annually based on inflation rates.

The law also requires an employer to pay a worker overtime, unless the worker falls under an exemption to overtime laws. To qualify as “exempt,” the employee must meet a minimum weekly salary threshold and perform an exempted category of work such as executive, administrative, or professional work.¹² The current minimum weekly salary is \$684 (\$35,568 annually), but the Department of Labor released a proposal in August 2023 to increase the minimum salary to \$1,059 weekly (\$55,068 annually).¹³ Whether or when the new rule will be adopted is not yet certain. Learn more information about overtime requirements on the California Department of Industrial Relations website here:

http://www.dir.ca.gov/dlse/faq_overtime.htm, and exemptions to overtime here:

https://www.dir.ca.gov/dlse/FAQ_OvertimeExemptions.htm.

Comply With Meal, Break, and Time Off Requirements

Employers must comply with rules governing breaks and meal periods during the workday. Employers must provide nonexempt employees one day off per week, and provide a 30-minute unpaid meal break for any shift of five hours or more, and a paid 10-minute break for every four hours worked, with a few exceptions. While on a break, the employee must be fully relieved of all work duties. For more info, see: http://www.dir.ca.gov/dlse/FAQ_MealPeriods.htm.

Provide Paid Sick Leave to Employees

California State Law

¹² 29 U.S.C. § 213(a)(1). See also Lisa Burden, *Exempt Employees v. Non-Exempt Employees*, FindLaw (Nov. 6, 2023), <https://www.findlaw.com/employment/wages-and-benefits/exempt-employees-vs-nonexempt-employees.html>

¹³ Press Release, U.S. Dept. of Lab., Wage and Hour Div., Department of Labor Announces Proposal to Restore, Extend Overtime Protections for 3.6 Million Low-Paid Salary Workers (Aug. 30, 2023) (<https://www.dol.gov/newsroom/releases/whd/whd20230830>).

California law requires employers to provide paid sick leave to employees who perform at least 30 days of work for them in a single year.¹⁴ Employees earn the right to use their paid sick leave after 90 days of employment for that employer.

Employers can adopt one of two policies for dispensing sick leave: an *accrual* or *up front* policy. An *accrual* policy is one where employees accrue sick leave over time, with accrued time carrying over in each year of employment. Generally, employees must earn at least one hour of paid sick time per 30 hours of work. An employer can limit an employee's use of paid sick leave to 40 hours (5 work days) during each year, which is an increase as of January 1, 2024, from the prior minimum cap of 24 hours (3 work days).

An *up front* policy makes the full amount of sick leave for the year available up front to employees. The same 40 hour (5 work day) minimum cap applies, but under this policy the employee must have access to all 40 hours at the start of the year. Employers set how the period will be calculated (i.e. calendar year, fiscal year, or other).

Employers can also develop their own "Paid Time Off" or sick leave plans as long as these plans meet the minimum requirements under state law.

Employers are required to display a poster in a conspicuous place in the workplace with the following information regarding the sick leave policy:

- That an employee is entitled to accrue, request, and use paid sick days;
- The amount of sick days provided for and the terms of use of paid sick days;
- That retaliation or discrimination against an employee who requests paid sick days or uses paid sick days or both is prohibited; and
- That an employee has the right under this law to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against an employee.

For more information about the details of this requirement and frequently asked questions and answers regarding paid sick leave, see this link:

http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm.

Oakland Law

Oakland implemented a new paid sick leave ordinance in 2015. Under this law, a business with employees who work at least two hours in a particular workweek within the geographic limits of Oakland must allow their employees to accrue paid sick leave at a rate of at least one hour of sick leave per 30 hours they work, including overtime. Small businesses (generally employers with less than 10 compensated staff members) can cap sick leave earned at 40 hours. All other employers can cap earned leave at 72 hours. This law also requires all Oakland employers to use an accrual policy, not an up-front policy. For further information on Oakland employment standards, see this link:<https://www.oaklandca.gov/topics/measure-ff-and-measure-z>.

San Francisco Law

San Francisco enacted its "Paid Sick Leave Ordinance" in 2007. The law mandates that employers use an accrual system whereby employees accrue one hour of paid sick leave for every 30 hours worked within the city's geographic limits. Small businesses (generally

¹⁴ Cal. Lab. Code § 246(a)(1).

employers with less than 10 compensated staff members) can cap sick leave earned at 40 hours. All other employers can cap earned at 72 hours. The accrual cap is not annual; whenever an employee's accrued hours fall below the cap because he/she has used hours, the employee begins to accrue hours again. For further information, see this link: <https://www.sf.gov/information/paid-sick-leave-ordinance>.

Provide Safe Working Conditions and Comply With Safety Standards

The federal Occupational Safety and Health Act (OSHA) requires an employer to provide a safe workplace free from hazards that could likely cause serious physical harm to employees. Under this law, employers MUST:

- Inform employees about hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods.
- Keep accurate records of work-related injuries and illnesses.
- Perform tests in the workplace, such as air sampling required by some OSHA standards.
- Provide hearing exams or other medical tests required by OSHA standards.
- Post OSHA citations, injury and illness data, and the OSHA poster in the workplace where workers will see them.
- Notify OSHA within eight hours of a workplace incident in which there is a death or when three or more workers go to a hospital.
- Not discriminate or retaliate against a worker for using their rights under this law.

See OSHA's Resources for Small Businesses: <http://osha.gov/dcsp/smallbusiness/index.html>.

Free consultations: OSHA also provides free consultations and advice to small businesses to help businesses comply with the OSHA regulations. You can call the toll-free number, or you can call the local office to set up a consultation or get advice. Cal/OSHA Consultation toll-free number 1-800-963-9424 (SF Bay Area – (510) 622-2891).

Posting notices: OSHA requires that you post a notice called "Job Safety and Health Protection" for employees to see.¹⁵ The notice is available for free online, or you can get one from the nearest OSHA office.

Logging injuries: All businesses with 11 or more employees must keep a log of all workplace injuries and illnesses. This log must be available for employees to see, and any incident must remain on the log for at least five years.

Obtain Workers' Compensation Insurance

Employers in California are required to have workers' compensation insurance, even if they only have one employee. When a worker suffers an injury, illness or death because of work, workers' compensation insurance can provide medical care, temporary disability benefits, permanent disability benefits, supplemental job displacement benefits or vocational rehabilitation and death benefits.

See the California Department of Industrial Relations website for a more detailed explanation of workers' compensation insurance and links to relevant forms:

¹⁵ Occupational Safety and Health Administration, *Job Safety and Health: It's the Law!* (last accessed Mar. 7, 2024), <http://www.osha.gov/Publications/osha3165.pdf>.

<http://www.dir.ca.gov/dwc/employer.htm>.

You can find a workers' compensation fact sheet for employers at the link here:

http://www.dir.ca.gov/dwc/FactSheets/Employer_FactSheet.pdf.

Important Note on Young Employees!

There are special rules that apply to young employees, and workers under 16 cannot work as many hours as other workers – this is intended to prevent youth from leaving school for work. More info on the laws related to child workers here: <http://www.dir.ca.gov/dlse/DLSE-CL.htm>. Child Labor Pamphlet: www.dir.ca.gov/dlse/ChildLaborPamphlet2000.html.

Payroll Taxes and Other Withholding

An employer is required to withhold money from each employee's paycheck for federal and state income taxes, social security tax, Medicare tax, and federal unemployment tax. The California Employment Development Department provides state payroll tax services and information on its website here: http://www.edd.ca.gov/Payroll_Taxes/default.htm.

An employer can also withhold money from an employee's paycheck for health, welfare, or pension contributions – but only with the employee's consent. The State rules on deductions can be viewed here: http://www.dir.ca.gov/dlse/faq_deductions.htm.

Most small businesses hire a payroll company to handle their employee's paychecks to ensure all relevant laws are being followed, as there are lots of possibilities for innocent mistakes when it comes to providing paychecks to employees.

Verify Employee Eligibility

Immigration laws require employers to complete the Form I-9, the Employment Eligibility Verification form, to be sure that the employee can legally work in the United States. However, when an employee has substantial ownership and control over at least part of the business (as a shareholder, partner, or member of an LLC), she may be exempt from the Form I-9 requirement. Factors such as minimal supervision, other employees regarding the worker has an owner, and difficulty in firing the worker make an exemption more likely. Despite an owner-worker being exempt from the requirement, immigration enforcement authorities may still subject the worker to immigration proceedings. For more detailed information, and to see the forms, go to the U.S. Citizenship and Immigration Services (USCIS) website: www.uscis.gov.

On the right side of the page there is a section titled "Employment Verification," you can click on the link below "Employment Verification" that says "I-9 Central" to get specific information on completing and filing the I-9 Form. You can also call this toll-free number for additional information: 1-800-357-2099.

Additional Government Requirements:

Notices and records: Employers are also required to post notices related to employee's rights, and to keep employee records according to the government's requirements. You can view, download, and print all the required employer postings here:

<http://www.dir.ca.gov/wpnodeb.html>.

CONTRACTS

Running a business involves many relationships, and many of these relationships will be governed by contracts. We have relationships with our employees, independent contractors, lenders, landlords, suppliers, and customers. A contract is like a roadmap to a relationship, explaining how the relationship could play out, how to manage things that go wrong, how parties will respond to changes, and so on.

As an entrepreneur, you will likely be party to many contracts. Here are a few pointers to get you better acquainted with contracts:

- Contracts and agreements – what’s the difference? Really there is no difference between a contract and agreement; except the word “contract” generally refers to an agreement that is put into writing and meant to be legally binding.
- Contracts don’t HAVE to be in writing, but it’s a good idea: Contracts don’t always have to be in writing in order to be enforceable. An oral agreement can be a binding contract. There are some circumstances where a contract must be in writing to be enforced – contracts involving real estate, and contracts that take longer than one year to carry out. In general, it’s good to get all contracts in writing – to avoid confusion and to make sure parties are “on the same page.”
- Contracts should make sense: Contracts don’t have to say “heretofore, theretofore, blah blah blah.” The more you can use plain language in a contract, the better! It's important that you read the contract and make sure it makes sense to you.
- A contract needs *consideration*: Consideration is a funny legal term, but it means that each party has to promise or provide something of value in order to have a real contract. If someone tells you that you can use their empty lot for free, that would not be a contract until you have promised something in return. That’s why you will sometimes hear about nonprofit organizations leasing land for \$1 per year – the \$1 is the consideration.
- A few key ingredients of contracts
 - Responsibilities: What does each party put into the relationship?
 - Rights: What does each party get out?
 - Rules: What can or can’t each party do under the agreement?
 - Termination: How will the agreement be terminated?
 - Default and remedies: What happens if one party violates the contract and what can be done to repair the harm?
 - Risk management: What risks are involved and how do you want to allocate them?
- Common types of contracts:
 - Promissory notes
 - Liability waivers
 - Leases

- Licensing agreement
 - Contract for sale of goods
 - Nondisclosure agreement
 - Independent contractor agreement
 - Employment contract
 - Insurance policies
- When should you have a lawyer review your contract?
 - Any time the stakes are high – are you making a big commitment?
 - Any time you don't understand it
 - Any time you can afford a mistake – really there is always a lot of potential for a contract to run afoul of the law (labor laws, securities laws, landlord/tenant laws, etc.), and attorneys are trained to catch these issues.

Commercial Leases Checklist

Ready to find a location for your business and move in? The terms of your lease could be very important to the success of your business – especially questions related to how you can use the space, how long you get to be there, and so on. Here are some things you should be sure to sort out with the landlord:

- What spaces do you get to use? Clarify the exact spaces and equipment you will be able to use. What storage areas, parking spaces, restrooms, entryways, trash areas, hoses, or sign spaces will you get to use?
- Who maintains what? Who is responsible for repairs of your space? Possibly ask that the landlord be obligated to repair all unexposed plumbing and wiring, any damage caused by acts of nature or by external activity, or by acts or omissions of the landlord. If there are any common areas – like common entries, hallways, and restrooms – who is responsible for maintaining them? Will the landlord charge you common area maintenance (CAM) fees? Are the charges reasonable? If the space is partially or entirely restored, does the landlord have an obligation to repair/rebuild?
- How long is the lease term? Can you renew it? Usually leases obligate the landlord and tenant to commit to a fixed number of years for the lease, and they also give the tenant an option to renew it for additional terms. For example, a lease might be for three years, with an option to extend it for two years.
- What do you need in the space to make it ready? Is there anything that the landlord needs to do to the space to make it ready for you to move in? What condition should the space be in? Does anything need to be installed? What happens if the space is not ready when your lease starts?
- How will rent be determined? What will the rent be? Can it be raised and by how much? Can you negotiate lower rent during the first few months or ask for a month of free rent while you make necessary improvements to the space? Would it make sense to set a base rent and pay an additional percentage rent – usually determined by the gross sales of your business? Will there be a security deposit? Will it be kept in an interest-bearing account? What are the terms for refunding the security deposit?
- Who pays property taxes? If there are multiple tenants sharing payment of property taxes, how do you determine your percentage?
- How can the space be used? It is often good to negotiate a flexible set of allowable uses for the space, in case your business changes or in case you need to sublet the space to another tenant.
- Can you make changes to the space? Will you need to alter the space? Usually leases allow you to make changes, within reason, especially in the case of longer

term leases.

- Who pays for utilities? If there are shared meters servicing the building, on what basis will you determine your share of the utilities to be paid?
- Can you assign or sublet the space? At a minimum, in case you need to move out, ask the landlord to allow you to assign or sublet the space, so long as the new tenant is reasonable.
- Under what circumstances can you terminate the lease or withhold rent? If the landlord is not upholding his/her responsibilities under the lease, at what point would you have a right to terminate the lease or withhold rent? Would it make sense to give yourself other ways to terminate, such as if your business does not reach a certain level of sales?
- What kinds of signs can you put up? Where can you put signs and what size? Does the landlord have to approve a sign?

UNDERSTANDING ZONING: WHERE YOU CAN OPERATE YOUR BUSINESS

What is zoning?

Cities use zones to designate what activities and structures are allowed on each plot of land. This helps separate land uses that are incompatible, such as high-pollution industry and residential neighborhoods. Zoning also sets standards so that land is best used for the common good.

Each city has a planning code or ordinance which dictates where a business can and cannot be operated. Most cities, for example, do not allow a business to be run from one’s own house or apartment or, if they do, it usually requires a special permit (such as for home offices, group homes, childcare, and tutoring).

The city’s planning code and zoning map can give you an idea of where you can run your business. Pay attention to permitted and conditionally permitted activities AND facilities. Be sure to contact the planning department to determine what permits you will need.

In a city’s planning code, you will find a table or list that says what you can/can’t do with regard to:

- Activities permitted or conditionally permitted
 - For example, specific types of housing or businesses or community/civic industrial and agricultural activities
 - Each activity may have its own limitations, like how far it must be from residences, the distance it must be from another establishment of the same type, what floor of the building it may be on, etc.
- Facilities permitted or conditionally permitted:
 - Such as, single or multi-family facility, enclosed/open/drive-in facility, types of signage allowed, etc.
- Property development standards:
 - For example, lot sizes, location of the building on the lot, etc.
- Design standards; usable open space standards
 - For example, mechanical exhaust ventilation at or above all cooking equipment; smooth and impermeable inner floors; light-colored, smooth and non-absorbent indoor walls and ceilings, etc.

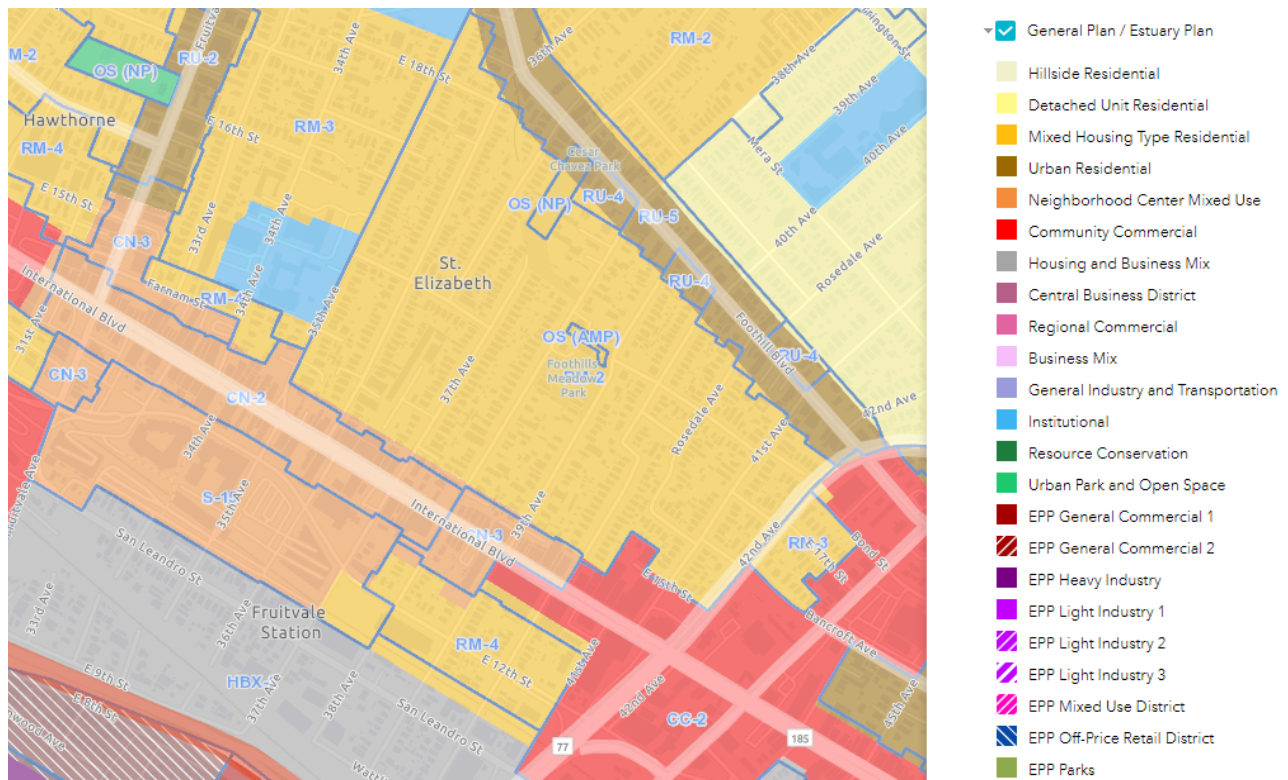
Where to find zoning information for your city and neighborhood:

	Oakland	Berkeley	Emeryville	Richmond
Planning Code + Zoning Map	<p><u>Zoning Map:</u> https://www.oaklandca.gov/resources/zoning-map</p> <p>Planning Code Elements: https://www.oaklandca.gov/resources/zoning-map</p>	<p><u>Zoning Map:</u> https://berkeley.municipal.codes/BMC/OfficialZoningMap</p> <p>Zoning Ordinance : https://berkeley.municipal.codes/BMC/OfficialZoningMap</p>	<p><u>Zoning Map:</u> https://www.ci.emeryville.ca.us/DocumentCenter/View/5907/Development-Maps</p> <p><u>Planning Regulations:</u></p>	<p><u>Zoning Map:</u> https://www.ci.richmond.ca.us/DocumentCenter/View/3624/Zoning</p> <p><u>Zoning Ordinance:</u> https://www.ci.richmond.ca.us/3379/Zoning</p>

	andca.gov/topics/city-of-oakland-general-plan	C/A	https://www.ci.emeryville.ca.us/311/Planning-Regulations	-Ordinance
Zoning Information	Zoning Information Hotline: (510)238-3911; Planning Permit Counter at 250 Frank H. Ogawa Plaza, 2nd Floor. https://www.oaklandca.gov/services/request-zoning-information-2	Office of Economic Development: 2180 Milvia St., 5th Floor. Tel: (510) 981-2490 https://web.berkeleychamber.com/Public-Services-and-Government/City-of-Berkeley-Office-of-Economic-Development-1237	Planning and Building Department: Civic Center, 1333 Park Ave., ground floor. Tel: (510) 596-4310 https://www.ci.emeryville.ca.us/315/Building-Division	Planning Division: 450 Civic Center Plaza - 2nd Floor, Tel (English): 510-620-6706, Tel (Spanish): 510-620-6705 https://www.ci.richmond.ca.us/2098/Planning-Division .

First: Figure Out Your Zone

To illustrate how to determine which zone your business is located in and how zoning rules may impact your business, imagine that you wish to open a brick-and-mortar restaurant on International Boulevard in Oakland’s Fruitvale district. When considering whether you can open that restaurant, you would consult the zoning map for the area, shown below.¹⁶



¹⁶ City of Oakland, California, Planning Code (Aug. 8, 2022), https://library.municode.com/ca/oakland/codes/planning_code.

After reviewing the zoning map, determine which zone your business will be located in according to its name or planning code abbreviation.

Examples of Zones and Sub-Categories (From Oakland's Planning Code):

Residential Categories

- Detached Unit (RD)
 - RD-1 single-family
 - RD-2 two-family allowed
- Mixed Housing (RM)
 - RM-1 (lowest density)
 - RM-2
 - RM-3
 - RM-4 (highest density)
- Urban Residential (RU)
 - RU-1 (low-rise)
 - RU-2 (low-rise or mid-rise)
 - RU-3 (low-rise or mid-rise, higher density)
 - RU-4 (mid-rise and high-rise on city's main corridors)
 - RU-5 (mid-rise, high-rise, and ground floor businesses on main corridors)

Commercial

- Neighborhood Center (CN)
 - See examples on later in this handout
- Community Commercial (CC)
 - CC-1 (shopping centers and malls)
 - CC-2 (businesses with frontages on city's corridors and commercial areas)
 - CC-3 (heavy commercial and service)
- Central Business District (CBD)
 - CBD-R (residential and small-scale businesses)
 - CBD-P (ground-level store fronts for pedestrian retail, upper-story office/residential)
 - CBD-C (ground-level office and commercial, upper-story office/residential/commercial)
 - CBD-X (ground-level and upper-story residential/commercial/light industrial)

Industrial

- Light Industrial (M-20)
 - Manufacturing and related, limited external impact
- Heavy Industrial (M-40)
 - Manufacturing and related, should be separated from residential

Next: Figure Out What You Can Do In Your Zone

Example: Oakland's Neighborhood Commercial Zone

Let's say that after looking at the map, you see that the area along International Boulevard

where you want to open your restaurant is designated as CC and CN. You can search the [Oakland Planning Code](#) for a list of permitted activities in CC (Community) zones and see that full service restaurants are allowed in those zones. An excerpt from the Planning Code is below, showing what you would see when you look up CC in the Code. The table includes a legend that explains P= Permitted, C= Conditionally Permitted, L= Limitations apply, and -- = Prohibited.

Activities	Zones			Additional Regulations
	CC-1	CC-2	CC-3	
Commercial Activities				
General Food Sales	P	P	P	
Full-service restaurants	P	P	P	
Limited Service Restaurant and Cafe	P	P	P	
Fast-Food Restaurant	C	C	C	17.103.030 and 8.09
Convenience Market	C	C	C	17.103.030
Alcoholic Beverage Sales	C	C	C	17.103.030 and 17.114.030

So, you would be permitted by zoning laws in Oakland to open a restaurant on International Blvd in Fruitvale. See below for more resources on checking the zoning restrictions in your intended area of business.

Other Useful Resources

- Oakland Business Assistance Center:
<https://www.oaklandca.gov/services/contact-the-business-assistance-center>
- Doing Business in Oakland (links to city regulations and other info):
<https://www.oaklandca.gov/resources/starting-a-business-in-oakland>
- Richmond California Business:
<https://www.ci.richmond.ca.us/4538/Business-Guide-and-Toolkit>
- Nation-wide Food Desert Locator:
<https://www.ers.usda.gov/data-products/food-access-research-atlas/>
- California-wide advisory and funds resources:
<https://calosba.ca.gov/local-direct-assistance/small-business-centers/>

AB 551: Urban Agriculture Incentive Zones Act (UAIZ)

Adopted in 2013 by the California State Legislature, AB 551 provides landowners with tax incentives to convert urban land for agriculture uses.

How it works:

- City and/or counties choose whether or not to opt into the UAIZ program. Each jurisdiction administers its own UAIZ program.
- Landowners enter into a 5-year contract with a city/county to convert their land for urban agriculture in exchange for reduced property tax rate. Tax rate reflects an agricultural use rather than a market rate commercial or residential use.
- Requirements for Parcels
 - Must be vacant with no dwelling units; between 0.1 and 3 acres; located in an urbanized area (as defined by the US Census Bureau) that includes at least 250,000 people, and dedicated solely to agricultural use

Which jurisdictions have adopted the program?

- San Francisco
- Sacramento
- Santa Clara County (adopted in unincorporated areas of the county)
- San Jose

Coming Soon:

- San Diego
- Berkeley
- Los Angeles
- Long Beach
- Oceanside
- Chula Vista

Other Useful Resources

San Francisco:

- Find My Zoning San Francisco: <https://sfplanning.org/resource/find-my-zoning>
- Overview of the San Francisco Planning Process: <https://sfplanning.org/zoning>
- Urban Agriculture Incentive Zone: <https://sfplanning.org/resource/urban-agriculture-incentive-zone>
- Restaurant/Food Service: <http://www.sf-planning.org/index.aspx?page=2844>
- Food Trucks: <https://www.sf.gov/guide-starting-food-truck>

Oakland

- Find My Zoning Oakland: <https://oakgis.maps.arcgis.com/apps/webappviewer/index.html?id=3676148ea4924fc7b75e7350903c7224>
- Urban Agriculture Program: <https://www.oaklandca.gov/topics/urban-agriculture-citywide-update>
- Food Trucks/ Mobile Vending:

<https://oakgis.maps.arcgis.com/apps/View/index.html?appid=ca204ca9b81a4cdfb3c28c2472c4640b>

Berkeley:

- Find My Zoning:
<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Planning%20and%20Building>
- Zoning Certificate Requirements:
<https://berkeleyca.gov/construction-development/permits-design-parameters/permit-types/zoning-permits>

USDA Urban Agriculture and Innovation Production (UAIP) Grants:

The Urban Agriculture and Innovation Production (UAIP) offers grants to initiate or expand efforts of farmers, gardeners, schools, and other stakeholders in urban areas and suburbs. Eligible projects may target areas of food access, education, business and start-up costs for new farmers, the development of policies related to zoning and other needs of urban production. You can submit an online application at <https://www.usda.gov/topics/urban/grants>.

FOOD SAFETY LAWS FOR CALIFORNIA FOOD BUSINESSES

There are many different government agencies that regulate our food system. Many food enterprises need multiple government agency permits or registrations. Food safety laws differentiate between (1) "agricultural products" that are raw, uncut, which are generally not ready-to-eat as sold, and (2) "processed" or "prepared" foods which are foods that have been chopped, mixed with other ingredients, cooked, or otherwise altered from their raw state. Typically, but not always, agricultural departments regulate raw agricultural products and health departments regulate processed food.

What Stores, Restaurants, and other Food Retailers Need to Know about Selling Food

Note: This Section describes requirements that apply to California "retail food facilities" which include fixed, mobile, and temporary food facilities such as restaurants, grocery stores, mobile food facilities (food trucks), food carts, food booths at events, catering operations, farm stands, certified farmers' markets, Microenterprise Home Kitchen Operations (MEHKOs) and any other facilities that provide food to consumers among the general public.

What is a "retail food facility"?

Knowing whether you operate a retail food facility will help you determine whether you are subject to certain health and safety laws. A "retail food facility" is any facility that "stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level." There are exceptions to this rule, which you can find in section 113789 of the California Health and Safety Code.

Retail Food Facilities in California Must Acquire All Food from "Approved Sources"

California's Health and Safety Code requires that all food (including ingredients) entering a retail food facility be from "approved sources."¹⁷ Many food businesses satisfy this requirement by purchasing food from large wholesale food distribution companies that are permitted by the California Department of Public Health or some other government agency that regulates food. Stores purchasing directly from farms and gardens should request affirmation from the farm that the farmers are implementing the Small Farm Food Safety Guidelines provided by the California Department of Food and Agriculture at the very least, though other requirements could apply. More details related to purchasing directly from small farms are provided later in this guide in the section for farmers and gardeners (beginning on page 38).

Food Retailers Must Keep Records

If you manage a retail food facility in California, which includes most corner stores, grocery stores, restaurants and institutions that provide food to the public such as school cafeterias, hospitals and food banks, then you are required to keep records of produce and other food

¹⁷ California Health and Safety Code Section 113980.

that comes into your facility. Such records must include:

- Date
- Identity of the producer (name of farmer or other source of produce)
- Address of the producer
- Identity of produce purchased
- Quantity of produce

These records are required so that if a customer gets sick, it's easier for a health regulator to find the source of the illness. Additionally, it may help protect your business from liability.

Retail Food Facility Requirements

Any facility in California where food is handled in preparation for sale must have the following:

- Equipment certified by American National Standards Institute (e.g. NSF certified)
- Washable walls, floors, ceilings, and light fixtures
- 4 sinks: 3-compartment sink for washing utensils, hand washing sink (with paper towels), floor (mop) sink and a food washing sink. Federally approved soap and single-use (eg paper) towels must be available.
- Shelving and any other food storage equipment must keep all food at least 6 inches above the floor
- Refrigerators that consistently stay at 41°F or below and freezers that consistently stay at 0°F or below
- Hot water for washing hands must run between 100 and 108 °F.
- Hot water temperatures for ware washing sinks, food prep sinks and mop sinks must be provided at a minimum of 120 °F at the tap
- Signs reminding employees who handle food to wash their hands

Safe Food Handling Training for Workers

In any business in California where open food is handled, prepared, or served to the public, all employees must have a Food Handler Card. Additionally, at least one person, typically someone in a kitchen management position, must have a Food Safety Manager Certification and be responsible for ensuring safe food handling practices are implemented in the facility, including teaching other employees to handle food safely. Both the Food Safety Manager Certification and the Food Handler Card involve a class and an exam. Classes are taught in multiple languages on a regular basis.

Food Handler Cards cost \$15 or less and can be obtained online from various providers. Here is a list of certified organizations that can provide the food handler training program:
<http://www.ansi.org/Accreditation/credentialing/certificate-issuers/AllDirectoryListing.aspx?prgID=228,238&statusID=4>

Food Safety Manager Certification training and exams are offered by local Departments of Environmental Health for a fee that varies by county. In Alameda County, the Department of Environmental Health offers the training in English and Spanish. The course costs \$141 the first time and \$38 to retest. Recertification costs \$95.

Selling Produce and other Food by Weight

There are two ways to price produce: by weight and "by each." If you sell any food by weight, your business must have a scale approved by the County Division of Weights and Measures. This is required if you have bulk bins of produce, or other foods, and you allow customers to choose their own quantity to purchase at a certain price per pound (or other unit of weight). Selling by weight also happens if you place produce in bags of a certain weight and you advertise that the bag of produce weighs that certain amount. Stores can choose to sell some food products "by each," instead of by weight, if the price is not directly tied to the weight and if the weight is not advertised on the product. However, products sold "by each" generally cannot be in sealed containers. Common examples of products sold "by each" are a fresh pastry, a basket of strawberries, or a bunch of kale. These types of products sold "by each" can be sold in a store without a scale. Many fresh fruits and vegetables are often sold by weight, but they can be sold "by each" if they are not in a sealed container or a container that advertises a specific weight.

Produce in Ready-to-Eat Containers and Cut Samples

California law distinguishes between two types of sales of fresh produce

- (1) One type of sale involves produce sold in a store that is intended to be bought by the consumer and washed at home before being eaten. An example of this kind of sale is a bunch of cilantro sold at a grocery store.
- (2) The second type of sale of produce is when the produce is sold in a way that is intended for immediate consumption. Freshly cut pieces of fruit are an example of this kind of sale. Note that freshly cut fruit offered as in-store samples and fresh cut produce sold in serving containers are both also included in the second category of sales. When a store plans to wash, package, or slice any produce, this is considered food "processing" or "preparation" and more extensive facility requirements will apply compared to a grocery store that sells prepackaged food only.

If you would like to sell produce in ready-to-eat containers or provide cut fruit as samples, then the produce must be washed in a commercial kitchen that complies with all the equipment and facility requirements described in the California Retail Food Code (part of the Health and Safety Code), and anyone handling the produce must complete a course and pass an exam about food safety. If your store does not have a kitchen at all, then in order to lawfully provide ready-to-eat produce and samples, your store may need to install additional sinks and other equipment, employees will need to undergo safe food handling training, and a different type of food facility permit will be required. We recommend contacting the Department of Environmental Health directly to make sure you are applying for the right permit and fulfilling all the requirements for it because the department has many different types of permits for various types of food facilities.

Labels for Produce Sold in Containers

If your store has a kitchen that can accommodate produce washing (in a designated produce washing sink) and you would like to offer ready-to-eat produce, then produce must be washed and put into containers that include the following information on each label:

- Name, address and zip code of the producer.
- Name of the produce in the package.

- Quantity of the produce in the package.¹⁸

Food Safety Laws for Gardens, Urban Farms, and Small Farms

Farmers and Gardeners Might Need to Become “Approved Sources”

The California Health and Safety Code requires that all food entering a retail food facility be from “approved sources,”¹⁹ meaning, that restaurants, grocery stores, mobile food facilities, and other facilities that provide food to consumers among the general public must ensure that all their ingredients are from approved sources. Many food businesses satisfy this requirement by purchasing food from large wholesale food distribution companies which are permitted by the California Department of Public Health, or some other government agency. With regards to fresh fruits, vegetables, and nuts, Section 113735 of the California Health and Safety Code defines “approved source” as:

“(a) [...] a producer, manufacturer, distributor, or food facility that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

(b) Any whole uncut fruit or vegetable or unrefrigerated shell egg grown or produced in compliance with all applicable federal, state, or local laws, regulations, and food safety guidelines issued by a regulatory agency shall be deemed to be from an approved source.”

While this law fails to specify what exactly is meant by “guidelines issued by a regulatory agency,” other health and agricultural laws are increasingly pointing to California Department of Public Health’s Small Farm Food Safety Guidelines as a set of standards that small farms must follow.

Small Farm Food Safety Guidelines

California Department of Food and Agriculture (CDFA) has published a set of guidelines for farmers on how to safely grow, harvest, and handle fresh produce. These are now required for certain farms, including all “community food producers,” farmers selling at farmers' markets, and gleaners. Regardless of whether your farm falls under any of the laws that specifically require following these guidelines, it is generally advisable that all farmers, including backyard gardeners, abide by these guidelines to minimize the risk of eaters getting sick. Make sure that all people involved in planting, harvesting, or handling food at your farm, garden, or gleaning organization are familiar with these guidelines. The guidelines are available here: http://www.cdfa.ca.gov/is/i_&_c/sffsg.html.

Community Food Producers

A new law that applies to mostly urban (and some rural) producers of fresh fruits, vegetables, and eggs in California went into effect in 2015. It defines anyone growing those food products on land that is not zoned as agricultural as a “community food producer” and requires these producers to follow safe food handling practices and labeling requirements. The law also allows

¹⁸ California Food & Ag Code § 47002(c).

¹⁹ California Health & Safety Code § 113980.

the local environmental health department to require that these producers register with the department in some situations. However, effective in 2016 there are numerous exemptions from registration requirements, so very few community food producers will need to register, but the safety and labeling requirements still apply.

All community food producers, whether exempt from registration or not, must follow the California Small Farm Food Safety Guidelines, described above. All community food producers must follow basic labeling requirements when selling or giving away produce. At a farm stand that is at the location where the food is grown, "community food producers" must have a sign with their name and address on it displayed at the site. When selling or donating produce elsewhere, they must label produce with their name and address if the produce is sold in a package. When selling directly to the public (not through a food facility such as a store or restaurant), "community food producers" and gleaners must keep records related to their sales which include the type of food sold and the date. These records must be kept for 30 days. For example, if your farm operates a produce stand once per week, you must keep a list of the products you sold at the farm stand for each date you operated the farm stand.

Gleaners

What is gleaning? A gleaner is defined as "a person who legally gathers remnants of an agricultural crop or harvests part of, or all of, an agricultural crop made available by the owner of the agricultural crop."²⁰ Gleaners often gather fruits and vegetables from residential areas, community gardens, and other small farms and gardens to prevent waste. Gleaners should be aware of the new requirements regarding community food producers described above, including whether they must comply with certain safe food handling, labeling, and record-keeping requirements. When working with community food producers, like with any producers of food, gleaners should make sure their sources of food comply with applicable food safety laws.

Safe Food Handling, Keeping Records, and Registration

Fresh produce sellers/producers and gleaners must follow the Small Farm Food Safety and record-keeping requirements. Gleaners should be familiar with these guidelines, even if they do not harvest the produce, because some of these guidelines apply to the storage and general handling of food, not just growing and harvesting food. As for record-keeping, records must specify the food received or donated, the date, and the name and contact information of the donor and records should be kept for 30 days. Food facilities, including charitable organizations such as food banks, must also keep these records when they receive food from community food producers or gleaners.

Selling Gleaned Produce

New California laws enacted in 2015 and 2016 allow local environmental health departments to require gleaners to register in some circumstances. See the examples below where a gleaner is exempt from registration.

Donating Gleaned Produce

As of 2016, new provisions of the California Health and Safety Code clarify that gleaners may collect whole, uncut fruits and vegetables to donate to a food bank or food kitchen. In this

²⁰ California Health & Safety Code § 113796.

scenario, a gleaning organization does not need to register with the local department of environmental health. Additionally, community food producers are exempt from registration when their agricultural products are donated to a food bank or food kitchen that provides food at no cost to consumers. This means that gleaners can aggregate whole, uncut fruits and vegetables from community food producers to donate to a food bank and both the community food producer and gleaner do not need to file paperwork with the health department or pay associated fees.

The following situations illustrate some instances when community food producers and gleaners are exempt from registration requirements:

- a gleaner sells or donates produce from a community food producer to consumers and the producer or gleaner keeps records for 30 days of the type of food sold and the date;
- a gleaner donates produce (that was produced by a community food producer) to a food bank or food kitchen and the producer or gleaner keeps records for 30 days of the type of food sold and the date;
- a community food producer or gleaner provides produce directly to the public at their farm or garden or some other premises controlled by the community food producer;
- a community food producer donates produce to a food bank or food kitchen that provides food at no cost to consumers; and
- a community food producer sells produce directly to a food facility that is permitted by a health regulatory agency, such as a corner store or grocery store that has a permit to operate from the County Department of Environmental Health.

Because so many transactions are exempt from registration under state law, there are very few situations in which a community food producer or gleaner would need to register. One type of transaction that is not exempt is where a community food producer wants to set up a produce stand at a festival, other temporary event, or other site that is not at the farm or garden where produce is grown. This could be done lawfully if the community food producer obtains a Temporary Food Facility permit from the local Department of Environmental Health (see the section on Low Cost Alternatives for more about TFFs).

Other Avenues to Becoming an “Approved Source”

Certified Producer’s Certificate

The Certified Producer’s Certificate was developed to ensure that farmers selling at certified farmers’ markets are in fact selling produce that they grew, and not someone else’s agricultural products. This certificate is a requirement for any farm seeking to sell at a certified farmers’ market in California. Farmers with a Certified Producer’s Certificate are considered to be an “approved source” for selling at Certified Farmers’ Markets, and some interpret the law as even permitting the Certified Producer’s Certificate to act as documentation of “approved source” status for other purposes as well, such as selling to a food facility, not just directly to consumers. The application for obtaining a Certified Producer’s Certificate must include “a declaration by the producer that he or she is knowledgeable of and intends to produce in accordance with good agricultural practices, as outlined in the Small Farm Food Safety Guidelines published by the department [CDFA].”

Farmers seeking a Certified Producer's Certificate may apply online at <http://www.cdfa.ca.gov/egov/farmersmarket/>

Similarly, getting organic certification is sometimes considered to provide "approved source" status, though this process involves notable annual fees and significant record keeping, so many very small urban farms and backyard gardens find that it's not worth the cost and inconvenience to be certified organic. If you are interested in organic certification, California Certified Organic Farmers (CCOF), or another organic certification organization accredited by the USDA, can help guide you through the steps involved. Numerous laws apply to using the word "organic" on labels, and organic certification and practices generally, which are briefly described on page 55.

Community Supported Agriculture (CSA)

A registered Community-Supported Agriculture (CSA) program is considered an "approved source." Anyone seeking to sell produce advertised as a Community Supported Agriculture (CSA) share or subscription is supposed to register with the California Department of Food and Agriculture. The registration includes a declaration by the producer that he or she will follow the Small Farm Food Safety Guidelines. The fee for registering a CSA is currently \$75 annually and \$25 for each amendment to the registration.

The CSA registration form is available at

http://www.cdfa.ca.gov/is/i_&c/pdfs/CSAProducerRegistrationRemittanceForm.pdf

Labeling Requirements

Packaged Food Labeling Requirements

Packaged food products generally must comply with FDA labeling requirements, which require at the minimum:

- the name and identity of the product,
- quantity of contents,
- name and place of business of manufacturer,
- packer or distributor,
- list of ingredients in descending order by weight, and
- nutritional information (though this last requirement only applies to retail food businesses that do greater than \$50,000 in sales annually, or greater than \$500,000 in sales annually.)

Single ingredient packaged foods such as a box of fresh tomatoes or a bag of walnuts do not need to have a nutrition facts statement, but other information as listed above must be on the label. Also, the FDA has additional specific standards if a business wants to claim a product is "low fat," "high in fiber," "a good source of protein," "heart healthy," or other similar health claims.

See this link for guidance on filing a notice for a small business nutrition labeling exemption: <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm053857.htm>

For information on organic certification and labeling, see the Organic Certification section of this handbook, on page 55.

Produce Labeling Requirements

When selling produce to a retail food facility, containers carrying produce must have the following information:

- Producer name
- Address and ZIP code of the manufacturer, packer or distributor
- Name of the produce in the package, and
- Quantity of the produce in the package.
- List of ingredients in descending order by weight
- Any of the eight major food allergens

While the FDA or CDPH do not preapprove labels for food products, questions about labeling laws and regulations could be directed to FDBInfo@cdph.ca.gov, or the Food Labeling and Standards Staff (HFS-820) at the FDA. Additionally, the FDA provides guidance for food labeling organized by areas of interest that can be found at:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm>.

Miscellaneous Requirements You Should Know About

Wholesalers need to register with the FDA

Food facilities that primarily process food for wholesale generally must register with the Food and Drug Administration (FDA). NOTE: Retail food facilities and all farms are exempt from registering with the FDA. Even facilities that do some wholesale sales but are primarily retail food facilities are exempt from FDA registration. See this link for more information on who must register and how to register:

<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/FoodDefense/ucm331959.htm>

Produce Dealers need to register with CDFA

Does your business plan to purchase produce that was grown by a separate enterprise and then resell that produce to a retail store or to another food business? If you are acting as an intermediary in this way then you are considered a “dealer” by the California Produce Dealers Act,²¹ and therefore you must register with the California Department of Food and Agriculture (CDFA). If your business is a corner store, grocery store, or other retail business with a fixed location and it only sells to end consumers (not to other businesses) then this registration requirement does not apply to you; this registration requirement only applies to businesses that sell produce at wholesale.

The annual registration fee for the Market Enforcement Branch as of this writing is \$136 to \$400 depending on the volume of sales of your business. Find the registration instructions and application here:

<http://www.cdffa.ca.gov/mkt/meb/forms.html>

Note: A corner store, grocery store, or other retail food facility may be able to act as a pick-up and drop-off site for farm products without registering with CDFA as a produce “dealer” if the retail store does not actually sell the produce or otherwise collect any money from acting as a pick-up and drop-off site.

Farms Using Pesticides Must Obtain Permits

We generally recommend that community gardens and urban farms use organic practices as much as possible, but if you decide to use pesticides, the county Department of Agriculture and the California Department of Pesticide Regulation both have helpful information about how to mitigate risks, obtain permits, and comply with the law. Farms planning to use pesticides or herbicides must generally obtain permits to do so.

Keeping Records

Any time a farmer sells produce to a restaurant, store or other food facility, the farmer must also provide a receipt that lists

- the date, the identity of the producer,
- the address of the producer, and
- the identity and quantity of the produce purchased.

²¹ California Food & Ag Code §§ 56101, *et seq.*

Food facilities are also required to keep records of this information for all food coming into their facility in case of an incident of food borne illness, so that the source of the illness may be traced back to its source. Though not required by law, it may be helpful to note prices in these records for accounting purposes.

LOWER-COST, ALTERNATIVE WAYS TO SELL FOOD

There are an increasing number of alternative ways to legally sell food in California. Food trucks and food carts (or “mobile food”), cottage food, “pop-up” events, catering, farmers’ markets, and temporary events are all gaining popularity as avenues for food entrepreneurs to get a business started without a brick-and-mortar location.

In addition to regular business licenses and seller’s permits, mobile food facilities and temporary events require health and zoning permits. County Health Departments typically regulate the health and safety aspects of these types of food operations, which includes food preparation and handling practices and required equipment. Individual cities regulate zoning and location permits that determine where mobile food facilities can operate, or temporary events can be held. Though this section only discusses the health and zoning regulations for mobile food facilities, temporary events, and other alternative ways to sell food, remember that other general laws in this guidebook still apply. For instance, all employees working at these businesses need a food handler card, as described above in the section on food safety laws. This section first provides a general discussion of mobile food facility and temporary event regulations, followed by information specific to several Bay Area cities and counties. It then describes the regulations that apply to other alternative food-selling operations, like catering, Cottage Food Operations (CFOs), Microenterprise Home Kitchen Operations (MEHKO), and farmers markets.

Mobile Food Facilities (MFF) and Temporary Food Facilities (TFF)

Mobile Food Facilities

Though individual counties (and particular cities in some counties), conduct inspections and issue health permits, state law sets out certain requirements that all MFFs, including food trucks, trailers, and push-carts, must follow. Each county can categorize MFFs differently (such as in numbered types, or by descriptive features) but they follow the same pattern of placing more stringent restrictions on MFFs that serve more hazardous foods, and fewer on MFFs that serve pre-packaged food or foods that do not need temperature control.

MFFs require an annual health permit to operate, which includes an annual inspection of the unit similar to a stationary restaurant or grocery store. For a newly-built or remodeled MFF, some counties recommend or require blueprint or schematic approval before construction begins to ensure it meets structural requirements. MFFs must be affiliated with a stationary commercial kitchen where the unit can be regularly stored in clean conditions, be serviced and cleaned, dispose of wastewater, and refresh water tanks. Food and supplies used in the MFF must also be stored in the affiliated commercial kitchen when not kept in the MFF.

Some of the common equipment that health departments require for MFFs include refrigeration, handwashing sinks, and warewashing sinks. Pushcarts that serve only prepackaged foods may need refrigeration but do not typically need any sinks, while MFFs dealing with potentially hazardous foods need both refrigeration and sinks. In addition to learning about the requirements for MFFs from a county’s permit application, it is also useful to read through Chapter 10 of the [California State Retail Food Code](#), which describes the

statewide MFF requirements.²²

Each city treats zoning and location permits for MFFs differently, but many establish minimum distances from restaurants, schools, and other institutions, to manage concerns about safety, right-of-way, and business. A city's planning or public works department often issues the required permits allowing MFFs to serve in a specific location or set of locations.

Some Bay Area businesses have successfully established food bikes, which offer the mobility of traditional food trucks while avoiding the major expense of a truck or trailer. Unfortunately, food bikes are generally limited to offering pre-packaged foods because the size limitations of a bike make it difficult to meet the safety requirements for preparing food on-site.

For example, Curbside Creamery is an ice cream shop in Oakland that prepares ice cream sandwiches at its storefront and kitchen that it then sells and delivers on a custom e-bike made by Icicle Tricycle in Portland, Oregon. Because the bike only serves pre-packaged sandwiches, it does not have a hand- or ware-washing sink, but it does have a well-insulated freezer compartment to store the sandwiches at the appropriate temperature. Curbside Creamery vends as a MFF, and as a TFF at local events like farmers' markets. Another successful food bike is Bicycle Coffee Co., which delivers roasted coffee beans by bicycle to many cafés around Oakland. It is also the main coffee business at the popular Grand Lake Farmers Market in Oakland and operates under a TFF permit.

Temporary Food Facilities

Vendors can also sell food at city-sanctioned events, under a permit for Temporary Food Facilities (TFFs). Prepared food booths at farmers' markets, music festivals, city fairs, and other similar events all fall under the TFF umbrella. The state regulations that apply to TFFs are in Chapters [10.5](#) and [11](#) of the California State Retail Food Code.²³

The application for a TFF permit is much shorter than that for a MFF permit, but you must apply for and get a separate TFF permit for each individual event you serve food at. Additionally, your TFF must be associated with an approved community event, and the sponsor of the event must submit a separate sponsorship form and fees in addition to the individual permit each TFF obtains.²⁴ The sponsor of an event that will host TFFs must also be sponsored, Like MFFs, any food prepared ahead of time for service at the event must be prepared in a commercial kitchen, or by an approved Cottage Food Operator.²⁵

There are specific requirements for how your booth must be set-up and TFFs are randomly inspected to ensure they meet all requirements, so make sure you have the equipment you need before applying for this permit. Certain facilities may be shared with other TFFs, though.²⁶ For example, up to four food booths can share a common warewashing setup so long as the setup is adjacent to the booths, and up to eight booths can share it under certain conditions. If

²² Cal. Health & Safety Code §§ 114294-327

²³ Cal. Health & Safety Code §§ 114332-32.7, 35-63

²⁴ Cal. Health & Safety Code § 113930.

²⁵ Cal. Health & Safety Code § 114341.

²⁶ Cal. Health & Safety Code § 114351.

a TFF operates for three days or less, the handwashing station can just be any container capable of providing a hands-free stream of warm water for 15 seconds.²⁷ Check with your local enforcement agency for additional requirements related to equipment for your TFF.

Alameda County

The Alameda County Department of Environmental Health (ACDEH) runs a free “New Business Info Session” at their office (1131 Harbor Bay Parkway, Alameda, Room 106) from 10AM-11AM on the first Wednesday of every month . The head inspectors can answer any specific questions you have, and they offer a useful handout which sums up the main food vending options that the office permits, including MFF (truck, trailer, and pushcart), caterer’s license, farmers’ markets, and TFFs. The ACDEH website features [a list](#) of commercial kitchens and commissaries operating in the county.²⁸

Alameda County offers an overview of MFFs, FAQs, and application forms at [this web address](#).²⁹ The cost as of January 2024 for a health permit includes a \$207 application fee and the permit itself which ranges from \$204 to \$1058, as assessed by an inspector.³⁰ The county requires MFFs to pass a “plan check” for MFF layout and setup before any new MFF construction or remodeling of an existing MFF.³¹ A plan check costs the \$207 application fee plus an inspection fee of \$514 for a truck/trailer, or for a cart, of \$174 per hour that the inspection takes. The (a cart, also known as a Compact Mobile Food Facility, CMFO).

The ACDEH website also offers [an informational page](#) about TFFs.³² The application forms for [TFF Sponsors](#) and [individual food booths](#) are both located here, and should be submitted at least 30 days prior to an event to avoid late fees. MFFs operating at temporary events do not need to apply for individual TFF permits, but still need to be sponsored by the event organizer. The cost of sponsorship varies by the total number of food facilities present, ranging from \$218 for 2 to 15 facilities, up to \$433 for 50 or more. The cost for a TFF booth permit is \$211 for non-prepackaged foods and \$143 for prepackaged foods for events that are between 1 and 4 contiguous days. For TFFs serving between 5 and 25 days within a 90-day period (at the same event), the costs are \$333 and \$186 for non-prepackaged and prepackaged foods, respectively.

City of Oakland

Oakland amended its Municipal Code and Planning Code in 2017 to create a new citywide food vending program. The new program expanded the areas in the City where MFFs can

²⁷ Cal. Health & Safety Code § 114358.

²⁸ Alameda County Department of Environmental Health, *List of Commissaries & Commercial Kitchens that provide services to Mobile Food Vendors - Alameda County & Vicinity* (last visited Jan. 31, 2024), https://deh.acgov.org/operations-assets/docs/mff/List_of_Permitted_Commissaries_2022.pdf.

²⁹ Alameda County Department of Environmental Health, *Mobile Food Facilities (MFF)* (last visited Jan. 31, 2024), <https://deh.acgov.org/operations/mff.page>. The MFF application form is here: <https://deh.acgov.org/operations-assets/docs/mff/MFF%20APPLICATION%202023.pdf>.

³⁰ Alameda County Department of Environmental Health, *Fee Schedule* (effective July 1, 2021), <https://deh.acgov.org/deh-assets/docs/General-Fees.pdf>.

³¹ Alameda County Department of Environmental Health, *Plan Check Guidelines* (updated 2016), https://deh.acgov.org/operations-assets/docs/plancheck/Mobile_Food_Facility_Plan_Check_Guidelines.pdf.

³² Alameda County Department of Public Health, *Temporary Events* (last visited Feb. 1, 2024), <https://deh.acgov.org/operations/tff.page>.

operate, and centralized resources and information about mobile food vending to make it easier for applicants to go through the process.

The City website provides an informational page about Mobile Vending in Oakland.³³ This page provides links to [educational materials](#), the City's [Mobile Vending Application](#), and additional information about operating an MFF in Oakland.³⁴ The City grants 6-month and 12-month operating permits. As of February 2024, an annual permit costs \$482.50 for a truck or large push cart, and \$399.75 for a small push cart. The City website also has [an interactive map](#), with layers showing permitted vending areas for MFFs and the buffer zones from schools and restaurants.³⁵ Potential vendors in Oakland need to obtain their Alameda County Health Permit, pass a Fire Prevention Inspection, and get liability insurance before applying for a City vending permit. MFFs also need a City of Oakland Business License or Certificate.

To vend as a TFF at an approved community event in Oakland, you must follow the steps for Alameda County TFF applications above and have a City of Oakland business tax certificate. If you do not yet have City of Oakland business tax certification, you can request one by completing the application and paying the necessary fee through Oakland's Online Permit Center, or its in-person "One Stop Permit Center" at 250 Frank H. Ogawa Plaza.³⁶ Appointments at the in-person permit center are mostly by appointment only, with limited walk-in hours.

If you would like to host a special event where TFFs vend, use Oakland's new, centralized system for special events administration [on their website here](#).³⁷

City of Berkeley

The City of Berkeley has an Environmental Health Department that is independent of the Alameda County Department of Environmental Health. Because the City's zoning code limits the areas in which mobile food vendors can operate, only a very limited number of MFFs operate within the city at any time.

However, Berkeley does have many special events where TFFs can sell food. At least two weeks prior to the event date, each TFF must submit a health permit application and a TFF Operations Specifications form, and pay the permit fee. The fees range from \$44 for pre-packaged food to \$182 for full service food preparation booths. The City has a [webpage](#)

³³ City of Oakland, *Mobile Vending* (last visited Feb. 2, 2024), <https://www.oaklandca.gov/services/mobile-vending>.

³⁴ *Mobile Food Vending: Food Trucks, Trailers, and Sidewalk Vendors* (last visited Feb. 2, 2024), https://cao-94612.s3.us-west-2.amazonaws.com/documents/Mobile_Food_Vending_Handout_Packet_English.pdf. *City of Oakland Mobile Vending Application* (updated June 11, 2023), https://cao-94612.s3.us-west-2.amazonaws.com/documents/Fillable-MV_Individual_Vendor_Permit_Application_FIN_AL-063023.pdf.

³⁵ City of Oakland, *Permitted Food Vending Area Map* (updated May 15, 2023), <https://www.oaklandca.gov/resources/permitted-food-vending-area-map>.

³⁶ City of Oakland, *One-Stop Permit Center: In-Person & Expanded Digital Services* (last visited Feb. 2, 2024), <https://www.oaklandca.gov/resources/one-stop-permit-center>.

³⁷ City of Oakland, *Apply for a Special Event Permit* (last visited Feb. 2, 2024), <https://www.oaklandca.gov/services/apply-for-a-special-events-permit> (Special Event Checklist describes the requirements for food vendors at special events).

[about TFFs](#), and a [brochure of TFF requirements and application for permit](#) in the city.³⁸ The City's farmers markets are run by the non-profit [Ecology Center](#), and you can apply to sell at these markets [via this link](#).³⁹

City and County of San Francisco

San Francisco amended its Public Works code in 2013 to expand and streamline mobile food operations in its borders. As both a city and a county, it benefits from coordination between the zoning and health departments regarding food vending permits. Even so, there are several departments to work with and applications to complete, depending on whether you will operate on private or public property. San Francisco offers a [guide to starting a food truck](#) on its website.⁴⁰

i. Mobile Food Facilities in San Francisco

Like Alameda County, San Francisco County requires that any new MFF construction or remodeling pass a plan check prior to starting the project, and any pre-existing MFFs to pass the plan check prior to beginning operation.⁴¹ San Francisco imposes different restrictions on MFFs based on which of the 5 types of MFFs you operate, which is determined by the hazardousness of the food sold and the amount of on-site preparation.⁴² The San Francisco Department of Public Health, which does plan checks and health permits, updates their fee schedule for each fiscal year, and the most current rates are available [on their website](#).⁴³ The plan check fee (effective until June 30, 2024) ranges from \$353 to \$825 depending on the kind of food you want to sell, as indicated by your MFF type.

In San Francisco County, after a plan check, the applicant generally goes through zoning permissions before proceeding to the health permit process, unlike in Oakland where the MFF must receive county health permits before seeking a vending permit. The process differs depending on if you intend to operate on private or public property.

[Here is a step-by-step guide](#) provided by the City for MFFs serving on private property.⁴⁴ The Planning Department issues the zoning permits for MFFs on private property, called Temporary

³⁸ City of Berkeley, *Temporary Food Booth Permits* (last visited Feb. 2, 2024), <https://berkeleyca.gov/doing-business/operating-berkeley/food-service/temporary-food-booths-permits>; City of Berkeley, *Temporary Food Facility (TFF) and Event Coordinator Requirements* (last visited Feb. 2, 2024), <https://berkeleyca.gov/sites/default/files/2022-02/Temporary-Food-Facility-Event-Coordinator-Requirements.pdf>.

³⁹ Ecology Center, *Berkeley Farmers' Markets* (last visited Feb. 2, 2024), <https://ecologycenter.org/fm/>; Ecology Center, *Apply to Sell or Table* (last visited Feb. 2, 2024), <https://ecologycenter.org/fm/apply/>.

⁴⁰ City and County of San Francisco, *Guide to starting a food truck* (last visited Feb. 2, 2024), <https://www.sf.gov/guide-starting-food-truck>.

⁴¹ City and County of San Francisco, *Submit your plan to start a mobile food facility* (last visited Feb. 2, 2024), <https://www.sf.gov/submit-your-plan-start-mobile-food-facility>.

⁴² City and County of San Francisco, *Understand which type of mobile food facility (MFF) you have* (last visited Feb. 2, 2024), <https://www.sf.gov/information/understand-which-type-mobile-food-facility-mff-you-have>.

⁴³ San Francisco Department of Public Health, *City and County of San Francisco Environmental Branch Fees* (last visited Feb. 5, 2024), <https://www.sfdph.org/dph/eh/fees.asp>.

⁴⁴ City and County of San Francisco, *Operate a mobile food facility on private property* (last visited Feb. 5, 2024), <https://www.sf.gov/step-by-step/operate-mobile-food-facility-private-property>.

Use Authorizations (TUAs) that cost \$596 and are valid for up to one year, renewable.⁴⁵ However, if they are serving at a location that a larger permit holder already coordinates (such as *Off the Grid* or *SOMA Street Food Park*), they can proceed directly to the Department of Public Health for their health permit.

[Here is a step-by-step guide](#) provided by the City for operating a MFF in any public space, such as public streets, sidewalks, or alleys.⁴⁶ The Department of Public Works provides the zoning (a.k.a, location) permit that is required for MFFs in public spaces.⁴⁷ Public Works describes its process, which involves a public notification and comment period, in a [flowchart](#) on their Mobile Food Facilities page. This page also details minimum distances you must keep between your MFF and certain features such as schools, restaurants, bus lanes, fire hydrants, street artists, and other features. A map of the allowable operation zones is available on the Public Works' [MFF webpage](#), and you will need to provide a diagram showing that your chosen vending location will observe these minimum distances will be observed as part of your application.

To apply for an MFF location permit you must pay a filing fee of \$183, a notification fee of \$292, and an inspection fee of \$558.⁴⁸ To vend in multiple locations, pay the \$292 notification fee for each location, a \$558 inspection fee for the second location, and a \$279 fee for the third location and each additional location beyond that. It usually costs \$183 annually to renew the location permit, but can cost more if you have been cited by the Department of Public Works within the past year.⁴⁹

The Department of Public Health also has separate applications for the annual health permit it administers for MFFs on [private](#) and MFFs on [public](#) property. As of April 1, 2024, [health permit fees](#) for MFFs range from \$235 to \$943, based on the type of MFF you intend to operate.

MFFs in San Francisco also need a City of San Francisco [business registration certificate](#).

ii. Temporary Food Facilities in San Francisco

TFFs in San Francisco can either be a pre-existing licensed MFF operating at an approved event, or pay a fee to operate as a food booth or other TFF. For TFFs, a "sponsor" permit is required for the overall coordinating party of the event.⁵⁰ Then, each unique vendor and booth is required to have a booth permit, which cost roughly \$100-200. Applications must be

⁴⁵ S.F. Plan Code § 205.4; San Francisco Planning, Temporary Use Authorization (TUA) Supplemental (updated Oct. 16, 2023), <https://sfplanning.org/resource/tua-supplemental>. San Francisco Planning, [Fee Schedule \(effective Aug. 28, 2023\)](https://sfplanning.org/sites/default/files/forms/Fee_Schedule.pdf), https://sfplanning.org/sites/default/files/forms/Fee_Schedule.pdf.

⁴⁶ City and County of San Francisco, Operate a mobile food facility on a curbside (last visited Feb. 5, 2024), <https://www.sf.gov/step-by-step/operate-mobile-food-facility-curbside>.

⁴⁷ San Francisco Public Works, Mobile Food Facilities (last visited Feb. 2, 2024), <https://sfpublicworks.org/services/permits/mobile-food-facilities>; S.F. Pub. Works Code § 184.81.

⁴⁸ S.F. Pub. Works Code § 184.83(a).

⁴⁹ S.F. Pub. Works Code § 184.83(d)(2).

⁵⁰ City and County of San Francisco, Guide to food permits for special events (last visited Feb. 5, 2024), <https://www.sf.gov/guide-food-permits-special-events>.

submitted 14 days prior to the event, otherwise there is a late fee. [Here is the application.](#)⁵¹ Applications cannot be submitted less than 7 days prior to the event. Farmers’ market booths are essentially a TFF that occurs every week. For this purpose, a quarterly permit can be issued instead of having to get a permit for each week (which would be very costly). These booths must not be in operation any more than 25 days in a 90-day period. San Francisco’s Permit Center is located at 49 South Van Ness on the second floor, and it is open for walk-in permit services.⁵² They also have a dedicated Mobile Food Program that you can email at mobilefood@sfdph.org with questions about establishing an MFF in the City. San Francisco’s Small Business Assistance Center also offers support and services for food entrepreneurs.

Mobile Food Facility zoning and health permit fees by city/county (approximate)

City/County	Zoning	Health - plan check	Health - permit	Total (range)
SF/SF	\$708+	\$353-825	\$235-934	\$1,300-2,500
Oakland/Alameda	\$400-485	\$381-721	\$411-1,265	\$1,200-2,500

Catering Operations

Under California law, catering is defined as a food service operation where the food is prepared at a fixed food facility (e.g. restaurants, commercial kitchens), but will be served directly to customers at an offsite location, whether as part of a contracted food service event (e.g. weddings, private events) or at a host facility (e.g. a brewery, winery, or commercial building).⁵³

A catering operation can deliver food prepared in a fixed food facility (e.g. restaurants, commercial kitchens); however the food must be delivered directly to the consumer. They cannot deliver from a host facility or through a third-party delivery service, like DoorDash or UberEats.

You must apply for a permit to conduct catering operations. Once approved, you will also be required to pay an annual fee to continue to conduct catering operations. The specific operating requirements for a catering business are determined by the Department of Environmental Health in your local county. The requirements may vary from county to county so be sure to review the application closely. Generally, once the catering application is reviewed, the supporting documents have been submitted, and the procedures, equipment and menu are approved, then an inspection of the commercial kitchen in which the food is prepared may be scheduled.

Catering operations are generally required to maintain safe food temperatures during transport and food service. A Person-In-Charge (PIC) must be on-site during all operating hours of the catered event. There may be limits to the amount of time you can serve food. For example, in Alameda County, food service must be limited to 4 hours in a 12-hour period. Food handlers

⁵¹ City and County of San Francisco, Mobile Food Facility (MFF) Temporary Event Application (last visited Feb. 5, 2024), https://www.sf.gov/sites/default/files/2023-09/MFF_Concession_Application.pdf

⁵² City and County of San Francisco, San Francisco Permit Center (last visited Feb. 2, 2024), <https://www.sf.gov/location/san-francisco-permit-center>.

⁵³ Cal Health & Saf Code § 113739.1.

need access to approved hand wash facilities in the food preparation area and must maintain clean and sanitized equipment and utensils. If your catering business has employees, they must also receive training in proper food safety and handling.

The following table shows the catering application fees in local counties (as of April 2024):

County	Application	One-Time Application Fee	Annual Fee
Alameda County	chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://deh.acgov.org/operations-assets/docs/tfso/CatererApplication.pdf	\$207	\$555
Santa Clara County	https://cpd.sccgov.org/sites/g/files/exjcpb706/files/applications-fees/Catering%20Packet%202023-08-30.pdf	\$435	\$421 or \$ 624 ⁵⁴
San Francisco County	https://www.sf.gov/get-health-permit-operate-caterer-san-francisco	\$401	\$456
Contra Costa County	https://www.cchealth.org/home/showpublisheddocument/5685/638255525834400000	\$45	\$1,052

Additional Resources

Alameda County	https://deh.acgov.org/operations/food-safety.page
Santa Clara County	https://cpd.sccgov.org/food/food-safety-program
San Francisco County	https://www.sf.gov/information/common-violations-food-inspections
Contra Costa County	https://www.cchealth.org/home/showpublisheddocument/5865/638256066269470000

Record Keeping

A catering operation is required to maintain records for all offsite food service activities for 90 days after each event. You may be asked to share these records with the county health department. The records should include all of the following information:

1. The location, date, and time of the offsite food service activity;
2. The customer name and contact information, including the customer's address, email,

⁵⁴ The annual fee is more expensive if your catering business will handle potentially hazardous foods.

- and phone number;
3. Whether the food was delivered to a customer or served to a guest at a catered function or host facility;
 4. The departure and arrival food temperature logs for transportation, and corrective action taken if the food arrived out of temperature; and
 5. A complete menu of the food provided.⁵⁵

Selling Homemade Food through "Cottage Food Operations"

California law allows businesses to prepare limited amounts of certain non-potentially hazardous foods in private home kitchens for sale to the public. These businesses are Cottage Food Operations, or "CFOs." This can save start-up food businesses many thousands of dollars if they meet the requirements of the law, as detailed below.

The state first established CFOs as legal operations in 2012, and updated the requirements in 2022 to allow CFOs to sell statewide, expand on the permitted transaction and delivery types, and require annual renewal of CFO permits.⁵⁶ This information and more is also on the California Department of Public Health (CDPH) [web page on CFOs](#).⁵⁷ While CDPH manages a list of CFO-approved foods that applies statewide, county-level health departments permit and register CFOs in their counties. Here is the [Alameda County webpage](#)⁵⁸ on Home-Based Food Businesses, including the requirements and application, and here is the [same page for San Francisco](#).⁵⁹

The state recognizes two classes of CFO. A Class A CFO sells food directly to the public only. An annual permit for a Class A CFO costs \$190 in Alameda County and \$161 in San Francisco as of April 2024. Class A CFOs can sell food in person, or via an electronic transaction method like phone or internet sales, and can fulfill the sale in person, via mail delivery, or another third-party delivery service. Class A CFOs are limited to \$75,000 in gross annual sales to remain eligible for CFO status.

The second class of CFOs, Class B, can sell directly to the public and also to retailers like restaurants and food markets. Class B CFOs are limited to \$150,000 in gross sales per year. Annual permits for Class B CFOs cost \$450 in Alameda County and \$562 in San Francisco as of April 2024.

⁵⁵ Cal Health & Saf Code § 114328(h)

⁵⁶ Cal. Health & Safety Code §§ 114365-65.5. California Department of Public Health, Assembly Bill (AB) 1144 Fact Sheet, <https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/AB1144Facts.pdf>.

⁵⁷ California Department of Public Health, Cottage Food Operations (last visited Feb. 6, 2024), <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/CottageFoodOperations.aspx>.

⁵⁸ Alameda County Department of Environmental Health, Home-Based Food Business (last visited Feb. 7, 2024), <https://deh.acgov.org/operations/home-based-food-business.page>.

⁵⁹ City and County of San Francisco, Sell Food You Make at Home (last visited Feb. 7, 2024), <https://www.sf.gov/step-by-step/sell-food-you-make-home>.

CFOs of both Classes may only sell foods that are not potentially hazardous. That is, they must not contain ingredients such as dairy, eggs, meat or fish, that have a higher risk of food-borne illness, and they cannot require temperature control such as freezing, refrigeration, or to be served hot. CDPH maintains a list of the approved foods that CFOs can sell on its website.⁶⁰

The list of approved foods as of February 2024 is:

- Baked goods without cream, custard, or meat fillings.
- Candy and confections.
- Extracts containing at least 70 proof or 35% food-grade for human consumption ethanol/alcohol.
- Dried, dehydrated, and freeze-dried foods.
- Frostings, icings, fondants, and gum pastries that do not contain eggs (excluding meringue powder, powdered or pasteurized eggs), cream, or cream cheese.
- Pure honey and sorghum syrups without additional ingredients.
- Fruit butters, jams, jellies that comply with part 150 of title 21 of the Code of Federal Regulations (CFR) for the quality and composition standards for those products.
- Nuts, nut mixes, and nut butters.
- Powdered drink mixes made from manufactured ingredients, but may not be labeled as “protein” powder mixes.
- Vinegars and mustards without eggs.

CFOs must label all their foods for sale according to specific requirements.⁶¹ CDPH lists 7 pieces of information to include on CFO food labels:

1. The common or descriptive name of the food
2. The CFO’s name, city, and zip code. If your CFO does not have a registered phone number you must also include your street address.
3. “Made in a Home Kitchen” or “Repackaged in a Home Kitchen” in 12-point font.
4. The CFO’s registration or permit number as provided by the county health department.
5. The food’s ingredients, in descending order by weight
6. The total quantity in count, weight, or volume of the food product.
7. A declaration in plain language of any major allergens, such as milk, eggs, fish, shellfish, tree nuts, wheat, peanuts, or soy, that the food product contains in both a separate statement and in the ingredients list.

There are also some limitations on what information optional food labels may contain. See the CDPH guide to [labeling requirements for Cottage Food Products](#) for restrictions on nutrient content or health claims, labeling materials, and non-labeled food products.

⁶⁰ California Department of Public Health, Approved Cottage Foods - March 10, 2023 (last visited Feb. 7, 2024), <https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>. CDPH maintains a link to the most recently updated Approved Foods List on its website at:

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/CottageFoodOperations.aspx>.

⁶¹ California Department of Public Health, Labeling Requirements for Cottage Food Products (last visited Feb. 7, 2024), <https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/CFLabelingReq.pdf>.

As with all other low-cost alternatives for selling food, everyone at your business who handles food must have a food handler card. Because CFOs prepare food in home kitchens, the State requires that food for the CFO is only prepared when other domestic activities, such as family meal preparation, cleaning, or entertaining guests, are not going on. Small children and pets may not be present while preparing CFO food products, and smoking is prohibited in the portion of the home where food is prepared, handled, or stored.⁶²

Advertising Food Made in Cottage Food Operations

A CFO that advertises to the public, including through an internet website, social media platform, newspaper, newsletter, or other public announcement, must include the following information in the advertisement:

- (1) The county of approval.
- (2) The permit or registration number.
- (3) A statement that the food prepared is “Made in a Home Kitchen” or “Repackaged in a Home Kitchen,” as applicable.⁶³

Microenterprise Home Kitchen Operations (MEHKO)

California recently passed a law that established Microenterprise Home Kitchen Operations (MEHKOs) as a new type of retail food operation.⁶⁴ With a MEHKO, an individual may operate a limited scale food operation out of their private residence. CDPH maintains a [webpage about MEHKOs here](#). However, MEHKOs are not automatically legal statewide; each county has to pass a local law to permit MEHKOs to operate within that county. As of February 2024, [Alameda County](#) and [San Mateo County](#) permit MEHKOs, but San Francisco County and Contra Costa County do not.

The application for a MEHKO in Alameda county, which must be renewed annually, is \$696 as of February 2024. Once the permit application is submitted, the County inspects the site for health and safety compliance before issuing a permit. Note that MEKHOs are exempt to certain general health and safety requirements that apply to other food businesses. For example, a MEKHKO does not need to have handwashing facilities within, or close to toilet rooms, and is exempt from displaying a no smoking sign, etc.

MEHKOs are subject to some significant limitations on their operations. MEHKOs may not sell more than 30 meals per day (capped at a maximum of 90 meals per week) and all food must be served the same day it is prepared.⁶⁵ A meal, defined as an amount or quantity of food that is intended to be consumed by one customer in one sitting, may include a main dish, appetizers, side dishes, beverages, baked goods, and/or desserts.⁶⁶ The meal must be served at the

⁶² Cal. Health & Safety Code § 114365(a).

⁶³ California Health & Safety Code § 114365.2(f).

⁶⁴ Cal. Health & Safety Code §§ 114367-67.6.

⁶⁵ Cal. Health & Safety Code § 113825(a).

⁶⁶ Cal. Health & Safety Code § 113825(d).

residence, picked up by the consumer, or delivered by the MEHKO (not a third-party service like DoorDash or UberEats). The sale of raw oysters is prohibited, as is the production, manufacturing, processing, freezing, or packaging of milk or milk products, including, but not limited to, cheese, ice cream, yogurt, sour cream, and butter.

MEHKOs may not have more than one full time equivalent employee, not including another member of the household, and that employee must live in the residence where food is prepared and served. Similar to CFOs, MEHKOs must stay below a gross sales threshold to remain eligible for a MEHKO permit. As of July 21, 2023, that limit for MEHKOs is \$100,000, to be adjusted for inflation annually.

However, some of the strict regulations on other limited food service facilities are relaxed for MEHKOs, so long as the operator passes a health inspection and details in the permit application how they will ensure cleanliness and consumer safety. These regulations include the limitation on non-essential persons in the food preparation area, posting no smoking signs, the need to provide additional clean plates and cups for second servings or refills, and more. You should review the California Health and Safety code for the full list of exemptions,⁶⁷ and speak to a representative of the local health department about any local compliance requirements.

MEHKOs and CFOs, though similar, are not interchangeable. That is, you cannot have both a MEHKO and a CFO in the same residence, and you cannot use your permit for one to do the activities for the other. So, a MEHKO cannot sell prepackaged non-hazardous foods to the public through an intermediary like a CFO can. A CFO also cannot serve hot food to customers to eat on the premises or as take-out. Whichever alternative food operation you pursue, make sure to only do the food activities allowed for your specific type of food operation.

Certified Farmers' Markets & Farm Stands

Certified Farmers' Markets

Certified Farmers' Markets are sites where farmers sell their goods and produce directly to consumers. California law requires that the market is:

1. Operated by a local government agency, one or more certified producers (farmers/growers), or a nonprofit organization;
2. Certified by and operating in a location approved by the county agricultural commissioners; and
3. The farmers (or producers), or their lawful authorized representative, sell agricultural products that they grow/produce themselves directly to consumers ("direct marketing").

Each vendor must get a Certified Producer's Certificate from the county agricultural commission in the county where they are growing. Each farm must be inspected and the farmer must obtain this certificate before they can sell at a Certified Farmers' Market.

Only California-grown agricultural products may be sold in the Certified Farmers Market, and

⁶⁷ Cal. Health & Safety Code § 114367.1(b).

the products must be sold by a farmer who holds a valid Certified Producer's Certificate for that farm's products. The farmer can hire an employee to sell their products at a farmers' market but the employee must be an employee of the farm. Other sales (crafts, art, etc.) can be sold outside of the certified market perimeter. Prepared food (Temporary Food Facilities) must be located outside or adjacent to the certified portion of the certified market.

Additionally, when selling at a certified farmers' market, you must have a copy of your Certified Producer's Certificate, and if you are claiming that your products are organic, a copy of your organic certification.

Fees

Certification fees are different depending on the county. They usually cost around \$50 per certificate. Markets will charge a service fee as well.

Health and Safety Regulations for Certified Farmers' Markets

The local environmental health agency (county health department) is responsible for regulating the health and sanitation aspects of the markets. Depending on the laws in the local community, certified farmers' markets may also need to obtain business or other licenses or land use approvals to operate.

Food Storage, Food Sampling and Sanitation Requirements

Fresh produce offered as a sample at certified farmers' markets must be washed with potable water such that any visible soil is removed. When cutting up products for sampling, farmers must wear gloves and use clean utensils. Samples must be kept in containers approved by the health department. Samples of all cut fresh fruits, vegetables, cheeses and other perishables must be kept at 45 degrees F and disposed of within 2 hours of cutting among other requirements.

To Start a Certified Farmers' Market

Contact the Agricultural Commissioner's office in the county where you are considering starting the market. It is also highly recommended that you contact existing Certified Farmers' Market operators in the same city or county to obtain their input. Applications for Certified Farmers' Market and Certified Producer Certificates can be found at www.cdfa.ca.gov/is/i_&_c/cfm.html.

When registering, you should mention the times and location of the farmers' market, your name and contact information, and the person that will be in responsible for of the application. The certification is valid for 12 months and has to be renewed every year⁶⁸.

Farm Stands and Field Retail Stands

A Field Retail Stand is a producer-owned and operated stand located on the premises or near the point of production and is established in accordance with local ordinances and land use codes. A Farm Stand is a field retail stand that sells California agricultural products grown or produced by the producer, and also sells, bottled water, soft drinks, or non-potentially hazardous prepackaged food products from an approved source⁶⁹.

⁶⁸ See California Food & Agricultural Code § 47020.

⁶⁹ See California Food & Agricultural Code §§ 47030, 47050; California Health & Safety Code §§ 113778.2, 114375(c)(3).

Changes to the law regarding Certified Farmers' Markets

In 2015, a new law passed changing how certified farmers' markets operate. The law stiffens penalties for producers who make false or misleading statements about the origin of the agricultural products they sell. In addition, the bill outlines three requirements with which farmers must comply at farmers' markets. First, farmers must post a sign stating "We Grow What We Sell" or the equivalent. Second, farmers must ensure that all processed agricultural products that they offer for sale are labeled that they consist only, with the exception of incidental flavorings and necessary preservatives, of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm or ranch is located. They also must identify the facility where the product was processed. Third, farmers must ensure that organic products are clearly labeled as organic. The law makes other changes including how fees are assessed and how farmers' markets must be arranged.

Additional Resources

- The UC Small Farm Program publications about farmers' markets:
<https://sfp.ucanr.edu/pubs/publications/>
- ChangeLab Solutions information on farmers' markets and farm stands in California:
<https://www.changelabsolutions.org/product/california-farmers-markets-webinar;>
https://www.changelabsolutions.org/sites/default/files/CACertFmrsMkts_FctSht_20141106.pdf
- Legal requirements for starting a school produce stand in California:
<http://changelabsolutions.org/publications/spinach-schoolyards>

FINANCING YOUR BUSINESS – SECURITIES LAW PRIMER

Introduction

Financing your enterprise will be one of the most important and challenging steps in starting a food business. This guide does not offer detailed strategies for *how* to raise money (although the appendix does have some information on financing opportunities), but it does address some of the laws that *regulate how* you can raise money. Laws related to how investments can be made in a business are called “securities laws.” We highly recommend entrepreneurs avoid asking for loans and other forms of investment without first knowing how they will comply with securities laws. Securities laws exist at both the federal and state levels and are designed to protect investors by limiting when and how entrepreneurs can solicit investments. To comply with securities laws, an enterprise sometimes needs a permit from a government agency (or multiple permits from multiple agencies) before asking for investments. Even asking can be a violation of securities laws. This is a complex area of law and we recommend speaking with an attorney before implementing any plan to solicit investments (including loans) for your business.

What is a Security?

You create a security when you ask people to put money into your business or venture and you offer them a return or when you put money at risk. For example, a security could be:

- Selling stock in your business
- Asking people to lend money to your business
- Offering a share of your business’ profits
- Interests in limited liability companies (LLCs)
- Pre-selling products or services that have not been developed yet (in California and other states)

Most financing and fundraising options require compliance with securities laws. This is true when the investors are looking for a “return” on their investment.

It’s important to know what is or isn’t a security because whenever you sell or even offer to sell a security, it needs to either: 1) be registered with the Securities Exchange Commission and with the state agency in every state where you want to raise money or 2) qualify for an exemption from registration.

Ways to Raise Capital NOT Regulated by Securities Law:

These are common examples of ways to raise money for a business without the solicitation triggering securities regulation:

1. Donations

A donation is when someone gives money without the expectation of receiving anything in return. If someone donates to your business without the expectation of getting anything of

value in return, this is not a security. Many entrepreneurs (and others) are using crowdfunding websites such as Kickstarter.com and Indiegogo.com to raise money for various projects. Entrepreneurs that solicit donations often provide non-monetary rewards to donors such as invitations to special events for donors and other VIPs, t-shirts and other thank you gifts.

At what point might a reward be valuable enough that it could be seen as a financial return on investment? This issue has yet to be tested, but it is advisable to ensure that any rewards offered are valued at less than the amount donated. Some states have stricter securities laws than others. California is one of the states with stricter securities laws where even if an investor puts their money into a business only intending to get their money back, if there is any risk involved, the transaction (and even the offering, or advertisement of the investment opportunity) would be considered a security that either needs to be registered with the state Department of Business Oversight or the company needs to demonstrate that their securities qualify for an exemption from registration.

2. Product Discounts

Another way to raise capital for your business is to charge a membership fee and offer product discounts in exchange, an example of which is Costco. However, another interesting model is REI. REI is a consumer cooperative that sells memberships to its customers. At the end of the year, REI members receive a "dividend" based on the amount spent at REI during the year. REI takes the position that its memberships are not securities because what members are really buying is the right to receive discounts on the items they purchase – not at the time of purchase like at Costco, but at the end of the year in the form of a rebate check. Similarly, customers can pay for other perks such as purchasing advance tickets to a special event.

3. Bartering

Avoid money all together and exchange services or goods directly. If you need to raise money to pay for something like web design or compostable cups, consider whether you might be able to barter your goods or services to get what you need. Then you won't have to raise so much money!

A Few Ways to Raise Capital as Securities:

The 25102(f) Exemption in California

California Corporations Code Section 25102(f) offers a special securities law exemption to certain kinds of private securities offerings, if they meet the following criteria:

First, you must be exempt from federal securities filing requirements:

- Your company must be formed under California law (i.e., if you are a corporation you filed your articles of incorporation in California, etc.)
- You plan only to offer securities to California residents
- You must include in your contract with your investors that they will not resell the security to anyone outside the state for nine months, and
- Your business is very California-focused – here is a test for this:
 - You get at least 80% of your revenues from California
 - At least 80% of your assets are in California

- o You plan to use at least 80% of the money you raise within California

Then, you must meet the requirements for 25102(f):

- You can sell your securities to up to 35 people as long as they meet one or more of the following criteria:
 - o The investors have a pre-existing personal or business relationship with you “consisting of personal or business contacts of a nature and duration such as would enable a reasonably prudent purchaser to be aware of the character, business acumen, and general business and financial circumstances of the person with whom such relationship exists.” These investors can be friends or family;
 - o The investors have enough financial experience to protect their interests; or
 - o The investors have experienced professional financial advisors.
- You can sell an unlimited number of securities to officers and directors of the company and accredited investors. Accredited investors are either 1) people with \$1 million in net worth (excluding their home) or \$200,000 in annual income, or 2) entities with more than \$5 million in assets.
- Your securities offering cannot be advertised to the public.
- The investors must sign something saying that they are not investing for the purpose of reselling the securities to someone else.
- You have to file a simple form with the California Department of Business Oversight.

Direct Public Offering (DPO)

Doing a direct public offering is not simple and it will require a lot of help from a lawyer, but it's a nice option if you need to raise a lot of money from local community members. Conducting a DPO usually requires filing some paperwork with and obtaining a permit from the SEC and the Department of Business Oversight. Regulators want to ensure that you are disclosing a sufficient amount of information to your investors, and they also sometimes review the merit of your securities offering to ensure that it will be fair and not unreasonably risky for investors. Some small to medium sized businesses use this strategy to access capital outside the realm of big banks or other institutional and wealthy investors, and so that their company can be owned by customers, fans, and other stakeholders of the business instead of absentee shareholders. Including all the filing fees and attorneys fees, this process can cost several thousands of dollars, depending on the level of complexity involved in the business and investment opportunities.

Socially Responsible Investing or Community Investment

Socially responsible investment organizations have grown rapidly over the past 30 years and continue to expand. Many of them are located right here in the Bay Area:

- Working Solutions' Microloans for Start-Up Businesses offers loans of \$5,000 to \$50,000 to small businesses with significant experience in the same exact industry and with owner's equity injection into the business of at least 20% to 30% of the requested loan amount.
- Oakland Business Development Corporation Small Business Financing is affiliated with the City of Oakland and offers loans to small businesses of \$10,000 to \$250,000 at varying interest rates. They require personal guarantees on loans.
- RSF Social Finance is a private organization that offers food and agriculture-specific

programs that include grants and loans.

Government Funding

There are also some decent government financing options, the most notable of which is the Small Business Administration (SBA) Loan.

- The SBA offers the CDC/504 Loan Program. A Certified Development Company (CDC) is a private, nonprofit corporation, which is set up to contribute to economic development within its community. CDCs work with SBA and private sector lenders to provide financing to small businesses, which accomplishes the goal of community economic development.
 - The loan must be used for fixed-asset projects:
 - The purchase of land, including existing buildings;
 - The purchase of improvements, including grading, street improvements, utilities, parking lots and landscaping;
 - The construction of new facilities or modernizing, renovating or converting existing facilities; and
 - The purchase of long-term machinery and equipment.
 - The loan cannot be used for working capital or inventory, consolidating or repaying debt, or refinancing.
- There is also the California Small Business Loan Guarantee:
 - It allows a business to not only acquire a loan it could not otherwise obtain, but to establish a favorable credit history with a lender so that the business may obtain future financing on its own.
 - Eligible Applicants include any small business as defined by the SBA (typically businesses that employ 100 people or less).
 - Eligible Uses:
 - Proceeds must be used primarily in California and for any standard business purpose beneficial to the applicant's business, such as expansion into new facilities or purchase of new equipment.

Resources:

- SELC's Community Enterprise E-Resource Library – www.communityenterpriselaw.org
- Appendix: Funding Handbook

TAX AND ACCOUNTING

Here are a few things that food businesses should know about tax and accounting. Really, there's a lot more to know about tax, so we recommend you look at the book *Tax Savvy for Small Business* by Frederick Daily (Nolo Press), and invest in some sound advice and assistance from an accountant, bookkeeper, and/or tax lawyer.

California Seller's Permit

You'll need a California Seller's Permit if you are doing business in California and intend to sell "tangible personal property that is ordinarily subject to sales tax," even if you are making sales for only a temporary period.

Apply to the California Board of Equalization (BOE):

<http://www.boe.ca.gov/sutax/sutprograms.htm>.

For more information:

See Publication 73: Your California Seller's Permit: <http://www.boe.ca.gov/pdf/pub73.pdf>

California Sales Tax

Many food products are exempt from sales tax. But you do have to collect sales tax for hot prepared food. Sales tax also applies to food that is consumed at your facilities, ordinarily sold for consumption near your parking facilities (think drive-ins), or sold for consumption where admission is charged (think concerts or county fairs).

There are many subparts and exceptions to these general rules. For example, whether takeout or "to-go" sales are taxable depends on the "80/80 Rule": unless you separately account for these sales in your records, you will need to collect sales tax if 1) more than 80% of your gross receipts are from the sale of "food products," and 2) more than 80% of your retail sales of food products are considered taxable. Make sure to keep detailed records so you can claim exemptions!

The BOE has prepared a detailed (but still fairly readable!) guide to sales tax on food products. See Publication 22: Dining and Beverage Industry: <http://www.boe.ca.gov/pdf/pub22.pdf>

For the black letter law, see Sales and Use Tax Regulations, Article 8: Food Products.

www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/sales-and-use-tax-regulations-art8-all.html

Business / Personal Property Tax

When you register your business with the county, the county Assessor-Recorder will ask you to file a Business Property Statement and pay business personal property taxes every year. The statement must list the costs of all supplies, equipment and fixtures at each location for your business. The statement need not list business inventory, which is exempt from taxation.

Income Tax

Filing state and federal income tax returns: Unless your business is a sole proprietorship, you

will need to file an income tax return for your business. If you are a sole proprietor, then you need only report your business income and expenses on your personal income tax return.

The entity you choose could affect how much tax you owe: There are many entities to choose from - cooperative corporations, partnerships, LLCs, S corporations, etc. – and each one is subject to different tax rules. A lawyer or tax specialist can help you determine which structure is ideal.

Deduct those businesses expenses: You can significantly lower your taxes if you keep clear records and track your business expenses. The IRS allows you to deduct "ordinary, necessary, and reasonable" expenses related to your business. This includes costs of travel, vehicles, rent, utilities, advertising, interest, professional fees, entertainment, equipment, supplies...but only if these expenditures are "helpful and appropriate" for your business. The IRS has issued a lot of helpful guidance to help you determine what is deductible. See <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Deducting-Business-Expense>.

Be sure to pay quarterly taxes, if you are required to: If you are filing as a sole proprietor, partner, S corporation shareholder, and/or a self-employed individual, you generally have to make estimated tax payments if you expect to owe tax of \$1,000 or more when you file your return. If you are filing as a corporation you generally have to make estimated tax payments for your corporation if you expect it to owe tax of \$500 or more when you file its return. If you had a tax liability for the prior year, you may have to pay estimated tax for the current year. See the worksheet in IRS Form 1040-ES, available at www.irs.gov/pub/irs-pdf/f1040es.pdf for more details on who must pay estimated tax.

Bookkeeping and Accounting

Here are the basics:

Bookkeeping = Keeping track of everything! Accounting = Counting it all up!

That may be an over-simplification, but it's a good reminder that bookkeeping and accounting don't have to be complicated or intimidating. If you have the funds to hire help, it's always easier to hire a bookkeeper to set up your books and a certified public accountant (CPA) to prepare your taxes. But here are some basics to know if you plan to do it yourself:

- Keep records of all business-related expenditures: Keep a ledger of all of your expenses, when they were made, and what they were for. And keep all the receipts!
- Keep records of all business income: Keep a ledger of income and when it comes in. Keep other records of the income, including sales receipts, records of deposits, and invoices.
- Periodically count it all up: Periodically generate reports summarizing your income and expenditures. The most important reason to do this is to know what taxes you will owe. But it's also a good idea to do this so that you can learn about your business – what are your income trends, where might you be able to cut expenses, and so on.

LIABILITY, INSURANCE, AND RISK MANAGEMENT

Anyone who runs a business or organization, no matter how small, is at risk of being sued. Accidents happen, even when careful and responsible people are in charge. Attorneys often recommend that any food enterprise hold an insurance policy to cover such expenses, though in certain cases where only extremely small amounts of low-risks foods are involved, an attorney may not advise it as strongly.

Before you decide what kind(s) of insurance to buy, you should identify the risks associated with what you're doing and how you operate:

- Do you have a storefront or sell food at a farmers' market or other public space? If you do, then you probably need general liability insurance to cover you for any accidents that occur in your booth or space.
- Do you use a vehicle? If yes, then you'll need an automobile insurance policy.
- Do you have employees? If yes, then you'll need workers' compensation insurance.
- Do you make and sell a product? If yes, then you'll want product liability insurance.

Common Types of Insurance:

General liability insurance covers bodily injuries, property damage, and a handful of losses that could occur as a result of the operation of your business. General liability is also sometimes known as "slip and fall" insurance, and it is particularly important if you have a "premises," like a food stand, cart, or shop, where the public will visit your business. Even if you are leasing your space, it is likely the owner will require you to have this insurance, and may ask you to add him/her to your policy as an "additional insured." You'll need to check with your insurance provider to see how and if you can add another person or organization to your policy.

Product liability insurance protects you if a customer gets sick from a food product they got from you. Whether you purchase this type of insurance probably depends on what type of food product you're providing and the level of risk associated with that product. For example, if you're selling bread or granola, your risk may be low enough that you can forego this type of insurance. If you sell vegetables or animal products, product liability insurance is recommended.

Commercial auto coverage protects you from losses incurred while employees are using your vehicles for purposes of your business, and for damage done to the vehicles. Most policies address each individual vehicle separately, and coverage and costs vary depending on factors such as vehicle size and intended use.

Workers' Compensation insurance is required by law if you have employees, even if you have just one part-time employee, in order to cover costs if an employee is injured while working. Not having workers' compensation insurance is a criminal offense, and you can't require your employees to help pay the cost of the policy. You aren't required to cover volunteers, but you can choose to include them in your coverage. Insurance can be obtained from an agent or broker, the State Compensation Insurance Fund, or you can "self-insure" if you qualify. Policy rates are based on the size of your payroll and the tasks your employees perform. Nonprofit organizations with volunteers do not need

worker's compensation coverage for volunteers but some choose to provide it anyway to reduce risk or liability. For more information on workers' compensation requirements for employers, see <http://www.dir.ca.gov/dwc/>.

Property Insurance and Homeowners' Insurance protects property owners against lawsuits from visitors to the property as well as damage to the property. Property owners who allow gleaners onto their property are advised to ensure that such gleaning activities are covered under their particular policy.

A note on liability for backyard farms and gardens: Generally, homeowners insurance policies cover injuries that take place on the property if the injured party is the guest of a homeowner and if the activity is not for a commercial purpose. Typical homeowners insurance policies do not cover incidents related to the sale of fresh produce from the property. However, in many cases, "endorsements" can be added as modifications to the general policy that add or remove provisions to serve particular needs. Some homeowners policies can be amended to include certain home businesses or other activities. If you are unsure whether your providing of fruits or vegetables from your backyard garden to anyone would be covered by your insurance policy, ask your insurance agent.

Other ways to protect your business, organization, or yourself from liability:

Indemnification agreements: Indemnification, or "hold harmless" agreements, can provide additional protection by requiring someone else to pay your legal fees and expenses if you are sued by a third party. Whether you can get this type of agreement may depend on your power position in the relationship. For example, a farmers' market may require a vendor to indemnify the market if the market is sued because of an injury sustained in that vendor's stall. The indemnified party should also make sure to ask to be named as an "additional insured" on the indemnifying party's insurance policy – you want the party indemnifying you to have the financial resources to make good on that promise.

Liability waivers: Depending on your activities and who is involved, you may also want to ask some participants to sign a liability waiver. For example, if your organization operates a community garden, you could ask volunteers and gardeners to sign a liability waiver, which states that they will not hold you responsible or sue you in the event that they are injured in the garden. The waiver should be very clear in informing gardeners of the risks they are taking and about the fact that they are voluntarily waiving their right to sue you. In practice, courts often refuse to uphold liability waivers, on the grounds that it would be poor public policy for businesses and organizations to waive their duty to be careful. Nevertheless, if you carefully craft your waiver, there is a good chance it will protect you, either in court or in simply setting clear expectations that volunteers should be careful to avoid injury and not sue you.

Limited liability business structures: Forming a corporation or forming an LLC for your business can limit your liability, and provide an extra layer of insurance. If you are sued, the claim will be limited to the assets owned by the company, and not your personal assets – such as your home, car, and personal bank accounts. Remember: this "shield" over your personal assets is not absolute. For example, you wouldn't be protected if you commit intentional fraud, and you can destroy the limited liability protection if you treat the LLC or corporation bank account as

your own personal account. So act fairly and legally, fund your LLC or corporation adequately, and keep business and personal finances separate.

Tips on Purchasing Insurance:

Shop around for coverage. Find an insurance broker or agent who understands your business and the particular risks associated with what you're doing. Rates can vary widely from one insurance company to another.

Ask lots of questions. Make sure your insurance provider understands what you're doing, so that you get the coverage you need. For example, a products liability policy might cover your sales of produce, but not meat and dairy. And your policy might not cover "temporary structures" like tents or tables used in your farmers' market stall. You don't want to find this out after you submit a claim.

Ask for referrals. Ask other similar businesses or organizations what insurance policies they hold and what their experience is like.

Note for urban farms: Some urban farms have found that their insurance policies are unusually expensive, in spite of the fact that there is a low risk of injury in urban farming. This is because insurers often liken an urban farm to a large commercial farm that involves trucks, tractors, pesticides, repetitive motion activities, or other activities with a higher risk of injury. It's a good idea to call around until you find an insurer or broker that understands urban farms. One suggestion is to tell the insurer or broker that you are a "garden," rather than a "farm." Of course you should still be honest about what activities you are engaged in, including growing food for sale, if applicable. However, reframing the activity as a garden might prompt insurers to choose an insurance policy that better fits your activity.

Find out if you can associate with or become a member of a larger entity, who may be able to provide discounted insurance rates. Some larger membership organizations and associations offer special rates on insurance policies to their members. Check with any existing organizational affiliations.

Be safe. One of the best ways to manage risk is to adopt safety practices and policies. Train people on safety, remove hazards, post warnings – a little care goes a long way in preventing injury and avoiding liability.

ORGANIC CERTIFICATION

“Organic” is a regulated labeling term. Since 2002, the U.S. has had a single national standard for organic. The USDA National Organic Program (NOP) oversees independent certifiers that work directly with organic food producers to ensure they all meet the NOP requirements.

There are three labeling categories for certified organic products: “100% Organic,” “Organic,” and “Made with Organic.”

100% Organic	Organic	Made with Organic
<ul style="list-style-type: none"> • Only ingredients certified “100% Organic” • Only organic processing aids • May use USDA organic seal • May use certifier’s logo 	<ul style="list-style-type: none"> • At least 95% organic ingredients • Limited approved nonorganic ingredients and processing aids • May use USDA organic seal • May use certifier’s logo 	<ul style="list-style-type: none"> • At least 70% organic ingredients • Limited approved nonorganic ingredients and processing aids • May NOT use USDA seal • May use certifier’s logo

What’s different about the “organic” label?

Many food labeling terms, like “natural” and “sustainable” have no official meaning. Organic is a strictly regulated marketing term, and you must be certified to use it on your products.

For food processors, the organic standards cover three main areas: ingredients, protection against contamination and commingling, and record-keeping.

- **Ingredients:** Organic certifiers review each organic formula and label to make sure it meets the labeling requirements. Suppliers provide their organic certificate to confirm that ingredients are organic. The “National List” is a limited list of nonagricultural ingredients and processing aids that may be used.
- **Contamination & Commingling:** Organic processors make sure that organic products aren’t mixed with nonorganic products and that organic products are protected from contact with cleaning materials or packaging that may have prohibited residues.
- **Record-keeping:** Organic producers have their records inspected every year and must document sales, production, and purchases to show that they have maintained organic integrity.

How do I become certified?

Any organic producers who sell \$5,000 or more per year in organic products must be certified if they want to advertise their products as organic, even just on the label. The USDA does not certify any organic producers directly – they oversee independent certifiers.

Organic is a practice-based standard, which means you can’t simply test a final product to find out if it is organic. Certification focuses on producers’ practices. New organic producers go through an initial application and inspection process with their certifiers, and they continue to have annual inspections for as long as they remain certified.

Most certifiers charge an application fee and an annual fee that is either based on production value or a set scale.

Where can I learn more about organic?

The organic regulations can be confusing – beware of misinformation about organic on the Internet, in the media, and in the food industry! The National Organic Program website is the most reliable source for information about organic in the U.S.:

www.ams.usda.gov/AMSv1.0/nop.

Certifiers' websites can provide additional background about organic as well as details about fees and the application process. The largest and oldest organic certifiers in the U.S. are:

- CCOF: www.ccof.org
- Oregon Tilth: www.tilth.org
- QAI: www.qai-inc.com

REFERRAL LIST

Note: Sustainable Economies Law Center and the East Bay Community Law Center provide this list as a resource for clients and workshop attendees, but we do not necessarily recommend or vouch for any of the service providers listed here. It is up to you to evaluate service providers prior to hiring them.

Legal

Alameda Co. Bar Assoc. Attorney Referral 510-302-2222 for an attorney referral	acbanet.org/lrs	Or call
Nolo Lawyer Directory directory of lawyers by specialty	nolo.com/lawyers	Searchable
Legal Services for Entrepreneurs for low-income people	lccr.com/lse.shtml	Legal services
Cutting Edge Counsel law	cuttingedgecounsel.com	Social enterprise
Myrrhia Resneck law	myrrhieresneck.com	Small business
Jill Jacobs nonprofits, co-ops, shared housing	jilljacobslaw.com	Small business,
Jenny Loda agriculture, nonprofits, environmental law	jennyloda.com	Food &
Sarah Kaplan shared housing, small business	sarahkaplanlaw.com	Cooperatives,
Inder Comar property, small business	comarlaw.com	Intellectual
Janelle J. Smith law	stallparker.com	Small business
Cameron Holland and nonprofits	cameronholland.com	Small businesses
Hasmik Geghamyan nonprofits, real estate, litigation	geghamyanlaw.com	Cooperatives,
Elizabeth Burnett food enterprise, employment law	ejmburnett@gmail.com	Small business,
Will Pasley cooperatives, nonprofits	willpasleylaw.com	Shared housing,
Jeremy Chen enterprise, nonprofits, intellectual property	jeremychenlaw.com	Social
Tanya Eliason intellectual property, arts law	eliasonlegalsolutions.com	Small business,
Jesse Palmer nonprofits, real estate	jessepalmer.wordpress.com	Cooperatives,
Frederick Hertz co-ownership	frederickhertz.com	Housing
Don De Leon enterprise, nonprofits, co-ops	grassrootslawyers.com	Social
Zoe Hunton	hunton-law.com	Social enterprise

and nonprofits Bryan Springmeyer tech start-ups	calstartuplawfirm.com	Business law,
Philip Heiselmann law	sustainablefoodlaw.com	Sustainable food
Tiffany Clark businesses, cooperatives, nonprofits	tiffanyclarklaw.com	Small
Joseph Morris law	josephmorrislaw.com	Small business
Adler & Colvin	adlercolvin.com	Nonprofits
Rafael Pacquing and litigation	rafael_pacquing@yahoo.com	Business law
Therese Tuttle, Tuttle Law Group consumer and agricultural cooperatives	therese@cooplawgroup.com	Worker,
Van Baldwin attorney/CPA	vanbaldwin@pacbell.net	Cooperative
Neil Helfman attorney	nhelfman28@aol.com	Cooperative
May A. Witaer immigration law, legal cannabis law	may@mayflowerlaw.net	Business law,
Sushil Jacob, Tuttle Law Group Worker/consumer co-ops and co-op conversions	sushil@cooplawgroup.com	
Rob Yanagida cooperatives	counsel@yanagida.us	Nonprofits and

Food Resources

Alameda Co. Health Dept. Food Safety Certification Classes acgov.org/forms/aceh/regformenglish.pdf	acgov.org/aceh/food/index.htm
Community Alliance with Family Farmers Sustainable Agriculture Education La Cocina (incubator kitchen) Economy Restaurant Equipment Chefs First (restaurant supply) Restaurant Depot Big Tray (restaurant supply) California Cart Builder (mobile vending carts) Arrow Tableware (biodegradable tableware) Richard's Packaging (containers / food packaging) CA Processor's Permits	caff.org sagecenter.org/ lacocinasf.org economyrestaurantequip.com/ chefsfirst.com/default.asp restaurantdepot.com/ bigtray.com/ californiacartbuilder.com arrowtableware.com richardspackaging.com cdph.ca.gov

Entrepreneurial Training

A New America immigrant entrepreneurs	anewamerica.org	focus on
CEO Women	ceowomen.org	focus on women

immigrant entrepreneurs Hatch Network entrepreneurs	hatchnetwork.com	focus on women
Renaissance Entrepreneurship Center courses, workshops, training	recenter.org	small business
Small Business Development Center advisement + workshops	norcalsbdc.org	small business
SCORE advisement + workshops	score.org	small business
Women's Initiative entrepreneurs	womensinitiative.org	focus on women
Urban FIRE training	urbanfire.org	micro-business

Small Business Finance

Working Solutions	tmcworkingsolutions.org/	Microloans
RSF Social Finance responsible investing and loans	rsfsocialfinance.org/	Socially
Opportunity Fund for working people	opportunityfund.org/	Working capital
Oakland Business Development Corp. finance	obdc.com/index.php	Small business
Full Circle Fund philanthropy	fullcirclefund.org/	Engaged

Oakland Resources

Oakland Business Assistance Center and referral	oaklandbac.com	One-stop info
Oakland Business Development Corporation finance	obdc.com/index.php	Small business

Accountants

Iryna Accountancy, CP accountants	irynacpa.com	certified public
Jeff Brown, CPA accountant	jbcpa.net	certified public
Jennifer L. Goodwin, CPA accountant	jenniferlgoodwincpa.com	certified public
Leung, Louie, Ip & Co. accountants	llicocpa.com	certified public
Zachary Sahar, CPA accountant	capitaltaxaccounting.com	certified public
Van Baldwin, CPA	vanbaldwin@pacbell.net	

cooperative-specialized accountant Dmitry Kustov	kustovcpa.com/	
cooperative-specialized accountant		

Architects & Interior Designers

Sekou G. Cooke, R.A. interior design	sekoucooke.com	architecture +
Theo Revlock, R.A. interior design	seadotdesign.biz	architecture +

Banks

Cooperative Center FCU	coopfcu.org/index.html	credit union
Bank of San Francisco	bankofsf.com	community bank
Bank of the West	bankofthewest.com	community bank
California Bank & Trust	calbanktrust.com	community bank
Circle Bank	circlebank.com	community bank
Mechanics Bank	mechbank.com	community bank
New Resource Bank	newresourcebank.com	community bank
One Pacific Coast Bank	onecalif.com	community bank
Scott Valley Bank	scottvalleybank.com	community bank
Umpqua Bank	umpquabak.com	community bank
WestAmerica	westamerica.com	community bank
The Golden 1	golden1.com/home/default	credit union

Bookkeepers

B&T Bookkeeping services	btbookkeeping.com	bookkeeping
Hilliard Management Group setup + bookkeeping services	hilliardmg.com	accounting
Keeping Your Balance tax preparation	keepingyourbalance.net	bookkeeping +
Kereti Tuioti tax preparation	keretituioti.com	bookkeeping +
Phillips Business Consulting bookkeeping	pbcfsf.com	accounting +
Melissa Hoover cooperative-specialized bookkeeper	melissa@usworker.coop	

Business Consultants

Gabriel Cole consultant	fareresources.com	food business
Lift	lifteconomy.com	Business

Coaching for the Next Economy Project Equity cooperatives	project-equity.org	Consulting for
ES Napa Jeff Gustafson project-based CFO	greg@esnapa.com jgus@yahoo.com	business plans part-time or
Imagine coaching	gpcross@aol.com	business plans +
Sandler Training coaching + marketing + sales	joediliberto.sandler.com	assessments +
Phillips Business Consulting strategy	pbcfsf.com	management +
Purple Lynx Roth Consulting management + strategy	purplelynx.com consultroth.com	marketing capital +
The Wright Consultants financial analysis + loan packaging	thewrightconsultants.com	business plans +

Business Services

Bay Area Green Business Program Area businesses to become green	greenbiz.ca.gov	certifies Bay
CF&P Insurance Brokers insurance brokerage	cfpinsurance.com	commercial
Dharma Merchant Services services (<i>enables businesses to accept credit card</i> <i>transactions/ non-cash payments</i>)	dharmamerchantservices.com	merchant
Global Payments services including POS systems	globalpaymentsinc.com	merchant
Marble Bridge Funding Group (<i>financing through a/r, p/o, loc</i>)	marblebridge.com	factoring
Sunbelt brokerage	sunbeltnetwork.com	business
TempCFO Solutions preparedness, accounting, tax solutions	tempcfo.com	audit

Credit Counseling Services

Consumer Credit Counseling Services counseling	cccsebay.org cccssf.org	provides credit
Money Management International counseling	moneymanagement.org	provides credit
Operation Hope counseling	operationhope.org	provides credit

Commercial Real Estate

Bay Area Development Company estate purchase via SBA 504 program	baydevco.com	commercial real
Capital Access Group estate purchase via SBA 504 program	capitalaccess.com	commercial real
Marcus & Millichap estate investment services	marcusmillichap.com	commercial real
TMC Development estate purchase via SBA 504 program	tmcd.com	commercial real
Green Key Real Estate commercial and residential real estate	greenkeyrealestate.com	Green

Design (Branding + Graphic + Identity + Web)

AP42 branding & web design	ap42.com	full-service
Conscious Creative branding & web design	consciouscreative.com	full-service
Design Dork design	designdork.com	graphic + web
Unit Design Collective branding & web design	unitcollective.com	full-service
Design Action Collective print design	designaction.org	web design and
Radical Designs programming	radicaldesigns.org	web design and
Allison Ball Consulting marketing	alliball.com	branding +

IT Services

Linde Group	lindegroupp.com	full-service IT
TECHsperience	techsperience.org	full-service IT

Marketing

SCORE professional business advising	score.org	no-to-low cost
Small Business Development Center professional business advising	norcalsbdc.org	no-to-low cost
Purple Lynx services including strategy	purplelynx.com	full marketing
Sandler Training	joediliberto.sandler.com	commercial law

Appendix: Funding Handbook

Funding Dreams: How to Finance Your Food Enterprise



*A Guide to the Many Loan and other Financing Options Available to Small
Businesses and Low-Income Entrepreneurs*

Financing A Small Business: Introduction

What is Capitalization?

Capitalization is the money that a business needs to start and continue running. It is defined as the amount and source of money needed to start and operate a business.

This handbook provides tips for financing your business. However, it does not substitute for the advice of a qualified attorney, business advisor, or financial advisor.

Sources of Capital

One of the keys to success in starting a business is obtaining adequate financing. Traditionally, businesses look to three sources of capital:

1. Contributions from the owners of the business (internal equity)
2. Loans (debt), and
3. Outside investors (outside equity)

Equity capital is one of the measures by which financial institutions will gauge a business' potential for receiving loans. Equity financing is typically received in exchange for an ownership share in the business. By contrast, debt financing is borrowing money that the business will have to pay back. The lender, such as a bank, does not receive an ownership share in the business. When analyzing the creditworthiness of a business, lenders like to see that the members of the business have invested their own money in the business first, before seeking outside funding. Lenders are also more comfortable giving loans if they feel that a business has its own resources to pay the loan back. Banks are not in business to lose money, so you need to convince them that lending to your business is a worthwhile investment. Thus, in the eyes of banks and other lenders, the more equity capital the business holds in the form of capital contributions, the more deserving of the loan it is.

Quick Comparison: Traditional Sources of Financing Versus Alternative Financing

Traditional Sources (Banks and Credit Unions)	Alternative Financing (Micro Loans)
<ul style="list-style-type: none">● Greater funding● Potentially higher interest rates● May require the business to have 2 to 3 years of operating with profits● May require good credit, collateral, or equity	<ul style="list-style-type: none">● Less funding● Potentially lower interest rates● May invest in startups● Credit, collateral, and equity requirements vary by lender

Traditional Bank Loans

You may be interested in attempting to secure a bank loan or other traditional financing methods. The following page outlines best practices when approaching a bank for financing. The goal of this section is to help you understand the difficulties that businesses face when approaching a lender, and, more importantly, preparing you to overcome these challenges.

Overview of Bank Loans

While big banks offer loans for small businesses, they are doing so less often. Small business lending by the country's eighteen largest banks declined by 21 percent since 2009. Further, banks typically have more stringent requirements for business owners—good credit scores, equity, business financial statements and an overview of the business, etc. This does not mean, however, that you should write them off. They offer higher amounts in loans, with longer loan periods, than many microloan organizations. Community banks and credit unions are great resources for loans. Both provide a sizeable portion of funding to small businesses.

But, many commercial banks will not lend to certain types of enterprises, like food enterprises. **It is important to note that most banks will not lend to start-ups.** Interest rates for bank loans are anywhere from 6 to 9%.

Overview of Best Practices

1. Preparation
2. Understanding banks' perspective
3. Attention to detail
4. Follow-up/ keep at it

Research Project: talk to other businesses!

Not all banking institutions make public the standards they use to assess loan candidates. Some do, however, and you may be able to find useful information from other businesses in the community. Successful businesses may be willing to share which banks they do business with, and which to stay away from!

As someone seeking a loan from a financial institution, you will be well served to realistically consider your business' assets, collectively and individually.

(1) Preparation

Preparation is a key step in both business development and obtaining funding for your business. Very few people can simply walk into the bank without preparation and obtain a significant loan. To prepare for your interactions with financial institutions, start by evaluating your financial situation and the financial situation of any partners. You will want to collect documents from all founding members and evaluate personal income, credit scores, debts etc. You will then want to decide whether it is in the best interest of your business to obtain funding individually (e.g., one member has outstanding credit and is willing to try and obtain a loan) or collectively (e.g., you all pool your resources and sign together for a loan). You can receive one free credit score per year at the government sponsored site www.annualcreditreport.com; beware of credit report scams at other websites. You will want to bring all financial documents with you when speaking to financial officers. Be sure to cast a wide net; bringing too many documents is better than bringing too few. Do not neglect any

information that is less favorable to you (e.g., a bad credit score or default on loans). You need to realistically consider the pros and cons of your financial situation, individually or as a group, and be prepared to discuss these pros and address the cons where necessary.

HELPFUL TIP:

If you find something in your credit report that stands out in a negative way (e.g., a creditor noting late payments) then you should be proactive about its removal. Try talking to your creditor about removing the negative comment. If that doesn't work, try adding your own statement to your credit file. You have the right to put a statement (up to 100 words) in your credit file explaining any misunderstandings.

(2) Understanding The Bank's Perspective

A bank is a business. They want to reduce their risk and increase their returns. It is important to understand that bankers, loan officers, or whomever you are dealing with at a financial institution has to follow institutionally determined standards. These standards are not all the same and some are less difficult to overcome than others. Ultimately, a financial institution will be interested in knowing how much money you want, what you plan on doing with it, and how you are going to pay the money back (on time!).

(3) Pay Attention to Detail

Details are key! Neglecting a negative financial history or failing to point out the strengths of your business are just two important details that might get skipped in the process of obtaining a loan. A financial institution should not have to search for necessary and persuasive information about you or the business. Present all the details of your unique financial circumstances to the bank clearly. Also, being detailed and thorough will only make the process run more smoothly.

(4) Follow-Up/Be Creative/Keep At It!

Receiving financial assistance in the form of a loan is undoubtedly a difficult and time-consuming process; however, persistence is the key. Many small businesses face hurdles when they are just beginning. Do not let a few undesired events get in the way of your business' success. Be creative when preparing for and communicating with financial institutions and potential investors. Remember not to burn bridges and do not stop trying when one door closes.

Conclusion

For most entrepreneurs, applying for a loan is not easy. Remember that although a loan may not be a viable option at the outset of your business' development, over time your business assets will grow and loans may become a more viable option once your business develops. Despite the difficulties associated with obtaining a financial loan, keep at it and be creative!

Alternative Financing: Overview

Many entrepreneurs, especially those seeking to start food enterprises, become frustrated at the difficulty and bureaucracy of attempting to secure a traditional bank loan. Such loans require a good credit score, a great deal of paperwork, collateral, and much more in order to signal to the bank that they will get their money back. Fortunately, there are ways to raise capital for a business outside of obtaining bank loans. Here are some great alternatives.

Donations

When people give money without the expectation of receiving anything in return, they are donating. Many entrepreneurs are using so-called *crowdfunding* websites such as Kickstarter.com and Indiegogo.com to raise money for various enterprises. Entrepreneurs that solicit donations often provide non-monetary rewards to donors.

Pre-Selling

If you're an existing business and want to expand your business, one possible way to raise funds is to pre-sell gift certificates. For example, you might sell a \$150 gift certificate that a customer can redeem at your business, but only charge \$100 for the gift certificate. Charging less than the value of the certificate gives the buyer an extra incentive to purchase the gift certificate.

Micro Loans

While traditional banking loans are sometimes difficult for new businesses to obtain, an alternative is a micro loan. A micro loan is a small, low interest rate loan, supplied through various sources. Typically, the organizations that provide micro loans are socially conscious about the difficulties that community entrepreneurs face when trying to secure financing. Two examples of micro lenders are Kiva Zip and Working Solutions.

Loans with Return of Principle Only

Return of principle only means giving back the money that the funder gave, and not offering a return on the investment. Not offering a return means that the business will not offer anything more than the original investment amount, such as an additional dividend, interest, or appreciation in value. It is important to note that, in California, this is likely considered to be a security, so you should proceed with caution and consult with a lawyer if you choose to utilize this funding method.

Direct Public Offerings (DPO) / Crowdfunding

You can publicly advertise investment opportunities in your business if you get the approval to do so from state and/or federal regulators. This would enable your business to get investments of various sizes from a large group of people. There are several ways to do this in terms of legal strategy. Increasingly, start-ups and small to medium sized community-based businesses are finding that a "direct public offering" made in one or a few US states is a favorable option. If a business is based within one state and wants to raise under \$5 million from residents of that state, or if a business wants to raise up to \$1 million from investors in a small number of states, it could qualify for an exemption from registering the offering with federal regulators and just have to register the offering with the state(s) where it is located and/or wants to raise investments.

To do this, a business needs to complete an application that includes an offering document that describes the company, the investment offered, the risk factors that potential investors need to be aware of, and some other

information. Many businesses will choose to hire a lawyer to help with this but it's not always necessary. The documents are filed with the state and then the state will either grant you permission to conduct your offering or will ask you to clarify some things in your application. Once the state is satisfied that your offering documents disclose enough information for investors to make an informed decision, the business is granted the right to offer securities in that state. There is a fee paid to the regulators in that state based on the size of the offering.

Product Discounts

Another way to raise capital for your business is to charge a membership fee and offer product discounts in exchange.

More ideas

See the California Financial Opportunities Roundtable Access to Capital Guide:
<http://www.rurdev.usda.gov/Reports/CA-CalFOR.pdf>

Socially Responsible Investment and Loan Organizations

Socially responsible investment and loan organizations have grown rapidly over the past thirty years and continue to expand, even through difficult economic times. Many of them are located right here in the Bay Area. Here, we offer a detailed overview of some of these organizations—what they do, who they serve, and how to obtain a loan from them.

Opportunity Fund

Who They Are:

Opportunity Fund is a not-for-profit social enterprise and one of California's leading microfinance providers. Their mission is to advance the economic well-being of working people by investing in those who do not have ready access to financial resources. Specifically, they target people who are locked out of traditional finance. They use a capital market, so they get investments from large microfinance investors or from traditional banks. Their strategy combines microloans for small businesses, microsavings accounts, and community real estate financing. Since making their first loan in 1995, Opportunity Fund has put more than \$235 million into California communities.

Opportunity Fund is a U.S. Treasury-certified Community Development Financial Institution and an SBA (Small Business Administration) approved lender. Loans are made or arranged pursuant to Department of Corporations California Finance Lenders License.

What They Offer:

- A small, high interest rate loan for equipment and inventory – up to \$10,000
- A larger loan for working capital, remodels, equipment, etc. – up to \$100,000
- Typically, they send loan officers to meet with borrowers

(1) Opportunity Loan: up to \$10,000

- Use for inventory, equipment, vehicles, and more.
- Loan terms:
 - 12% interest rate
 - Up to two-year repayment
 - No pre-payment penalty
 - No application fee
 - Up to 5% closing cost
- Who qualifies?
 - Time in business= one year
 - Northern or Southern California
 - No minimum FICO score
 - Credit history—no current delinquencies, open tax liens, or bankruptcies
 - Collateral—vehicle title only
 - *“Collateral” refers to hard items that you pledge when taking out a loan. Having collateral lowers the risk of the loan for the bank, because if you default on the loan, the lender can seize the collateral and recapture some of the outstanding loan balance. The collateral then becomes the lender’s property.*
 - *Whenever you pledge collateral, you improve your chances of receiving the loan you want. Having valuable collateral makes the loan more appealing to the lender, since their total risk is lessened.*

(2) Small Business Loan: \$10,000 to \$100,000

- Use for working capital, equipment, remodels, and more
- Loan terms
 - 8-12% interest rate
 - Up to 5-year repayment term
 - No pre-payment penalty
 - No application fee
 - 5% closing cost
- Who qualifies?
 - Time in business= more than one year
 - Northern or southern California
 - No minimum FICO score
 - Credit history—no current delinquencies, open tax liens, or open bankruptcies.

(3) Equipment and Vehicle Loans

- Loans for mobile food carts
- Commercial vehicle loans
- Dry cleaner loans
- Green loans

Who They Serve:

- People with small businesses—small retail, mobile food, child care, janitorial
- Typically low-income people, but not a requirement
- Mostly people who already have businesses
- Currently, *no funding for start-ups EXCEPT people who want to start mobile food businesses*
 - i.e. food trucks and pushcarts
- Usually, people must be willing to pledge collateral, but it depends on the financials and the credit
 - Typically no collateral required of people requesting under \$10,000
- No one with recent bankruptcies, liens, unpaid child support
- People in the Bay Area and the Los Angeles area

Process:

- Can apply online in order to give them preliminary information
- Then, someone from the office will follow up within 24 to 48 hours
- Next, fill out all required documentation (application, financials) and submit it
- Process takes anywhere from one to four weeks
- The smaller the amount, the faster the process

Get in Touch:

Phone: (866) 299-8173

Street Addresses:

- San Jose: 111 West Saint John Street, Suite 800, San Jose CA 95113
- San Francisco: 2301 Mission Street, San Francisco, CA 94110
- Los Angeles: 6606 Pacific Blvd, Suite 214, Huntington Park, CA 90255
- San Francisco Market (Appt only): 785 Market St., Suite 1700, San Francisco, CA 94103

Working Solutions

Who They Are:

Working Solutions is a Bay Area nonprofit organization that supports entrepreneurs in starting or growing successful Bay Area businesses. They provide microloans and small business advising.

What They Offer:

1. Small Business Loans (Microloans)

- **For start-ups and existing businesses**, or those with less than 2 years of full sales history: \$5,000 to \$25,000
- **For businesses in existence at least 2 years, or those with more than 2 years of full sales history**: \$5,000 to \$50,000
- Eligible loan uses:
 - Working capital
 - Inventory purchase
 - Equipment and machinery
 - Leasehold improvements
 - Startup costs
- Ineligible loan uses
 - Debt consolidation or refinance of business debt
 - Personal use
 - Owner's draw or salary

Loan Details:

- Interest rates fixed from 6 to 10%
- Up to 5 years, fully amortized
- Application fee: \$50 nonrefundable
- Loan closing fee: 3% of the loan amount
- Additional fees may apply in connection with securing collateral, returned checks, late payments and any prepayments made within three months of loan closing
- For an estimation of monthly payments, try the Loan Calculator on their website
- **San Francisco Revolving Loan Fund**
 - \$5,000 to \$25,000 for startup and existing businesses, or those with less than 2 years of full sales history
 - \$5,000 to \$50,000 for businesses in existence at least 2 years, or those with more than 2 years of full sales history

Loan Details

- Interest rates are fixed from 4% to 6%
- Loan terms are up to 5 years, fully amortized
- Timing: one month

- From the time they receive a completed loan application, it takes 7 to 10 days to receive a decision as to whether a loan request is approved or not
- If a loan is approved, it takes an additional 1 to 3 weeks to fund the loan
- Application Fee: \$50 nonrefundable
- Loan Closing Fee: 3% of the loan amount
- Additional fees may apply in connection with securing collateral, returned checks, late payments and any prepayments made within three months of loan closing

Basic Eligibility Requirements

- Have limited or no access to a bank loan
- Business is located in San Francisco
- Create/retain 1 full-time job made available for low/moderate-income individuals

Who They Serve:

- Micro-entrepreneurs within the nine San Francisco Bay Area counties.
 - Alameda
 - Contra Costa
 - Marin
 - Napa
 - San Francisco
 - San Mateo
 - Santa Clara
 - Solano
 - Sonoma
- Entrepreneurs with *limited or no access to a bank loan*
- At least 1.5 years of industry experience
 - I.e., if you are looking to start a restaurant, need at least 1.5 years of restaurant experience
- People who meet the following eligibility requirements:
- Start-up Businesses (businesses with less than one year of full sales history)
 - The business has received a written or verbal loan declination from a bank.
 - Owners are current on their personal credit obligations when they apply.
 - The owner has a secondary source of income to cover personal expenses while the business is starting up. This could be from a family member, second job, or other source.
 - A completed business plan.
 - Owner's equity injection of at least 20% of the requested loan amount
 - I.e., owners have to invest at least 20% of the loan amount they are requesting into their business
 - This shows dedication and helps Working Solutions screen out people who will not follow through on payments
 - No minimum credit score, BUT must be current on all payments and have not had a bankruptcy in the last 2 years
 - People interested in receiving ongoing business coaching and mentoring
- Existing Businesses (businesses with one year or more of full sales history)
 - The business has received a written or verbal loan declination from a bank
 - The business has one year or more of full sales history
 - Owners are current on their credit obligations when they apply

- Executive summary of the management and operations of the business
- Owner's equity injection of 10% of the requested loan amount
- No minimum credit score, but must be current on all payments and have not had a bankruptcy in the last 2 years
- You are interested in receiving ongoing business coaching and mentoring.
- All owners of 20% or more are required to provide a personal guaranty on the loan

Process

The Working Solutions website sets forth the process for applying for, and receiving, a microloan, in a user-friendly way. You can apply at: <http://tmcworkingsolutions.org/loan-program>. The steps are listed here in order to acquaint you with their process.

- **(1) Determine eligibility.**
 - Determine if you are eligible for a loan by visiting Working Solutions' website and clicking the Are You Eligible? tab.
- **(2) Pre-application form**
 - If you feel your business meets basic eligibility, fill out the pre-application form on the Apply tab.
 - A Working Solutions staff member will contact you *within 2 business days*.
- **(3) Telephone Interview**
 - A Working Solutions staff member will schedule a 15-20 minute telephone interview with you to confirm eligibility and discuss the application process.
- **(4) Microloan Application**
 - Upon confirmation of eligibility, fill out the appropriate Microloan Application on their website (either for sole proprietorships, or for corporations, partnerships, and LLCs)
- **(5) Submission**
 - Submit the Application Forms, requested documentation, and \$50 non-refundable application fee to Working Solutions by email, mail, or fax.
 - Generally, it takes 7 to 15 business days to receive a decision on whether loan request was approved.
 - If loan is approved, it takes an additional 1 to 3 weeks to fund the loan.
- **Total time: *approximately 1.5 months***

Get in Touch:

San Francisco Office

440 Pacific Avenue
San Francisco, CA 94133

San Rafael Office

1115 Third Street
San Rafael, CA 94901

Youth Business America

Who They Are:

Youth Business America's (YBA) mission is to find, fund, and mentor young entrepreneurs who need help to start or expand their businesses and whose businesses will generate employment and promote the economic health of local communities.

Youth Business America is a nonprofit based in Oakland, California and currently serves the 9 counties of the Greater Bay Area. YBA aims to roll out its program to other communities in California with the final goal of establishing a national network.

What They Offer

- Loans
- Mentoring for the initial two years of business
- Access to technical support from professionals that share their vision

Who They Serve

Applicants for YBA support must be:

- 18 to 35 years old and committed to starting their own businesses – not limited to food businesses;
- A US citizen or permanent legal US resident;
- Recommended by two letters of recommendation: These may come from one of our Community Partners, or someone such as a banker, employer, teacher or client who can provide an opinion on your readiness to start a business. This letter should not come from a friend or anyone who may have a direct conflict of interest in the outcome of your loan decision;
- A graduate or have successfully completed a business orientation course, training program offered by a YBA Community Partner or otherwise convince YBA that they have the business skills and technical competence to successfully execute their business plan and operate their business;
- Prepared to present a viable business plan demonstrating how the required funds will be allocated, the anticipated cash-flow, and the expected capability to make regular payments on the loan: Loan proceeds may not be used to refinance existing debts;
- Willing and ready to work with a volunteer mentor, approved by YBA, whose role will be to provide ongoing guidance and support on a one-2-one basis (note, those seeking the support of a mentor only without a loan will be considered by YBA if there are sufficient mentors available);
- Working, or intend to work, full time (35 hours or more per week) in their business: Students applying for support while still undertaking a course of study will be considered if they are in the final year of their course at university or college, and if they can demonstrate that the time they are expected to devote to their studies will not interfere with their ability to manage and organize their business affairs;
- Qualifying Applicants must own at least 51% of the business being funded and serve as the operating manager(s): Other owners not qualifying as applicants must be passive owners. Qualifying Applicants will be responsible for 100% of the loans made by YBA.

Requirements for businesses:

- YBA will provide funds to start a new business, or to fund the development of an existing business which has been in full operations for two years or less
- Without exception, either the borrower(s) or the business must be based and operate from within a community where YBA has a program
- The business being funded, and its trade names and legal entities etc., must be registered in the U.S.

Process

- (1) **Ensure a good fit:** make sure that your business is at the appropriate stage to apply.
- (2) **Complete introduction:** complete “Introduction to YBA” form and email it to YBA OR have one of their Community Partners send them a referral

- (3) **Apply:** once YBA contacts you directly upon receiving your introduction form or Community Partner referral, they will provide an Application Packet and instructions for formally applying for the program. After the materials have been submitted, YBA will perform a background check, credit check and a reference check and will then assess your business and financial plan for viability.
- (4) **Present your case:** present your case directly to the panel of credit, entrepreneur and business specialists.

List of Current YBA Community Partners

These entrepreneurial support programs are a great resource to help you get the ball rolling on your business idea. Once you work with one of them, they can also provide referrals to YBA for you. The list is changing and expanding rapidly, so this list may not be exhaustive.

City and County of San Francisco:

- [San Francisco Small Business Development Center \(SFSBDC\)](#)
- [Urban Solution](#)
- [Renaissance Entrepreneurship Center](#)
- [La Cocina](#)
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [Jewish Family and Children’s Center](#)
- [City College of San Francisco](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at alkramer@cabrillo.edu.
- [Mission Economic Development Agency \(MEDA\)](#)
- [Women’s Initiative for Self Employment](#)
- [Impact HUB Bay Area|Impact HUB SOMA](#)

Solano County:

- [The Solano College Small Business Development Center \(SBDC\)](#) – For further information, contact Chuck Eason at charles.eason@solano.edu.
- [Solano Community College](#)

Alameda County:

- [Alameda County SBDC](#)
- [AnewAmerica Community Corporation](#)
- [Women’s Initiative for Self Employment](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at alkramer@cabrillo.edu.
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [Impact HUB Bay Area|Impact HUB Berkeley](#)

Contra Costa County:

- [Contra Costa Small Business Development Center \(CCSBDC\)](#)
- [Women’s Initiative for Self Employment](#)
- [John F. Kennedy University- Institute for Entrepreneurial Leadership](#)
- [AnewAmerica Community Corporation](#)

Santa Clara County:

- [Cogswell Polytechnical College](#)
- [AnewAmerica Community Corporation](#)
- [Women's Initiative for Self Employment](#)
- [Business & Entrepreneurship Center \(BEC\)](#) – For further information, contact Alex Kramer at alkramer@cabrillo.edu.
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.
- [De Anza College](#)

San Mateo County:

- [Renaissance Entrepreneurship Center](#)
- [The Business & Entrepreneurship Center \(BEC\)](#) For further information, contact Alex Kramer at alkramer@cabrillo.edu.
- [NFTE \(Network for Teaching Entrepreneurship\)](#) – For more information, contact Victor Salama at 212 232 3333 ext 311.

Get in Touch:

Youth Business America
469 9th Street, Suite 240
Oakland, CA 94607-4041
Mainline (510) 444-5511
Fax (510) 444-5004

Website: <http://www.youthbusinessamerica.org/entrepreneurs/>

Kiva Zip

Who They Are:

A U.S.-based pilot program aimed at making loans available to entrepreneurs in the United States (and Kenya). They are a part of Kiva, a nonprofit that connects volunteer lenders directly to borrowers through the internet with the goal of alleviating poverty. Kiva Zip is a small, new project to test a more direct lending model than currently used by Kiva. The first loan was disbursed in January 2012. It aims to expand access to capital for entrepreneurs and small business owners, to lower costs of capital, and to increase connection between borrowers and lenders.

Entrepreneurs apply for a loan on the Kiva Zip website through the endorsement of a “Trustee,” a Kiva Zip partner. If their applications are successful, the loans are posted on the Kiva Zip website. They are then “crowd-funded” by individual lenders from around the United States. Selecting from the borrowers presented on the Kiva Zip website, lenders can give any amount of money, starting with a minimum of \$25, to any borrower.

Loans are disbursed, and repayments collected, via PayPal.

What They Offer:

- *An **alternative to traditional microfinancing***
- **Small loans for a business purpose**

- Loans start at \$5,000 or less
- If you repay that loan successfully, with no default or delinquencies, you can come back and apply for a \$10,000 loan. If you repay that loan successfully, you can apply for a \$15,000 loan... and so on until you reach the loan cap.
- Hard cap on what borrower can take out is \$50,000. This would take several years to work up to.
- Short loan terms (12 months or less)
- **NO INTEREST**
- **Do not consider credit score or credit history**
- Personal connections between borrowers and lenders
- Efficiency—online application forms and electronic payment mechanisms save borrowers time
- Easier application process than most microfinancing organizations

Who They Serve:

People with a strong business concept and sound character who are not heavily indebted and are not millionaires!

- People who want to raise money for a small business – not limited to food businesses
- Targeted to people who have been excluded from financial services (those that have accrued a lot of debt, have low credit scores, etc.)
- The borrower must have a real social and economic need
- The borrower must have a sound business plan
- The borrower must not be in bankruptcy or foreclosure proceedings, or about to enter into them
- The trustee must endorse the borrower's character
- The trustee must determine that the borrower is financially responsible
 - Any individual or organization can be a trustee, so long as they provide strong answers to the questions on the application.

Process:

Personal reference model rather than traditional credit history model

- Kiva Zip is an attempt to test different ways of gauging a borrower's trustworthiness and ability to repay loans, with the belief that financial history and data does not tell the full story.
- Model centers on ***trustee recommendations***
 - Kiva Zip partners with organizations (or, at times, individuals) called "trustees"
 - Trustees are mostly small business incubators, small business development centers, or places that offer technical assistance to small businesses
 - Trustees recommend people that are looking for a loan to start or grow a business to Kiva Zip
 - (1) Trustees submit an online endorsement to Kiva Zip explaining why the borrower would be a good fit and what they would use the money for.
 - (2) Profile for the person seeking a loan is posted on Kiva Zip, along with their idea/ plan
 - (3) Lenders can select whichever borrower they would like to lend to

To date, every person whose loan request has been posted on Kiva Zip has been funded for the amount requested.

Get in Touch:

Register to be a lender, trustee, or borrower online at: <https://zip.kiva.org/>

Whole Foods Loan Fund

Who They Are:

Whole Foods! The natural foods supermarket chain decided they wanted to “walk their talk” in supporting local, sustainable, humane food producers. So, they set up an annual budget of \$10 million to promote local agriculture (especially animal agriculture), wherever they have stores, through long-term loans at low interest rates. This money will be used to help local producers of grass fed beef, goat milk dairies, organic pasture based eggs, animal-compassionate dairy cows, chickens, turkeys, sheep, pigs, etc. The money will also be used to support local vegetable farmers.

What They Offer:

Local Producer Loan Program

Low-interest loans to help local producers flourish. In addition to featuring local products in their stores, they provide up to \$10 million in low-interest loans to independent local farmers and food artisans. They help small producers make their dreams a reality.

- Targeted loan amounts between **\$1,000 and \$100,000**
- Maximum \$25,000 for start-ups
- Loan amount not to exceed 80% of total project cost
- **Low, fixed interest rates** (currently between 5% and 9%)
- Monthly payments required after termination of grace period
- No penalty for early repayment
- **Collateral required**
- One-time minimal processing fee covers administrative expenses, including credit report
- They do consider credit history and credit score
- Approval and terms dependent on product characteristics, risk assessments, and use of proceeds
- Opportunity to apply for additional financing if initial loan is in good standing after one year
- Existing vendor relationship with Whole Foods Market preferred

Who They Serve:

- Small, local, independent food producers—focused on **agriculture and production** rather than food service or packaged food
- Producers that are located a few hours’ drive time (or less) from a Whole Foods store
- Producers that meet Whole Foods Market’s Quality Standards and standards for animal welfare (i.e., organic and animal-compassionate producers)
- Producers that already sell to Whole Foods—although this is NOT a requirement
- Producers that will use funds for expansion and capital expenditures (i.e., buying more animals, investing in new equipment and infrastructure, or expanding crops), not operating expenses
- Producers that have a viable business plan and adequate cash flow to service debt

Process:

- Streamlined with fees, interest rates, and paperwork minimized
- \$65 processing fee for applications
- No closing fee
- Applications accepted on a rolling basis

- Can apply online at:
<http://www.wholefoodsmarket.com/mission-values/commitment-society/applying-local-producer-loan>

Slow Money

Who They Are:

The Slow Money Alliance provides an alternative to our current financial system, a system they believe to be disconnected from people and place. They believe in fixing the economy from the ground up—starting with food. Slow Money believes in:

- Investing in people and enterprises close to home;
- Building healthy enterprises, communities, and ecosystems rather than simply extracting financial wealth; and
- Measuring return on investment by the tangible world we create rather than just by the profits we make.

What They Offer:

- Slow Money itself **DOES NOT provide financing**
- Slow Money **DOES bring investors and entrepreneurs together**, on the basis of Slow Money principles
- You can present your business or project at Slow Food meeting or event, by signing up online at: <http://slowmoneynorcal.org/submission>

Who They Serve:

- People who want to start small food enterprises!
- Projects that fit with the mission of Slow Money

Get In Touch:

Slow Money
P.O. Box 2231
Boulder, CO 80306
info@slowmoney.org