ABOUT THIS GUIDE

This guide was written by staff at the Sustainable Economies Law Center with funding provided by The Health Trust. This guide is meant to serve the Healthy Food Partner Collaborative in San Jose and other organizations and individuals seeking to increase consumption of local and fresh produce in San Jose.

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Some of the topics covered in this guide relate to quickly changing areas of law. The food movement is growing and entrepreneurs increasingly seek to grow, process, buy, and sell food in ways that break away from industry norms of the last several decades. Many laws are designed for food to be sold through large distribution chains, which involve expensive, commercial facilities and rules designed for very large-scale sales of food. Lawmakers and regulators are still working to catch up with California's food movement, but for the last few years we have seen a great amount of legislation introduced in the California legislature and local government bodies to try to make the law work better for very small-scale food production and distribution. So it’s best to check with your county environmental health department, your county's agricultural department, your city planning department, or another relevant agency if you are unsure about how any laws discussed in this guide apply to your activities. For example, permit costs and registration fees referenced in this guide change occasionally, so when preparing to apply for any permits please inquire with the relevant agency about what the fee will be to avoid any surprises. If you have questions about selling food, forming a business, legal liability or any other legal questions, it’s often best to also speak with an attorney who can advise you about how the most current law applies to your particular situation.

Finally, most of the legal compliance processes discussed in this guide are specific to Santa Clara County, and the section on zoning is specific to the City of San Jose. If your produce selling activities are located outside Santa Clara County, this legal guide is not recommended for you.
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WHAT STORES, RESTAURANTS AND OTHER FOOD RETAILERS NEED TO KNOW ABOUT SELLING LOCAL PRODUCE

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 carts, food booths at events, and any other facilities that provide food to consumers among the general public. Wholesale food facilities (such as food manufacturers that sell to other businesses and produce distributors that sell to businesses) are discussed in following sections, starting on page 8.

Retail Food Facilities in California Must Acquire All Food from “Approved Sources”

California’s Health and Safety Code requires that all food entering a retail food facility be from “approved sources.” Retail food facilities 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 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 about the law related to purchasing directly from small farms are provided later in this guide in the section for farmers and gardeners (beginning on page 9).

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 the Health and Safety Code requires you to keep records of produce and other food 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 purchased

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.

Use Proper Refrigeration

Equipment used in retail food facilities must meet California Health and Safety Code requirements, specifically Part 7, called the California Retail Food Code, which many local environmental health officials call “Cal Code.” Refrigerators and other equipment in com

1 California Health and Safety Code Section 113980
Commercial kitchens must be commercial grade and certified to meet NSF/ANSI sanitation standards. Refrigerators must also have proper drainage systems, which may entail placing a floor drain below the refrigerator, depending on the model.

Whole uncut produce (except seed sprouts) can be stored outside of refrigerators in the original shipping containers or in any clean, washable containers. There are no specific certification requirements for containers for holding produce, it just needs to be washable and clean. Raw seed sprouts must be kept refrigerated, and many produce sellers prefer to keep leafy greens and other produce in refrigerators to keep it fresh longer.

Santa Clara County’s Department of Environmental Health requires that retail food facilities obtain approval when bringing in new equipment, such as new refrigerators, so the department can ensure that the new equipment meets the legal requirements. To obtain this approval you will need to fill out and submit a Plan Check Application Form, available on the Department’s website (www.sccgov.org/sites/deh). The fee for adding or replacing a single piece of equipment is $329 as of this writing, but subject to change.

If you are unsure whether a new piece of equipment you want to bring into your store meets the Health and Safety Code requirements, contact the Department of Environmental Health before you purchase it.

Selling Produce 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 sealed container or a container that advertises a specific weight.

Annual registration fees for scale approval in Santa Clara County costs $100 plus $20 per scale.

To request approval visit www.sccgov.org/sites/weights.

Produce in Ready-to-Eat Containers and Cut Samples

California’s environmental health regulators distinguish between two types of sales of fresh produce: 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. 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, with slightly higher permit fees.

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 (in Santa Clara County this permit is called a “food prep” permit). These requirements are summarized below, but we recommend contacting the Santa Clara 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. The permit fees vary depending on the size of the facility.

**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, and
- quantity of the produce in the package.  

**Additional Requirements Apply to Food Preparation, Including Washing and Slicing**

All food facilities in California that prepare food must have at least one person working at the facility who is a certified Food Safety Manager, meaning this person has taken a course in food safety that is approved by the Environmental Health Department and has passed a corresponding exam. Other employees in the food facility who handle food must generally have a Food Handler certification which entails a simpler, less expensive course and exam. The Food Safety Manager training and exam is periodically offered by the county Department of Environmental Health and other providers operated by private businesses. The Food Handler certificate can be completed online through various accredited courses. The Department of Environmental Health can provide the latest course information.

Food facilities that “process” or “prepare” food, which includes simply washing and slicing produce, must obtain a food prep permit from the Department of Environmental Health and the permit fee costs $635 or more depending on various factors.

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2 Food and Agricultural Code Section 47002(c)
There are additional requirements for plan review and construction, including fees for review, when a food facility undergoes remodeling that is more substantial than simply adding or replacing equipment. Contact the Department of Environmental Health for more information if you think this may be necessary for your facility.

Food facilities that wish to add the capacity to provide washed, ready-to-eat, fresh produce, or wish to provide samples of produce to customers, should contact the Department of Environmental Health for assistance in determining what additional equipment is needed and what permit is most appropriate.

More details about these requirements for retail food facilities are described in the Retail Food Code component of the California Health and Safety Code and are described in simpler terms at this link: https://www.sccgov.org/sites/cpd/programs/pcp/Pages/home.aspx

The Department’s fee schedule is available at this link: https://www.sccgov.org/sites/deh/Fees/Pages/default.aspx

**Produce Only for Customers to Wash at Home, Without Cut Samples**

Where a small store is only selling pre-packaged foods and whole fruits and vegetables without packing, washing, or cutting up the produce, there are fewer facility requirements and a lower annual permit fee.

In Santa Clara County, the Department of Environmental Health currently charges $684 per year for a retail food facility permit for grocery stores with less than 5,000 square feet where there is no food preparation. In these settings, the store will not need as many separate sinks and other pieces of equipment, but any refrigeration used must be commercial grade, certified by NSF/ANSI sanitation standards, and approved by the Department of Environmental Health.

**Selling to Other Retailers**

Santa Clara County Department of Environmental Health typically only inspects retail food facilities such as restaurants, grocery stores, corner stores, and other food facilities that sell food to the end consumer. Wholesale operations, which are those that sell to retailers or other businesses, and do not typically sell food to the end consumer, are inspected by the California Department of Public Health (CDPH) in most jurisdictions in California. So a single commercial kitchen needs to be inspected and permitted by both Santa Clara County Department of Environmental Health and by the state CDPH if it will process or store food products for its own customers as well as for other businesses.

A wholesale permit from CDHP costs $348 or more, depending on the size of the facility. To apply for a permit from CDHP, one must file a Processed Food Registration Application, which is available here: http://www.cdph.ca.gov/programs/Pages/FoodSafetyFormDownload.aspx
WHAT PRODUCE DISTRIBUTORS NEED TO KNOW ABOUT BUYING AND SELLING PRODUCE

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 a middleman in this way then you are considered a “dealer” by the California Produce Dealers Act, and therefore you must register with the California Department of Food and Agriculture’s Market Enforcement Branch as a produce dealer. 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.cdfa.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.

3 California Food and Agricultural Code Section 56101 et seq.
4 See definition of “dealer” in California Food and Agricultural Code Section 56107
WHAT URBAN FARMS AND GARDENS NEED TO KNOW ABOUT GROWING AND SELLING PRODUCE

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,” 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. Those 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 the law requires these producers to follow safe food handling practices and labeling requirements described later in this section. The law also allows the local environmental health department to require these producers to register with the department in some situations. However, effective in 2016 there are numerous exemptions from the requirement to register with the Department of Environmental Health, so very few community food producers will need to register, but the safety and labeling requirements still apply.

5 California Health and Safety Code Section 113980
All “community food producers,” whether exempt from registration or not, must follow the California Small Farm Food Safety Guidelines provided by the California Department of Food and Agriculture (CDFA).\(^6\)

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.\(^7\)

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.\(^8\)

Note: “Community food producer” selling or donating eggs must also follow these laws. However, additional laws enforced by the California Department of Food and Agriculture apply to selling eggs that are not discussed in this guide.

**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” 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.

**Download the Small Farm Food Safety Guidelines here:**
http://www.cdfa.ca.gov/is/i＆c/sffsg.html

**Exemptions from registration requirements for “community food producers” and gleaners include transactions where:**

- 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;\(^9\)
- a gleaner donates produce (that was produced by a “community food producer”) to a food bank or food kitchen if the producer or gleaner keeps records for 30 days of the type of food sold and the date;\(^10\)
- a community food producer or gleaner provides produce directly to the public at their

\(^6\) California Health and Safety Code Section 114376(a)(4)
\(^7\) California Health and Safety Code Section 114376(a)(2) - (3)
\(^8\) California Health and Safety Code Section 114376(d)
\(^9\) California Health and Safety Code Section 114376(b)(1)
\(^10\) California Health and Safety Code Section 114376(b)(2)
farm or garden or some other premises controlled by the “community food producer”;¹¹
• a “community food producer” donates produce to a food bank or food kitchen that provides food at no cost to consumers; and¹²
• 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. ¹³

Because so many transactions are exempt from registration under state law, there are almost no 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.

You can learn more about how to apply for a permit as a Temporary Food Facility at this link: https://www.sccgov.org/sites/cpd/programs/TE/Pages/home.aspx

The fee for this type of permit is $99 or more, depending on the event details. Note that for temporary events where there will be multiple food sellers, the event organizer and each individual seller of food must obtain permits.

**Other Avenues to Becoming an “Approved Source”**

**Certified Producer’s Certificate - Required for Certified Farmers’ Markets**

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. So 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.¹⁴ Beginning in 2015, the application for obtaining a Certified Producers’ 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].”¹⁵

Farmers seeking a Certified Producer’s Certificate may apply online at the California Department of Food and Agriculture’s website: http://www.cdfa.ca.gov/egov/farmersmarket/.

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¹¹ California Health and Safety Code Section 114376(c)(1)
¹² California Health and Safety Code Section 114376(c)(2)
¹³ California Health and Safety Code Section 114376(c)(3)
¹⁴ California Conference of Directors of Environmental Health (which is an association of environmental health regulators, and not a government agency) has issued a guidance report about farmers’ markets for environmental health regulators stating that anyone with a Certified Producer’s Certificate is an approved source. The guide entitled Environmental Health Requirements for Certified Farmers’ Markets was released in July, 2008.
¹⁵ California Food and Agricultural Code Section 47020(c)
After submitting your application through CDFA’s website, your county agricultural commission will follow up with you and may conduct an inspection. There will be a fee for the inspection, which is based on the amount of time the agricultural inspector spends inspecting a farm, including time spent traveling to the farm and back to the office. The fee currently varies from $80 to $105 per hour plus there is an additional fee of $0.05 per mile the inspector must travel. The inspection on a very small farm can take very little time if the producer is able to quickly show the inspector all the crops being grown on the farm so the distance the inspector must travel from the Agricultural Commission office to the farm may be the most significant factor in determining the fee. To keep the inspection bill to a minimum applicants may request that the inspection be scheduled on a day when the inspector has other farms nearby to inspect if the applicant is willing to be flexible about the date of the inspection.

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 beyond the scope of this guide.

**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. See California Food and Agricultural Code Sections 47060 - 47062 for more details about CSA requirements and restrictions.

**Link to CSA registration forms:**
http://www.cdfa.ca.gov/is/i_&_c/pdfs/CSAProducerRegistrationRemittanceForm.pdf

**Link to text of the new law regulating CSAs:**
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=fac&group=47001-48000&file=47060-47062

**Standard Container Requirements for Farmers Selling Fresh Produce**

Fresh fruits and vegetables must generally be sold in standard sized containers. The specifications for standard container sizes are detailed in the California Code of Regulations Section 1380.19. These so-called “standard pack” requirements are designed for produce

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16 California Food and Agricultural Code Section 47061(b)

17 California Food and Agricultural Code Section 42941
that is sold through large distribution supply chains and are not generally convenient for a small farmer selling to a store or restaurant.

However, certain sales known as “direct marketing” in California law are exempt from these standard pack requirements, including:

- sales at certified farmers markets\textsuperscript{18}
- sales at or near the site of the farm\textsuperscript{19}
- sales or donations to a charitable organization within the state for charitable purposes\textsuperscript{20}, and
- certain types of fresh fruits and vegetables do not have standard pack requirements, regardless of the type of sale or delivery involved.

Individual consumers, grocery stores, and restauranteurs alike can purchase fresh produce from farmers at the site of a farmers market, at a farm or at a roadside stand near a farm without the farmer having to sell the produce in standard container sizes. A farmer delivering to a restaurant or store, however, must still comply with standard pack rules. See Food and Agricultural Code Section 47002 and California Code of Regulations Section 1392.19.

The following fruits and vegetables must be packed and sold in containers of specific dimensions:

- APPLES
- APRICOTS
- ARTICHOKE
- AVOCADOS
- CABBAGE
- CANTALOUPE
- CAULIFLOWER
- CELERY
- CHERRIES
- CITRUS FRUITS
- GRAPES
- LETTUCE
- MELONS
- HONEY BALL MELONS
- NECTARINES
- PEACHES
- PLUMS AND FRESH PRUNES
- SWEET POTATOES
- TOMATES
- BASKETS OF BERRIES AND OTHER FRUITS

The regulations describing the container dimensions are in the California Code of Regulations, Title 3, §1380.19 and available at this link. Other produce does not need to be sold in containers of specific dimensions.

\textsuperscript{18} California Code of Regulations Title 3, Section 1392.1(d)
\textsuperscript{19} California Code of Regulations Title 3, Section 1392.1(d)
\textsuperscript{20} California Code of Regulations Title 3, Section 1390(f)
Labeling Requirements

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

- name, address and ZIP code of the producer,
- name of the produce in the package, and
- quantity of the produce in the package.\textsuperscript{21}

“Community Food Producers,” (see page 10) even when selling produce directly to consumers, still need to label produce with their name and address. However, that information may be provided on a sign at the site of a produce stand at the farm or garden and does not need to appear on a label attached to each portion of produce purchased by a consumer when produce is sold or given away at the site of the farm or garden.\textsuperscript{22} Special sign requirements apply to farmers selling at a Certified Farmers Market and the market manager can provide more detailed information.

Selling Produce by Weight

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 unit of weight. For more information see www.sccgov.org/sites/weights.

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

1. the date, the identity of the producer,
2. the address of the producer, and
3. the identity and quantity of the produce purchased.\textsuperscript{23,24}

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.

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 or gardens planning to sell crops and planning to use any type of pesticide must obtain permits from

\textsuperscript{21} Food and Agricultural Code Section 47002(c)
\textsuperscript{22} Health and Safety Code Section 114376(a)
\textsuperscript{23} California Code of Regulations Title 3, Section 1392.4(k)
\textsuperscript{24} California Food and Agricultural Code Section 47002(e)
the Santa Clara County Department of Agriculture prior to spraying any crops. Contact Santa Clara County Department of Agriculture for more information on permits and fees.

Zoning Laws and Growing Food in Cities - What community gardens, urban farms, and backyard gardeners should know about selling produce in San Jose

San Jose’s zoning code allows “Neighborhood Agriculture” in residential zones, in commercial zones, and in industrial zones, which means that in those zones, an entire lot or a backyard can be used for growing food and/or raising animals for food (some restrictions on breeding animals apply).

A note about residential zones: the sale of produce in a residential zone would be considered a “home occupation” under the zoning code, which means that the following restrictions would apply to sales:

• no more than two clients at a time can be at the home,
• the business cannot have employees or volunteers other than people who reside in the dwelling,
• the agricultural activity cannot entail obnoxious odors, dust, noise, and
• restrictions on signs advertising the business apply.

In commercial and industrial zones, food can be sold without the restrictions noted in the bullet point list above. Commercial and industrial zones, unlike residential zones, also allow aquaponics upon obtaining a special permit, and generally allow other more intensive business activities.

If you would like to grow food for sale in another part of the city other than a residential, commercial, or industrial zone, first you need to determine what zone the property is in, and then you need to look up what uses are permitted in that zone in the city’s Zoning Code. The city’s Planning Division can help you determine whether you can grow and sell food on a particular piece of property.

Tax Incentives for Urban Agriculture - Coming Soon to San Jose?

In 2013 the California Legislature passed AB 551, the Urban Agriculture Incentive Zones Act, which allows urban cities and counties to choose to provide special tax treatment to owners of land who commit to using an entire parcel of land for agricultural purposes for 5 years or more. This can be achieved by a land owner entering into a 5 year contract with a community group or individual to use the entire property for growing food and/or raising animals for food. The property cannot have a house or any other building on it, with the exception of small structures that support agricultural activity, such as toolsheds, greenhouses, and

25 City of San Jose Zoning Code Section 20.30.100
26 City of San Jose Zoning Code Section 20.40.100
27 City of San Jose Zoning Code Section 20.50.100
28 City of San Jose Zoning Code Section 20.200.798
29 City of San Jose Zoning Code Section 20.80.710
30 City of San Jose Code of Ordinances Title 23
houses, produce stands, and even “instructional space.” In other words, the entire property must be dedicated to agriculture. The property must be between 0.1 and 3 acres in size. An eligible property will be assessed for tax purposes at its agricultural value, often a very low rate, instead of its development value for the duration of the contract.\textsuperscript{31}

Property taxes will be assessed at the irrigated land rate published by the National Agricultural Statistics Service of the United States Department of Agriculture, adjusted annually,\textsuperscript{32} and the rate is currently set at $12,700 per acre.\textsuperscript{33}

As of this writing, Santa Clara County has authorized cities in the county to opt into providing this tax incentive to urban agriculture. Thus far, San Jose has not yet chosen to participate, but organizations in the Healthy Food Partner Collaborative are advocating that the city pass such an ordinance. The city will be most likely to choose to provide this tax incentive for urban agriculture if city council members hear from numerous constituents that this policy would benefit the local community.

**Home-Based Food Production**

If you would like to use your home for producing food products, you may want to learn more about the California Homemade Food Act - also known as California’s “cottage food law” - that allows certain processed food products to be made in home kitchens. The California Department of Public Health has general information about the law online here:

http://www.cdph.ca.gov/programs/Pages/fdbCottageFood.aspx

However, permits are issued by local health departments. Cottage Food Operators in Santa Clara County can obtain a registration or permit from the Santa Clara County Department of Environmental Health.

The Sustainable Economies Law Center also has an extensive Frequently Asked Questions page and other information available at: http://www.theselc.org/cottage_food_laws

Renters and members of homeowners associations may want to learn more about the Neighborhood Food Act, which grants limited rights to grow food on rented property and property governed by homeowners’ associations. The Sustainable Economies Law Center has an Frequently Asked Questions document here: http://www.theselc.org/neighborhood_food_act.

\textsuperscript{31} California Assembly Bill 551 (Ting, 2013)
\textsuperscript{32} California Revenue and Taxation Code Section 422.7
\textsuperscript{33} See California Board of Equalization website here: http://www.boe.ca.gov/proptaxes/uaincentivezone.htm
“Gleaner” Defined

“Gleaner,” according to the California Health and Safety Code, “means 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.”

Gleaners Working With “Community Food Producers”

Gleaners who gather fruits and vegetables from residential areas, community gardens, and other small farms and gardens should be aware of the new requirements regarding “community food producers” described in the previous section, as many of those sources of fruits and vegetables may now be considered “community food producers” and they must comply with certain safe food handling, labeling, and record-keeping requirements. When working with these “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

Food producers and gleaners must follow the Small Farm Food Safety Guidelines (link provided on page 10) 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 Food

New California laws enacted in 2015 and 2016 allow local environmental health departments to require gleaners to register in some circumstances, but not in others. For a list of exemptions from registration, see the list of exemptions in the section on community food producers on page 10.

Donating Food

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 scenario, a gleaning organization does not need to register with the local department.
of environmental health.\textsuperscript{36} 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\textsuperscript{37} so this means that gleaners can aggregate whole, uncut fruits and vegetables from “community food producers” to donate to a food bank and both “community food producer” and gleaner do not need to file paperwork with the health department or pay associated fees.

\textsuperscript{36} California Health and Safety Code Section 114376(b)(2)
\textsuperscript{37} California Health and Safety Code Section 114376(c)(2)
REQUIREMENTS FOR ALL BUSINESSES IN SAN JOSE

San Jose Business License

Any business in San Jose must generally obtain a business license from the City so that the city can tax the business. There are many enterprises that are exempt from taxes, including, but not limited to:

- low-income, sole proprietors (eg, not a corporation),
- charitable, religious, fraternal, student organizations,
- farmers selling exclusively their own produce, and
- artisans selling their own hand crafted goods.

For the full details about these and other exemptions, see San Jose Municipal Code Section 4.76.6. Businesses not exempt from this requirement must obtain a business license from the City and display it conspicuously at the site of the business.

If your business or organization qualifies for an exemption from tax, you can fill out a form available at [http://sanjoseca.gov/index.aspx?NID=408](http://sanjoseca.gov/index.aspx?NID=408)
See sanjoseca.gov and click on ‘Business’ for more general information about how to obtain the license and pay taxes.

California Seller’s Permit

A California Seller’s Permit is required of anyone doing business in California and intending to sell “tangible personal property that is ordinarily subject to sales tax,” even if you are making sales for only a temporary period. The permit is free, and easily available online. The purpose of the permit is so that the state knows about your business and can tax you. Because groceries, including fresh fruits and vegetables, are not subject to sales tax, most farm stands and retailers who sell groceries exclusively are exempt. However, many farm stands and corner stores tend to sell other non-food merchandise, which is subject to sales tax. Also note that hot, prepared food is subject to sales tax as well. If the California Seller’s Permit requirement applies to your business or organization, ensure that you obtain it.

Apply to the California Board of Equalization (BOE) here:
[http://www.boe.ca.gov](http://www.boe.ca.gov)

For more information see: Board of Equalization’s Publication 73: Your California Seller’s Permit: [http://www.boe.ca.gov/pdf/pub73.pdf](http://www.boe.ca.gov/pdf/pub73.pdf).

Fictitious Business Name - Using A Name Other Than Your Own

You’ll need to file a Fictitious Business Name Statement with the county, unless the name of your business is your personal name or the name of your corporation or LLC. Registrations are valid for 5 years and the fee is $40 as of this writing, but subject to change.

Register here: [https://www.sccgov.org/sites/rec/Fictitious%20Business%20Names/Pages/Fictitious-Business-Name-Filings.aspx](https://www.sccgov.org/sites/rec/Fictitious%20Business%20Names/Pages/Fictitious-Business-Name-Filings.aspx)
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? You’ll need an automobile insurance policy.
- Do you have employees? Then you’ll need workers’ compensation insurance.
- Do you make and sell a product? 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.
OVERVIEW OF GOVERNMENT AGENCIES

This is just a short summary of what each agency does and how to contact it - it may not cover every type of permit your business may need.

**Santa Clara County Department of Environmental Health**
This agency inspects retail food facilities, such as restaurants, corner stores, grocery stores, food carts, food trucks, and other places where food is provided to the public to make sure the facility is clean, using proper equipment, and producing food safely. This agency does not inspect wholesale food facilities that process food to sell to other businesses.

(408) 918-3400  
https://www.sccgov.org/sites/deh/Pages/deh.aspx

**Santa Clara County Division of Agriculture**
This agency regulates farms to ensure that pesticides are used within legal limits. This agency also inspects farms seeking to sell food at certified farmers’ markets to ensure that the farm is really growing or producing what it sells at the farmers’ market. This agency also monitors insects, plant diseases, and weeds to protect agriculture.

(408) 918-4600  
scc.agriculture@aem.sccgov.org  
www.sccgov.org/sites/ag

**Santa Clara County Division of Weights and Measures**
This agency inspects scales to make sure they are accurate to ensure customers are charged the correct price when buying food or other products sold by weight.

(408) 918-4601  
Scc.wts-measures@aem.sccgov.org  
www.sccgov.org/sites/weights

**City of San Jose**
The City’s law control what activities can take place in what locations. The City’s Planning Division helps to enforce these laws, including restrictions on home-based businesses, signs advertising businesses, and other aspects of your business that affect the physical environment.
City Customer Contact Center
(408) 535-3500
customerservice@sanjoseca.gov
http://www.sanjoseca.gov/
Planning Division
(408) 535-3555
www.sanjoseca.gov/planning

California Department of Public Health (CDPH) - Food and Drug Branch
This branch of CDPH regulates wholesale food manufacturers (those are food producers who sell to other businesses for resale, instead of selling directly to consumers) and other food producers to ensure that food is safe to eat.

(800) 495-3232
FDBinfo@cdph.ca.gov
https://www.cdph.ca.gov/programs/Pages/FDB.aspx

California Department of Food and Agriculture (CDFA) - Market Enforcement Branch
This branch of the CDFA licenses merchants who handle fresh produce and other agricultural products for resale.

(916) 900-5016
Mailing Address: 1220 N Street, Sacramento, CA, 95814
https://www.cdfa.ca.gov/mkt/meb

California Board of Equalization
This is one of the California state agencies that manages tax collection. Most businesses in California need a Seller's Permit from this agency.
http://www.boe.ca.gov