



# ECOLOGY CENTER FARMERS' MARKETS

Policies, Effective January 31, 2012

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## **I. Introduction and Purpose**

The Ecology Center Farmers' Markets are Certified Farmers' Markets operated by the Ecology Center, a non-profit environmental organization established in 1969. The Markets are run in accordance with state, county and local laws. Their purpose is to provide the community with a place to buy fresh produce direct from the producer in a congenial atmosphere at a reasonable price, and to provide the producer a profitable and comfortable place to sell products.

The Ecology Center Board of Directors, elected by the members of the Ecology Center, is ultimately responsible for the Ecology Center Farmers' Markets and their operation, and approves the policies, rules, and regulations of the Ecology Center Farmers' Markets after consultation and recommendation from the Community Advisory Committee. The Community Advisory Committee is made up of members of the local community, Market Managers, members of the Ecology Center board and staff, and sellers at the markets. The Market Managers implement the policies (after ratification by the Community Advisory Committee and Ecology Center Board), report to the Ecology Center Executive Director, bring major decisions to the Ecology Center Board of Directors, and make day-to-day decisions regarding the operation of the markets. Input from Sellers is always welcome in the form of comments to Market Managers or at our periodic Farmer meetings, but is most valuable in the form of ongoing participation in the Farmers' Advisory Committee and/or the Community Advisory Committee.

In issuing Market policies, it is not our intent to burden participants with needless rules and regulations, but to ensure a simple and smooth running market. We welcome suggestions to better our policies and our markets. All policies and rules will be enforced in a fair, nondiscriminatory, and equitable manner.

Because the Ecology Center Farmers' Markets are a program of the Ecology Center, whose mission is to promote environmentally and socially responsible practices, and because of the feedback we have received from the community, the Ecology Center Farmers' Markets have a special commitment to support sustainable agriculture and sustainable communities. The markets, therefore, will encourage small-scale, local Farmers producing organically grown produce and animal products, favor processed items that support local and seasonal sustainable agriculture, and discourage the use of excessive packaging.

## **II. Market Hours, Locations, and 2012 Schedule**

***Saturday Market*** - 10 AM until 3 PM year-round; Center Street at MLK Jr. Way, Berkeley

***Tuesday Market*** - 2 PM until 7 PM during Daylight Saving Time, and 2 PM - 6 PM during Standard Time; Derby Street at MLK Jr. Way, Berkeley

***Wednesday Market*** – 3 PM until 7 PM May through October; Solano Ave at San Pablo Ave, Albany

***Thursday Market*** - 3 PM until 7 PM year-round; Shattuck Ave at Rose St, Berkeley

The Ecology Center Farmers' Markets will be closed on:

Thursday, November 22<sup>nd</sup>, 2012

Tuesday, December 25<sup>th</sup>, 2012

Thursday, December 27<sup>th</sup>, 2012

Saturday, December 29<sup>th</sup>, 2012

Tuesday, January 1<sup>st</sup>, 2013

The Markets will reopen from the Holiday Break on Thursday, January 3<sup>rd</sup>, 2013.

### **III. Definitions**

#### **A. Terms from California's Direct Marketing Law**

##### ***Certifiable Agricultural Products***

Fresh fruits, vegetables, herbs, nuts, shell eggs, honey, flowers, and/or nursery stock, produced in California by practice of the agricultural arts.

##### ***Certified Farmers' Market***

A location authorized by the County Agricultural Commissioner where Certified Producers of Certifiable Agricultural Products may sell their produce directly to consumers exempt from standard pack and grading regulations. The Ecology Center Farmers' Markets are Certified Farmers' Markets.

##### ***Certified Producer***

A person or entity authorized by a California County Agricultural Commissioner to sell fresh Certifiable Agricultural Products, or Non-Certifiable Agricultural Products produced from these Certifiable Agricultural Products, directly to consumers at a Certified Farmers' Market. Products must be produced upon land controlled by the Certified Producer and listed on the Certified Producer's Certificate held by the Certified Producer.

##### ***Certified Producer's Certificate, Producer's Certificate, Certificate, or Cert.***

A certificate issued by a County Agricultural Commissioner which verifies that the certificate-holder (Certified Producer) produces the fresh fruits, vegetables, nuts, shell eggs, honey, flowers, and/or nursery stock listed on land he or she controls, authorizes the sale of the products listed by the certificate-holder at Certified Farmers' Markets in the counties listed, and exempts the certificate-holder from standard size, pack, container, and labeling laws.

##### ***Employee***

Except for Family Members as defined below, persons employed by a Seller at a regular salary, but not including any persons whose compensation is based primarily on a percentage of sales.

##### ***Family Member***

Parents, children, grandchildren, grandparents, and any other person regularly residing in a Seller's household.

##### ***Land Which the Producer Controls***

Land that the Certified Producer owns, rents, leases, or share crops.

##### ***Non-Certifiable Agricultural Products***

Products, other than Certifiable Agricultural Products, produced by the practice of the agricultural arts or by the practice of aquaculture. These include, but are not limited to: apiary products, dairy, poultry and meat products, aquaculture products, dried fruits and vegetables, jams containing only farm-grown fruit plus sugar, juices, and other processed agricultural products which have undergone a simple process such as drying, grinding, roasting, smoking, salting, pickling, fermenting, or pasteurizing.

##### ***Processed Agricultural Product***

Processed agricultural products shall be defined as agricultural products that have been altered or prepared by such means as, but not limited to, slicing, juicing, drying, shelling, smoking, freezing or cooking, provided, however, that the seller has produced all of the ingredients contained in the final product.

#### **B. Terms Similarly Defined by most Certified Farmers' Markets:**

##### ***Certified Organic***

Describes products that are certified as organically grown by an authorized third party certifying organization that inspects the farm regularly and certifies to standards defined by the USDA National Organic Program.

***Farmer***

A Certified Producer of fresh fruits, vegetables, herbs, nuts, shell eggs, honey, flowers, and/or nursery stock; and/or a person or entity who produces Non-Certifiable Agricultural Products by practice of the agricultural arts upon land or waters which the person or entity controls.

***Fisher***

A person or entity who catches pelagic fish or shellfish from shore or from boats which the person or entity controls.

***Non-Agricultural Vendor***

Any vendor who sells processed food items that does not meet the definition of an agricultural product (certifiable, non-certifiable, or processed), non-food items made by the seller, or who offers a service (e.g. massage, or knife sharpening).

***Processed Food Items***

Any product, that does not meet the definition for either Certifiable or Processed Agricultural Products that is produced from raw ingredients by the seller through processes (such as cooking, baking, roasting, fermenting, freezing, juicing, sprouting) that change its physical or chemical structure.

***Re-Selling***

The sale at a Certified Farmers' Market of any product not grown, caught or prepared by the Seller (or by the Farmer being represented by the Seller on a Second Certificate). Certifiable Agricultural Products not appearing on a Seller's Producer's Certificate, or not listed as in season on the Producer's Certificate (except in the case of cold stored products), are considered not to have been grown by the Farmer.

***Registered Organic***

Describes products which are grown organically as defined in California Health and Safety Code Section 26569.11 (California Organic Foods Act of 1990) *and* which are listed on a current Organic Registration Permit received from the State of California by the grower.

***Second Certificate***

An arrangement whereby a Farmer at Market sells products on behalf of another Farmer. See Section *IV.B.1. Second Certificates* for more information.

**C. Terms Uniquely Defined for Ecology Center Farmers' Markets**

***Approved Seller or Seller***

Any Farmer, Fisher, or Non-Agricultural Vendor who has been approved by the Managers with consultation to the Committee to sell any product or products at any Ecology Center Farmers' Markets.

***Farmers' Advisory Committee, or Farmers' Committee***

A voluntary advisory Committee made up of a representative group of the Ecology Center Farmers' Markets Grower Members who agree to advise Market Managers about issues of product mix and other related topics for the general benefit of the Ecology Center Farmers' Markets. The Market Managers will be responsible for soliciting membership in order to maintain representation from a variety of farming regions, farm sizes, growers of different crops, types of commodities sold, seniority at the Ecology Center Farmers' Markets, etc. Committee communications occur by email, phone, and at-market consultation. No meetings are required.

***Community Advisory Committee, or Committee***

The group of community members, Ecology Center staff and Board members, and Sellers who advise the Market Managers, particularly on issues relating to processed food, as described in

*Section I. Introduction.* Ideal committee size is between 8 and 10 members, with a maximum size of 12. In order to be considered a member in good standing an individual must have attended at least 3 of the most recent 6 committee meetings. New individuals interested in becoming members must attend 3 meetings in an advisory capacity before being considered members in good standing. If the Committee is concerned that Market Managers have stopped representing the values of the Ecology Center Farmers' Markets and Ecology Center, the Committee may bring the issue to the Ecology Center Executive Director and Board to seek to remedy the situation.

### ***Market***

A Certified Farmers' Market, and the sections of Farmers' Market adjacent to the Certified Farmers' Market that contain Non-Agricultural Vendors, which is operated by the Ecology Center Ecology Center Farmers' Markets.

### ***Market Manager***

Ecology Center staff person with responsibilities for managing the Ecology Center Farmers' Markets. Responsible to the Community Advisory Committee and the Ecology Center Executive Director and Ecology Center Board of Directors.

### ***Member***

An Approved Seller who has been admitted to one or more Markets, who has been an Approved Seller for at least one calendar year, and who abides by all Market rules and all State, County and City laws. *See Section IV for definitions of the privileges of membership.*

### ***Conditional Seller***

A Seller who has received approval from the Market Managers with consultation to the Community Advisory Committee to sell at a Market, during his or her first year as a Seller. All Sellers will be Conditional Sellers for their first calendar year selling at the Markets. Conditional sellers are not members of the market, do not pay membership fees, and may be restricted in products offered for sale or in selling season at any time by the Market Manager. Conditional Sellers pay the same stall fees as members and are responsible for following all market, state, county, and City of Berkeley rules.

## **IV. Admission of Products and Sellers**

### **A) Types of Vendors and Where Each May Sell**

- 1) ***Farmers*** - Certified Producers and Producers of Non-Certifiable Agricultural Products, their Family Members, and their Employees, may sell at the market in the Certified Farmers' Market area.
- 2) ***Non-Agricultural Vendors and Fishers*** – while the emphasis of the market is on farm products, non-agricultural food products add variety and ambiance to the market and will be permitted at the market on a limited basis outside the Certified Farmers' Market area. Although state laws regarding Certified Farmers' Markets do not apply to non-agricultural products, the same producer-to-consumer philosophy applies to all items sold at any Ecology Center Farmers' Markets. The Seller, Family Members, and Employees may sell these products. Reselling may be allowed by Sellers, in rare instances, outside the Certified Farmers' Market area, by approval of the Market Managers with consultation to Committee.

### **B) Types of Products, and Where Each May Be Sold**

- 1) ***Inside the Certified Farmers' Market area:***  
**Members** of the Market who are **Farmers** may sell:
  - a) Any Certifiable Agricultural Product or Non-Certifiable Agricultural Product that is listed on his or her current valid Producer's Certificate **which is similar in product type and quantity** to what he or she has sold in the previous year at the Market, during a season

similar to the previous year's selling season, unless specifically restricted by the Market Manager after consultation with the Farmers' Advisory Committee.

- b) Any other Certified Agricultural Product or Non-Certifiable Agricultural Product listed on his or her current valid Producer's Certificate that has been approved for sale in the current year by the Market Managers after consultation with the Farmer Advisory Committee, during the season for which it has been approved.

**Conditional Sellers** who are **Farmers** may sell any Certified Agricultural Product or Non-Certifiable Agricultural Product listed on their current valid Producer's Certificate which has been approved for sale in the current year by the Market Managers with consultation to the Committee, during the season for which it has been approved. Conditional Sellers may be restricted in products offered for sale or in selling season at any time by the Market Manager without any Committee consultation.

### **Second Certificates**

In some instances, a Certified Producer may bring the products of another Certified Producer to Market. These arrangements are generally termed "Second Certificates," and may be made only with the prior approval of the Market Managers. Second Certificates are permitted for a one-year period and only those items approved by the Market Managers may be sold. According to State law, a Certified Producer may not sell for more than two other Certified Producers through Second Certificates at any given time.

The name of the Certified Producer selling for another Certified Producer must appear on the Second Certificate which that primary farmer is carrying, and the name of the Second Certificate's holder (the other farmer) must appear on the primary (selling) farmer's certificate.

The Certified Producer selling for another Certified Producer shall be selling or offering for sale Certified Agricultural Products which s/he has produced which are greater at the beginning of each day of sale by weight or dollar value than the products offered for sale for the other certified producer.

A Second Certificate may not be renewed if the privilege is being abused or if the product being sold on a Second Certificate is preventing another Producer with similar products from entering or doing well at the Market. Special requirements and charges for Second Certificates are listed in the *Sections V. Paperwork, VII. At-Market Rules, and VIII. Fees and Penalties.*

### **2) Outside the Certified Farmers' Market area:**

**Members** of the market who are **Fishers or Non-Agricultural Vendors** may sell any product that has previously been approved for sale at the market, and any product they are testing for potential addition to their product line (See below for testing rules), during a season similar to the previous year's selling season, unless specifically restricted by the Market Manager after consultation with the Committee.

**Conditional Sellers** who are **Fishers or Non-Agricultural Vendors** may sell any product that has been approved for sale in the current year by Market Managers with consultation to the Committee, during the season for which it has been approved. Conditional Sellers may be restricted in products offered for sale or in selling season at any time by the Market Manager without any Committee consultation.

### **3) Methyl Bromide and Methyl Iodide**

No product or ingredient in a product sold at Market may be fumigated with methyl bromide or methyl iodide or grown in soil fumigated with methyl bromide or methyl iodide as of April 15, 1996, unless the soil is on land that was fumigated by an owner or leasee before the present Farmer acquired the land. In the case of Processed Items ingredients, the Seller may be required

to provide all necessary information to aid in determining if ingredients have been grown using or fumigated with methyl bromide or methyl iodide.

#### **4) *Genetically Modified Organisms***

No product, or ingredient in a product, sold at Market after October 1, 2000 may be grown from genetically modified seeds. Currently, the following crops and any ingredients containing them should be considered at risk of containing GMOs: soy bean, canola (rapeseed), rice, corn (sweet and seed), tomato (Flavr-Savr type), potato, summer squash, papaya, sugar beets, and red-hearted radicchio. For Farmers, variety names on the producer's certificate and possibly seed receipts will verify non-GMO status. In the case of Non-Agricultural Vendors, unless some other method of verifying non-GMO status is approved by the Market Manager, any ingredients derived from these crops must be Certified Organic or purchased from a farmer at the Ecology Center Farmers' Markets. Ingredients that are required to be Certified Organic include, but are not limited to, *sugar*, baking powder derived from corn starch, all other corn products, all soy products, all rice products, and all canola products.

#### **5) *Bottled Water***

Bottled water packaged in plastic may not be sold at the Ecology Center Farmers' Markets. Water packaged in glass or other materials may be sold by Market Manager approval only, with consultation to the Committee.

#### **6) *Styrofoam***

Styrofoam is banned at the Ecology Center Farmers' Markets, and vendors may not use Styrofoam in any form to package any products sold at the Ecology Center Farmers' Markets.

#### **7) *Fishers***

All items sold by fishers must be wild, local, and not on the Monterey Bay Aquarium's Seafood Watch "avoid" list.

### **C) Application Process**

#### **1) *New Potential Farmers***

Producers who would like to sell at any of the Ecology Center Farmers' Markets must submit the appropriate application (Farmer or Processed Item [includes fishers]), and any accompanying paperwork that is requested by the Managers. The Market Managers may, at times, solicit applications from producers who seem to be able to enhance the overall product mix at market. **All new Sellers at the Ecology Center Farmers' Markets will be Conditional Sellers for their first year of selling at the markets. Conditional Sellers may be restricted at any time by the Market Managers as to what products they may sell and what seasons they may sell those products, with or without consultation with the Farmers' Advisory Committee.**

#### **2) *Current Farmer/Members***

Any significant planned change from previous years in types of products or quantities of specific products to be offered for sale at Ecology Center Farmers' Markets must be brought up to the Market Managers in writing as early as possible in the planning process for consideration. No significant planned change from the previous year in types of products or quantities of specific products offered for sale will be allowed without the approval of the Market Managers. A bumper crop of something normally grown is not a reason for concern.

Before admitting a new farmer whose products would overlap with those of current Members to the market, and before allowing a significant change in product mix by a current farmer/member, the Market Managers will consult with and seek input from the Farmers' Advisory Committee. Market Managers will be responsible for all final decisions.

**3) *The Market Managers will consider the following when making decisions on admissions of farmers or agricultural products into the Ecology Center Farmers' Markets:***

- a) Space available at market
- b) Seller's commitment to sustainable agriculture, typically but not exclusively measured by use of organic growing practices
- c) Seller's use of sustainable production and labor practices
- d) Whether the Seller's product will enhance overall product mix at market without creating excessive competition
- e) Whether the farm is small to moderately sized, and operated as a family or cooperative business
- f) Seniority of seller at Ecology Center Farmers' Market
- g) Seller's history of compliance with state and local government regulations, BFM policies, and regulations at other CFM's where they sell
- h) Seller's history of participation at BFM and other CFM's
- i) Proximity of farm or production site to the Ecology Center Farmers' Markets
- j) Seller's commitment to promote producer to consumer relationships, (e.g. by farmer's presence at the market, by knowledgeable employees, and/or by educational information)

**4) *Animal Products***

In the case of animal products (dairy, meat, eggs), the Market Managers will also consider the seller's commitment to sustainable animal husbandry practices, which the Ecology Center Farmers' Markets define as:

- a) Providing animals with their traditional diet
- b) Providing adequate space to roam without incurring stress
- c) Commitment to organic practices, ideally demonstrated with organic certification

In addition, the farm must have an animal waste management plan, preferably cycled on the farm.

**5) *Non-Agricultural Vendors***

**a) *Application***

- 1) Potential Processed Foods Vendors who would like to sell at the Berkeley Farmers; Markets must fill out a Processed Food Application describing all the products they would like to sell.
- 2) Current Sellers who want to sell a new product must submit their request in writing to the Market Managers. The request should include a list of ingredients for the item(s), and which of those are organic or bought from farmers at the Ecology Center Farmers' Markets. Market Managers may request samples of product and/or packaging as appropriate. The Community Advisory Committee will consider these requests at regular monthly meetings.
- 3) When space is available at the Market, the Committee will consider applications for new prepared food vendors at regular monthly meetings and may request samples and packaging from potential new vendors when appropriate.

**b) *The Market Managers and Committee will consider the following when making decisions on admissions of Non-Agricultural Vendors or products into the Berkeley Farmers' Market:***

- 1) Item should be a staple (i.e. bread, pasta), or have a high proportion of California agricultural products (i.e. fruits, nuts, vegetables).
- 2) Products approved for sale at market after January 2007 must have approximately 80% (or more) of ingredients, which are either organically grown or purchased from farmers at the BFM. Particular attention is paid to the use of organic animal products (dairy, meat, eggs). Non-Agricultural Vendors that produce at least 50% of the

ingredients used in their processed food products may be exempted from this requirement.

- 3) Fish must be either on the Monterey Bay Aquarium's Seafood Watch "Best Choice" list or purchased from the Fisher people at the Ecology Center Farmers' Markets.
- 4) Fresh ingredients should be in season locally.
- 5) Any chocolate or coffee used in products sold at market, should be fair-trade whenever possible.
- 6) Occasional exceptions for non-local or non-seasonal ingredients in processed foods may be made based on the ingredient's Fair Trade and Organic status, and the necessity of the ingredient in the specific product for cultural reasons.
- 7) Any non-local ingredients permitted in the BFM as a staple food by the Committee must be organic.
- 8) Non-profit organizations, cooperatives, collectives, women-owned, minority-owned, and local businesses may be given preference if their product is appropriate.

### **c) *Committee Decisions***

- 1) **Only Processed Items that have been approved by the Market Managers with consultation to the Committee may be sold at Market.** The Managers will request sellers to remove from sale any processed item that has not been approved.
- 2) **Test Products** - Current Sellers may test new Processed Items at the market, without filling out a written request, *only* for the period of time until the next regularly scheduled Committee meeting, and only if the items being tested are within the general line of products already approved for sale, i.e., a new type of bread for a bakery, a new type of jam for a jam producer. The Seller must inform the Managers of any new product that s/he is beginning to test no later than three days before the market day that it is out for sale, and a written request for the new product containing a list of all ingredients must be given to the Manager before the next Committee meeting. The Market Manager has the authority to decide if the test product falls within the line of products approved by the Committee. The Seller may not continue to sell until a written request has been turned in, according to the terms described above in the application process for Prepared Food Vendors, and has been approved by the Market Managers with consultation to Committee.
- 3) **Priority of Farmers over Non-Farmer Non-Agricultural Vendors** - In evaluating new products for sale at market, market managers will give preference to certified producers over Non-Agricultural Vendors. Non-Agricultural Vendors will not be admitted to the market to sell products already offered for sale by farmers. Market managers may also allow farmers to sell products, or allow a new farm that has not previously sold at market to sell products that are already being offered for sale by Non-Farmer Non-Agricultural Vendors.

Non-farmer Non-Agricultural Vendors may be restricted from selling any product at any of the markets, during any season, by the Market Managers after consultation with the Community Advisory Committee at a regular monthly meeting. These rules allow the Market Managers to prioritize farmers over non-farmers when they have similar products, and to prioritize farmers over non-farmers if necessary due to space limitations. If new restrictions on selling by non-farmer Non-Agricultural Vendors who are Members are necessary, at least one month notice will be given before the restrictions take effect.

## **D) Product Mix**

### **1.) Product Mix and Restrictions**

The overall goal of the Berkeley Farmers' Market is to provide as diverse and varied a product mix as possible while balancing the needs of our farmer members. In order to manage this balance, the Berkeley Farmers' Market may place product restrictions on participating vendors. Members are expected to alert market managers in writing, or on their annual crop calendar, of any products that they wish to sell that they have not sold in prior seasons. Newly admitted vendors that are conditional sellers may have restrictions placed on them that apply until such time as the Berkeley Farmers' Market decides it is appropriate to remove such restrictions. Market Managers may consult with the relevant committee in determining if members or provisional sellers may sell the product(s) in question. In the event that the ingredients or production process of a vendor's product changes significantly, the Berkeley Farmers' Market reserves the right to impose additional restrictions on product.

### **2.) Member Input on Restrictions**

Any Member of the market may bring up any concerns about ongoing or developing overlap or product mix to the Manager or Community Advisory Committee at any time. The Manager will bring up any concerns about ongoing or developing overlap or product mix problems within the Certified Farmers' Market area with the Farmers' Advisory Committee before taking any action to restrict any Certified Producer Member. The Manager will bring up any concerns about ongoing or developing overlap or product mix problems outside the Certified Farmers' Market section at a regularly scheduled Community Advisory Committee meeting before taking any action to restrict any Non-Agricultural Vendor who is a Member. Any restrictions will be made with ample notice and due respect for business continuity.

### **E) Response to Solicited Applications and Written Requests from Current Sellers**

The Market Managers will respond with a decision to any solicited applications, and to any inquiries from current Farmer/Sellers about additional products, within one month of receiving the application or the inquiry.

## **V. Paperwork**

### **A) When Due**

- 1) All annual paperwork required by the Ecology Center Farmers' Markets and all membership fees must be **submitted by February 25<sup>th</sup> or within three weeks of the receipt of these Policies.**
- 2) Additionally, Sellers are responsible for providing Market Managers with copies of both new Producer's Certificates or other permits upon expiration of the previous one, and any addendums to the current Producer's Certificate during a Seller's season.
- 3) In addition to the annual request, Prepared Food Sellers are responsible for providing a complete list of all ingredients, including which are Organic or purchased from the Ecology Center Farmers' Markets, to Market Managers upon bringing a new product to market to test.
- 4) All Sellers of Certifiable Agricultural Products and Non-Certifiable Agricultural Products are responsible for turning in to the Market Manager at the end of each market day an accurate and complete Daily List of Products Sold (load list).

### **B) What is required**

*Not every document listed below is applicable to all Sellers.*

**1) *Annual, or as old permits expire:***

- a) Ecology Center Farmers' Markets supplied materials:
  - 1) Policy Agreement, including Methyl Bromide & GMO Ban Agreement and employee authorization
  - 2) Farm Facts Information Sheet questionnaire
  - 3) Current Year Selling Calendar
  - 4) Current Market Participation Schedule (attached to Policy Agreement)
  - 5) Second Certificate contract
- b) Map of Growing Location(s)
- c) Product list with all ingredients, or copies of labels with all ingredients for all processed products
- d) Organic processor documents for all products whose main ingredient is soy, corn, or rice, which are at risk of GMO contamination
- e) Receipts for all ingredients of all products sold by Non-Agricultural Vendors within the last month
- f) Producer's Certificate from each county of production
- g) Producer's Certificate from farm listed on Second Certificate Contract
- h) Nursery License
- i) Organic certification documents
- j) Organic registration documents
- k) Aquaculture permit
- l) Any other product-specific permits required
- m) Fishing License
- n) Certified Kitchen/Sanitary Facility Certificate from county where processing occurs
- o) Berkeley Health Department Mobile Food Facility Permit
- p) Berkeley Health Department Temporary Event Permit

**2) *Every market day***

Daily List of Products Sold (load list)

**3) *Upon Request of Manager***

- a) Partnership and cooperative agreements
- b) Evidence to back up claims regarding growing practices or source and type of ingredients
- c) Evidence of an employee's status as an employee of the Seller

**VI. Seller's General Responsibilities**

**A) Membership**

Approved Sellers are required to become Members after selling at the markets for one calendar year. Members will be charged an annual fee. Members are distinguished from Conditional Sellers by their privileges and requirements. Membership is not a guarantee of ongoing participation in the market. The Approved Seller retains Market Membership season to season, provided that the Seller abides by the Market rules and all applicable State, County and City laws. Members will be charged an annual fee. If a Member sells his or her farm or land or food business, the new owner will not be a Member, and will not be guaranteed a place at Market beyond the current season. Failure to pay Annual Membership Fees by the requested deadline may result in fines, and may ultimately result in loss of Membership status, so that the Seller would not be guaranteed a place in the Market beyond the current selling season.

**B) Paperwork**

All Sellers are responsible for keeping all required paperwork current in order to maintain their status as Sellers. Failure to provide current applicable paperwork to Market Managers may result in fines and, ultimately, suspension. See the *Section V. Paperwork*, for more information on what is required.

**C) Re-Selling**

No re-sales of any products are to be made in the CFM area, and no unauthorized re-sales are to be made in any part of the market.

**D) Employees**

Employees may represent Sellers at Market. However, the Seller or his/her Family Members are strongly encouraged to sell at least once per year. Sellers are also responsible for the conduct, including any violations of market policies, of their employees at market.

**E) Partnerships**

In order for partnerships to be Sellers, all partners' names must appear on the Producer's Certificate, or, in the case of Food Vendors or Fishers, on the Ecology Center Farmers' Markets Policy Agreement.

**F) General Compliance**

All Sellers must comply with the rules and regulations stated herein, and must abide by decisions made by the Market Managers with consultation to Community Advisory Committee.

**VII. Attendance/Scheduling**

**A) Schedule**

Each Seller must fill out the current year's Schedule form, stating her/his Market schedule for the year. Sellers are generally expected to attend the Market weekly or every other week, but other schedules can be arranged in advance, by approval of the Market Managers. Sellers may attend seasonally or year-round, depending upon their products.

**B) Cancellations and regular attendance**

- 1) Sellers are expected to attend market at the frequency and during the season that they have committed to. Sellers who cancel are requested to notify the managers as soon as they know they need to cancel. Sellers are expected to cancel at least 2 hours before a market. **Absences without 2-hour notification will result in warnings and fines, except in case of emergency.**
- 2) Any changes in a Seller's agreed upon attendance schedule must be coordinated with and approved by the Market Managers. Occasionally missed markets due to emergencies of crop needs are acceptable, but frequent absences of three weeks or more must be specifically approved by the Market Managers. Failure to do so may result in suspension or termination from the Market.
- 3) Sellers are expected to come to Market regardless of weather conditions. Ecology Center Farmers' Markets are small markets and depend on regular attendance of sellers to continue to exist as viable year-round markets. Sickness, lack of product, and vehicular breakdown are among the few legitimate excuses for missing a market. **Irregular attendance for other reasons, including wet weather and anticipated slow sales, may be grounds for suspension or lack of membership privileges.**

**C) Rainy Days**

The Ecology Center Farmers' Markets are always open when it rains, and in general, attending Sellers will be charged a stall fee for rainy days. In rare cases, Market Managers will reduce fees charged at market on rainy days.

**D) Guaranteed Spaces**

Members are guaranteed a space at Market during their stated season(s), unless specifically restricted by the Market Manager. Every effort will be made by the Market Managers to make space available to

members who want to sell at other times than their stated season, but they are required to communicate ahead of time.

## **VIII. General Market Rules**

### **A) Setup and Safety**

- 1) Sellers should arrive early enough to be ready to sell by the Market's opening time, and will be considered late if not set up by that time. Repeated lateness is a violation of Market rules, and may result in fines or suspension from the Market. (See XI for Violations and Penalties.)
- 2) Sellers should not drop off employees with no vehicle, leaving them alone, more than 90 minutes before Market opens.
- 3) All Sellers must check in with a Market Manager upon arrival to be assigned a space. Market Managers make every effort to give Sellers who arrive at a regular time their regular space, but there are no guarantees. In general, a Seller will be placed in the same quarter of the Market every week.
- 4) Sellers must park as directed by the Market Manager.
- 5) Vendors may not drive vehicles within the market for any reason from 15 minutes prior to the official start of the market until the official end of market. Sellers who need to make special arrangements due to deliveries, unavoidable late arrival or unavoidable early departure, must make arrangements with the Market Manager ahead of time. Vendors that will be arriving late or leaving early must park outside of the market and carry product to their assigned space.
- 6) Early Sellers must not begin setting up their stalls, product, or equipment in the traffic lane until Market Managers have closed the street to traffic.
- 7) Sellers must set up stalls facing the street, allowing for a 12-foot emergency access lane on Tuesdays and a 15-foot emergency access lane on Thursdays and Saturdays between their set-ups and those of the Seller across the way or street meridian.
- 8) Sellers' displays must not unduly obstruct the flow of customer traffic or be dangerous in any way. Sellers must alter their displays at the request of Market Managers.
- 9) All shades and shelters must be adequately tied down, secured, or weighted.

### **B) Signage and Labeling**

- 1) ***Farm/Vendor Identification***  
All Sellers must display a sign, legible at ten feet, clearly identifying their business name and, preferably, the city or town where their production occurs. In the case of Non-Agricultural Vendors, the business address must be displayed, as is required by the Health Department.
- 2) ***Permits and Licenses***  
All required permits and licenses (i.e. current embossed Producer's Certificates, Farm Facts Sheets, Nursery Licenses, Food Industry Permits, etc.) must be prominently posted at the Seller's stall and clearly visible to customers. All certified farmers will receive a fabric holder for the Farm Fact Sheets and other paperwork. These holders must be hung at the stall each market day where customers can easily read the materials displayed.
- 3) ***Prices***  
Sellers must have prices of all items clearly displayed. Collusion and deceptive pricing practices are prohibited. Bargaining with the customer is specifically allowed.
- 4) ***Scales***

All scales must bear a current seal from a County Sealer of weights and measures.

5) ***Ingredients***

All processed items, both bulk and packaged, must be labeled with a declaration of identity (ingredients list) which should note those ingredients that are organically grown. Packaged processed items must also be labeled with the net quantity/weight of the commodity in the package and the name and address of the producer.

6) ***Second Certificates***

All products sold on a Second Certificate must be clearly marked as not produced by the Seller, so that customers are fully informed. All permits and certificates for the Second Certificate products must be displayed.

7) No boxes or containers will be allowed on any display table that show any identifying marks other than those of the Seller, or of the Producer for whom the Seller is selling.

8) ***Growing Practices Information must comply with the following:***

- a) All Farmers must complete clearly and accurately to the Market Managers' satisfaction the questionnaire about the farm and growing practices, and clearly display the Ecology Center Farmers' Markets Farm Facts Sheet. All products currently offered for sale must be accurately described on the Farm Facts Sheet displayed.
- b) For Farmers selling solely certified organic products, farm must display a sign with the logo of their certifying organization (CCOF, QAI, etc.).
- c) Farmers' selling products that are certified organic and products that are not certified organic at the same booth must clearly label each item as "Certified Organic" and "Not Certified Organic." The Organic and non-Organic items must be clearly separated from one another on the table or display.
- d) **If a farm is not registered as organic with the State Department of Agriculture and, if organic production volume is over \$5000 annually, not certified as organic by a USDA-authorized third party certifier, it is illegal to call the farm's products organic.**
- e) Farmers who do not grow organically but do not *at any time* use synthetic pesticides (including herbicides, insecticides, nematocides, etc.) may use the term "No Synthetic Pesticides" in their signage.
- f) Farmers who do not grow organically but do not use synthetic pesticides *at any time* on the plants or trees producing the product may use the term "No Synthetic Pesticides on Plants/Trees" in their signage.
- g) Farmers who do not use synthetic pesticides on tree fruit after fruit set may use the term "No Synthetic Pesticides on Fruit" in their signage.
- h) All of the signage requirements stated above also apply to the spoken word, and Farmers and their employees must represent their products as described.
- i) **All claims about growing practices made verbally must also be clearly stated on the Farm Facts Information Sheet.**

**C) Compliance with Health and Related Laws**

*When selling at the market, sellers and their products shall comply with all applicable requirements of the CalCode, the California Sherman Food Drug and Cosmetic Law (??), and the California Direct Marketing Law, including:*

- 1) All produce and containers of produce must be kept at least 6 inches off the ground.
- 2) Food preparation (except trimming) is prohibited in the CFM area.
- 3) Processed foods must be processed in an approved facility and properly packaged and labeled under clean and sanitary conditions.
- 4) Dried fruits and shelled nuts sold in an unpackaged bulk form must be displayed with a cover and conform to dispensing methods approved by the Berkeley Health Department.

- 5) All non-washable agricultural products on display, such as dates, must be protected from contamination from the public with covers or sneeze-guards.
- 6) No live animals, birds or fowl may be kept or allowed within 20 feet of any area where food is stored or held for sale.
- 7) There shall be no smoking in the market.
- 8) Sellers selling non-agricultural food products are required to have a valid permit from the Berkeley Health Department, and are not considered part of the Certified Farmers' Market.
- 9) Samples may be distributed in accordance with the following guidelines:
  - a) Keep samples in clean, covered containers
  - b) Use toothpicks or disposable utensils to distribute the samples.
  - c) Dispose of pits, peels, and rubbish in leakproof garbage receptacles with close-fitting lids.
  - d) Use clean disposable plastic gloves when cutting produce for samples.
  - e) Produce intended for sampling must be washed and cleaned.
  - f) Utensils and cutting surfaces must be washed and sanitized (use a chlorine solution of one teaspoon liquid bleach per gallon of water).
  - g) Cutting surfaces must be smooth, non-absorbent, and easily cleanable.
  - h) Any samples of potentially hazardous foods, including, but not limited to, melons, must be stored at or below 45 (41?) degrees Fahrenheit. All samples must be disposed of after 2 hours from the time the sample was prepared.
- 10) Sellers preparing food on-site and/or sampling must set up a hand-washing station with running water and soap. Hands must be washed between handling of food, of money, and of raw meats.
- 11) All iced products must be stored in ice chests at or below 41 degrees Fahrenheit, with a thermometer in each ice chest. All hot products must either be served immediately after cooking, or stored at or above the specific temperature requirement for the product specified by the CalCode, with a food thermometer on hand for temperature tracking.
- 12) Each Seller must provide a container for garbage at her/his stall and take all garbage and recycling back to the farm or business.

***If a Seller has been warned of the need to comply with health regulations, fails to do so, and then is inspected and found in violation, the Seller will pay any fines levied against the Ecology Center for this infraction.***

#### **D) EBT Cards, WIC, Coupons and Gift Certificates**

- 1) ***EBT cards:*** Sellers are required to accept Ecology Center Farmers' Markets Food Stamp Tokens ("wooden nickels") for non-heated food items only. No change may be given for these tokens, and full value of the product must be given to the customer for the full token value.
- 2) ***WIC/Farmers' Market Nutrition Program coupons:*** All Sellers of fresh fruits and vegetables are required to accept WIC/Farmers' Market Nutrition Program coupons or checks according to the regulations established by the organizers of that program.
- 3) ***Ecology Center Farmers' Markets coupons and gift certificates:*** All Sellers are required to honor coupons and gift certificates distributed by the market management or our partners. All such un-expired coupons will be redeemed for cash on the day received. If you are not sure of the validity of any coupon, please ask the managers to verify its legitimacy, but in general, the Market Managers will reimburse Sellers for all such coupons.
- 4) ***Redemption:*** All tokens, food stamps, coupons and gift certificates described here are redeemable as part of the Seller's stall fee, or for cash from the Market Manager at the end of the market day.

#### **E) Cleanup, Departure, and Security**

- 1) Sellers are responsible for maintaining security of the street closure and restroom facilities as directed by the Market Managers. This includes keeping cones and barricades in place and keeping the restrooms locked when directed by the Market Managers.
- 2) Sellers are expected to sell for the duration of the Market, unless they run out of product. Early departures are discouraged, and are not permitted if the Market Manager considers the situation unsafe or disruptive.
- 3) Sellers should begin packing up by the end of Market hours, and should be ready to leave an hour after Market hours are over.
- 4) Sellers are responsible for cleaning up their stall area after each market (even if it's someone else's garbage), and may be fined for failure to do so. Market Managers have a dustpan and broom to lend.
- 5) Non-Agricultural Vendors will not be allowed to pay their stall fee prior to ½ hour before the Market closing time. Sellers are expected to bring enough product to last the length of the Market.
- 6) Sellers at the Tuesday and Thursday Markets are responsible for lighting up their stall during the fall and winter months when it is dark outside, for both safety reasons and to create a festive atmosphere that advertises the market to passers-by. We encourage Sellers to provide their own lighting, though the Ecology Center has lanterns to lend out as well.

#### **F) Berkeley Farmers' Market Bag and Packaging Requirements (effective March 7, 2009):**

- 1) When providing customers with a bag at market, vendors must charge customers \$.25 per bag. For purchases totaling over \$10, vendors may waive the \$.25 charge.
- 2) Bags offered by vendors for use by customers will meet all of the following criteria:
  - 1.) Be produced from renewable resources
  - 2.) Be free from polyethylene
  - 3.) Be compostable (if non-paper, must meet ASTM 6400 standards for compostability)
- 3) Packaging and utensils offered by vendors will meet all of the following criteria:
  - 1.) Be compostable (if non-paper, must meet ASTM 6400 standards for compostability) or produced from non-plastic recyclable material or be a durable, non-plastic container offered with a deposit and intended for return to the vendor for sanitary reuse.
  - 2.) Exemptions may be granted out of consideration for health, safety, product viability, or other reasons as recommended by the Community Advisory Committee. Requests for exemptions must be submitted in writing and will be considered at the next regularly scheduled meeting of the Community Advisory Committee. Exemptions will stand until a viable packaging alternative becomes available.

#### **G) Musicians**

Musicians may play for the purpose of general entertainment for our customers, and simple, minimal sales of recordings are allowed. Musicians must check in at the Ecology Center booth upon arriving at market. Before performing, musicians must ask the vendors selling on either side of and across if it is OK to perform. Vendors have the right to request that musicians not perform nearby. Amplified music is not allowed (exceptions made by market manager on a case-by-case basis). The market manager has full authority to move a musician to a different spot, to decide when the market is too full to accommodate more musicians or to ask musicians to leave. In order to perform at the Saturday market, musicians must sign up in advance at the Ecology Center booth, or by calling us at 510-548-3333. Musicians may sign up for a maximum of three Saturdays per month. At our other markets, musician spots are held on a first-come, first-served basis, unless the market manager institutes a sign up sheet.

#### **H) Tabling**

Information tabling or volunteer signature collection is permissible at the Ecology Center Farmers' Markets. Signature gatherers within the borders of the market should be working directly with their

organization and not paid on a per-signature basis. Sales, solicitation of donations, or the promotion of commercial ventures other than BFM farmers and food vendors is not permitted.

**I) No Solicitation**

Under no circumstances may anyone, for any reason (including information distribution, panhandling, selling, signature collection, etc.) specifically approach people walking around in the market, or otherwise block customers from our vendors. After a warning, such behavior will result in removal from the market.

**J) Customer Complaints**

The Ecology Center Farmers' Markets takes complaints from customers very seriously. In the event that a written customer complaint is filed against a vendor, farmers' market staff will show the vendor the complaint as soon as possible and work with the vendor to remedy the problems. In the event that additional complaints are received within a six month period, fines, suspension, or expulsion may result.

**IX. Fees**

**A) Farmer Fees**

Effective April 1 2011, fees for all agricultural producers will be \$36 per 10 foot stall space. For example, a vendor using 30 feet would be charged \$108. These rates will apply to all market days and locations.

The stall fee is based on the length of space used by the Seller's stall set-up. If the Seller's vehicle is longer than the stall set-up, the Managers reserve the right to ask the Seller to park perpendicular to the curb, or to have another Seller set up in front of the excess length of the vehicle, or, in rare instances, to require the Seller to offload and park elsewhere. The Manager will make every effort to place vendors so that the regular set-up spots work for everyone.

**B) Discounts**

Local "backyard" gardeners (at managers' discretion) and non-profit organizations pay half of the membership fee and stall fee.

**C) Winter Rates for Tuesday and Thursday Markets**

From December 1 through March 31 stall fee rates at the Tuesday and Thursday Markets will be reduced by \$4 per 10-foot stall space.

**D) Second Certificate Fee**

Farmers selling on second certificates will be charged an extra \$11 per day for each second certificate.

**E) Non-Agricultural Vendors**

- 1) Non-Agricultural Vendors will be charged \$10.00 plus 6% of gross income per day.
- 2) Non-profit Non-Agricultural Vendors will be charged \$5.00 plus 5% of gross income per day.
- 3) Non-member Non-Agricultural Vendors will be charged 10% of gross income per day when invited in only for special events.

**F) Annual Membership fees**

- 1) Members of one Market: \$50/year
- 2) Members of two Markets \$75/year
- 3) Members of three Markets \$100/ year

### **G) Changes in Fees**

All fees are subject to change

## **X. Market Integrity**

### **A) Inspections**

In order to insure that the Markets are in compliance with direct marketing, organic labeling, health and safety, and other laws, Sellers must grant permission for Market Managers and other Market representatives to enter the Seller's premises for reasonable inspection of land and production and processing facilities. Sellers will be inspected as often as it is feasible for Market Managers to schedule visits.

### **B) Market Onsite Inspections**

In addition, Market Managers will conduct regular at-market inspections to insure compliance with all applicable laws. Sellers must grant permission to Market Managers, as well as Health Department and Agricultural Department inspectors, to inspect market booth at any time.

### **C) Additional Documents**

Furthermore, Sellers must, upon request of the Market Managers, furnish copies of all relevant documents, including, but not limited to: receipts for seed, supplies, and ingredients; farm plans; lease or partnership agreements; and proof of ownership documents.

### **D) Use of Evidence**

Information derived from the Seller, an inspection of the Seller's property or paperwork, or reasonable and substantiated evidence from a State employee or other Farmers' Market association, may be used to determine that a violation has occurred.

## **XI. Violations and Penalties**

### **A) Minor Infractions (Penalties refer to repeat offenses occurring within any three-month period)**

	<b>1<sup>st</sup> Offense</b>	<b>2<sup>nd</sup> Offense</b>	<b>3<sup>rd</sup> Offense</b>
1. No show without calling to cancel	Warning	\$10	\$25
2. Farm or business name not displayed	Warning	\$10	\$25
3. Required permits not posted	Warning	\$10	\$25
4. Prices not posted	Warning	\$10	\$25
5. Scale not currently certified	Warning	\$10	\$25
6. Farm Fact Sheet not displayed	Warning	\$10	\$25
7. Growing Practices signage unclear or inadequate	Warning	\$25	Suspension
8. Processed Item improperly labeled	Warning	\$10	\$25
9. Processed Item sold without permission	Warning	\$10	\$25
10. Failure to clean up stall space	Warning	\$10	\$25
11. Failure to tie down & secure shelters	Warning	\$10	\$25
12. Non-compliance with relevant laws or regulations including but not limited to Direct Marketing Regulations, Cal Code, and Local Health	Warning	\$25	Suspension
13. Failure to turn in List of Products Sold	Warning	\$10	\$25
15. Selling non-organic ingredients at risk of GMO contamination	Warning	\$25	Suspension
17. Other Violations of BFM Policies not addressed elsewhere:	Warning	\$10	\$25

**Failure by vendors to comply with reasonable requests or instruction issued by a market manager may result in fines, suspension or expulsion. In the event that vendors fail to comply with a request or instructions related to health or safety issues, market managers may take immediate action to remedy the situation.**

**B) Repeat Violations Penalties**

Repeated violations of the same rule beyond a 3<sup>rd</sup> Offense within any three-month period will result in fines up to \$50 and/or temporary or permanent suspension from the Market, at the Managers' discretion.

**C) Re-Selling (Peddling)**

Items not listed on the Producer's Certified Producers Certificate, or items sold at a time out of sync with the season specified on the Certified Producer's Certificate are considered re-sold. Re-selling is a violation of California Direct Marketing Law, and will be penalized with fines and suspension or expulsion from the Market, as determined by the Market Managers with consultation to the Committee. Fines will be no less than \$100 and no more than \$5,000. Violations will be reported to county Departments of Agriculture, or other appropriate authority. Reasonable and substantiated evidence from a State employee or other Farmers' Market association of re-selling at any California Certified Farmers' Market will result in suspension or expulsion from the Ecology Center Farmers' Markets.

**D) False Organic Labeling**

Selling or labeling product as organic that does not meet the requirements outlined in the National Organic Program regulations is a violation of market policy and will be penalized with fines and/or suspension or expulsion from the Market, as recommended by the Committee. Fines will be no less than \$100 and no more than \$5,000. Violations will be reported to county Department of Agriculture, or other appropriate authority and may result in civil penalties.”

**E) Harassment Policies**

Harassment by Sellers, their employees or family members, toward customers, other Sellers, or Ecology Center staff or volunteers will not be tolerated. This includes, but is not limited to, use of abusive, profane, demeaning, or intimidating language or behavior and sexual harassment. This also includes slandering language regarding others in the market that may be heard by customers or other vendors. Harassment by Sellers, their employees or family members may result in suspension or termination from the Ecology Center Farmers' Markets. Appeals may be made as outlined by the Direct Marketing Law.

**F) Other Violations**

Negligent violations such as excessive disregard for BFM Policies (i.e. more than three types of multiple infractions within a three-month period), violations that endanger the public's health, and other serious violations will be handled on a case-by-case basis, and may result in fines and/or suspension or expulsion, as determined by the Market Managers with consultation to the Committee.

**G) Appeals**

**1) Appeals for Certified Producers:**

Sellers who have been penalized for violations shall receive a written Notice of Intent to Take an Action if the action includes a fine, suspension or expulsion from the market. The Notice shall state the specific reasons for the proposed action. The Notice shall be delivered in person or mailed to the market participant prior to an imposition of a fine, suspension or expulsion from the market unless an immediate suspension is necessary to protect the public health, safety or welfare. The Notice shall advise the participant that he or she has fifteen calendar days to submit a written appeal of the proposed action. If an appeal is submitted in a timely manner, the Market Manager shall arrange a date and time for the appellant to appear before the Community Advisory Committee or Market Manager for an administrative hearing. The Community Advisory Committee shall provide a recommendation to the Market Managers

at this hearing. The administrative hearing shall provide the participant with an opportunity to present evidence and argument regarding the reasons stated in the proposed action and the appropriateness of the proposed action. The administrative hearing shall result in a written decision upholding, reversing or modifying the proposed action. The decision shall be issued within fifteen calendar days of the conclusion of the hearing.

2) Appeals for Non-Agricultural Vendors:

Non-agricultural sellers who have been penalized for violations may appeal the decision to the Community Advisory Committee. Appeals must be made in writing within 15 days of the action at issue, and shall be considered by the Committee within 30 days of the appeal request. The Seller may present his/her case to the Committee at that hearing. The Committee will notify the Seller of its recommendation within 15 days of the appeal hearing. While the Committee is considering an appeal of a suspension or expulsion, the Seller will not be allowed to attend the Market.

**XII. State Dept. Of Food and Agriculture Oversight Process**

A) Any Certified Producer aggrieved by a rule or procedure of a Certified Farmers' Market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with the state's direct marketing law and the regulations implementing the law. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion.

B) The department shall provide for an informal hearing with regard to any grievance of a Certified Producer involving questions of fact concerning any action taken by a Certified Farmers' Market against the producer, or any implementation of a rule or procedure established by a Certified Farmers' Market against the Producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with the state's Direct Marketing Law and the regulations implementing that law.