



SPINACH TO SCHOOLYARDS

LEGAL REQUIREMENTS FOR STARTING
A SCHOOL PRODUCE STAND IN CALIFORNIA



ChangeLab Solutions
Law & policy innovation for the common good.

INTRODUCTION

More than one million Californians, including nearly 300,000 children, live in communities with extremely limited access to grocery stores selling fresh produce¹ – yet most live near at least one neighborhood school. Food access advocates, school staff, and farmers have come up with a creative solution to this problem of poor food access: produce stands at schools.

What are school produce stands?

School produce stands, typically run by a group of volunteers or a community-based organization, purchase produce to resell to their surrounding communities. They benefit communities in many ways: they supply school and community members with farm-fresh produce at affordable prices; they are a convenient way for families to squeeze food shopping into their daily routine of dropping off and picking up their kids from school; and they can support local growers.

In communities where it is difficult to attract a full-scale grocery store, they can provide a targeted, low-cost option to deliver healthy food to neighborhoods that need it most. Finally, school produce stands reinforce the notion of schools as centers of community: they provide a gathering space where people can interact, learn healthy habits, and strengthen intergenerational relationships.

Who should read this fact sheet?

The California laws regulating the sale of fresh produce are confusing to begin with, and school produce stands do not fit neatly into the existing legal categories of food retailers. That's why advocates who ask local agencies how to start a new stand may receive confusing or contradictory information about what permits or licenses are needed and what other operational standards apply. This complicated regulatory framework can halt a promising project in its tracks.

This fact sheet outlines the basic legal requirements for starting a school produce stand in California, including licensing, permitting, and food safety requirements. These findings were based on a legal analysis of state and local laws, discussions with agencies that oversee them, and interviews with school produce stand operators around the state. We recommend that schools, nonprofit organizations, and volunteers who are interested in starting a school produce stand read this fact sheet early on to ensure that they plan their programs accordingly. This information may also be helpful for local agencies that are working with stand operators, such as school districts, health departments, and other local government agencies.

THE ABCs OF SCHOOL PRODUCE STANDS

We use the term “school produce stand” to describe a vendor who buys fresh, uncut fruits and vegetables (from a farmer, wholesale distributor, or business) and resells the produce on school property to the school community and other members of the public. Produce stands featuring growers selling directly to shoppers face different legal and operational requirements, even though these arrangements may look almost identical in practice. See the chart below for information on different vendor types.

What Do Produce Stands Look Like?

Our interviews with school produce stand operators from around the state revealed that produce stands vary widely in scope and structure, but nearly all share the common mission of providing accessible, low-cost produce to communities where there are few grocery stores or other places to buy healthy food. In total we spoke with eight stand operators who represent roughly 30 individual school produce stands. Most of the programs we spoke with are relatively well established and have been running for at least a couple seasons. Here are some key observations:

Management: Programs may oversee individual or multiple stands, typically operated by volunteers (and, in some cases, paid staff members) from a PTA (parent-teacher association) or outside nonprofit organization. Oakland Fresh Markets, which manages 22 school produce stands, is run by the school district’s nutrition services department.

Purchasing: Programs varied in their buying practices: some buy directly from farmers while others purchase from wholesale produce distributors or local businesses. In a few programs the school district’s nutrition services department, using funds separated from the district’s food services fund, purchases the produce from the district’s produce distributor and then sells it to the stands at cost.

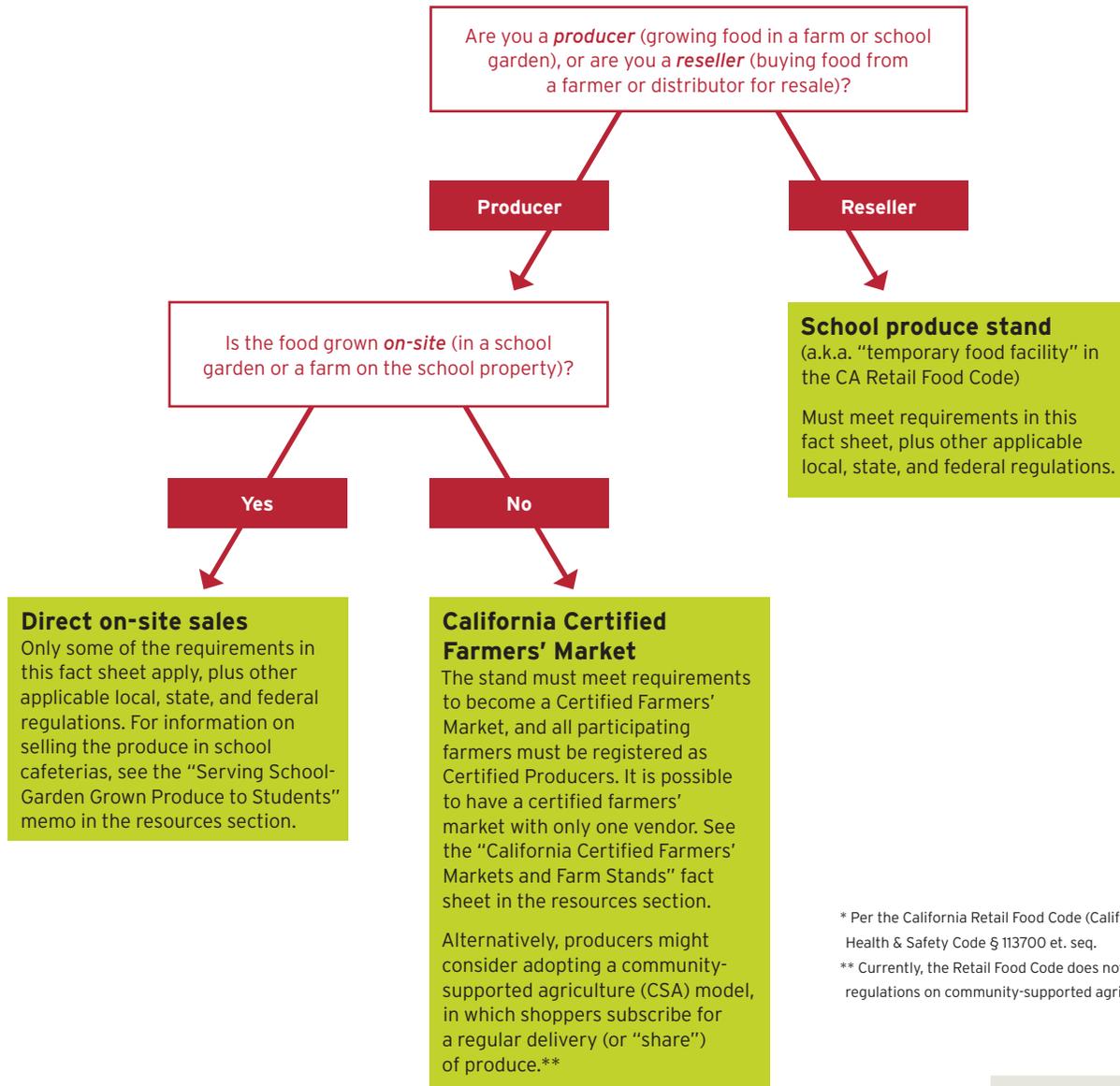
Finances: Most stands required an initial infusion of funds, typically provided by the PTA or local foundations, to set up the market and buy the first shipment of produce. Most operators indicated that once a produce stand is up and running, revenues are enough to break even or even to produce a modest profit, which is typically reinvested in the program. The larger programs with dedicated staff typically require additional outside funding in order to maintain their programs.

“Our markets were created to build a school-based local food system that increases access to fresh, healthy and affordable food for our residents and promotes healthy school environments for our children and families.”

*Jennifer LeBarre, Director,
Oakland Unified School District,
Nutrition Services*

What kind of food vendor are you?

This factsheet describes the requirements in California for school produce stands only – for other types of retail, legal and operational requirements vary depending on where a produce stand is located, who grew the produce, and who sells the produce.*



* Per the California Retail Food Code (California Health & Safety Code § 113700 et. seq.

** Currently, the Retail Food Code does not include regulations on community-supported agriculture.



MINDING YOUR PEAS & CUCUMBERS

Permitting, licensing, and operational requirements for California school produce stands

Starting a successful produce stand requires a substantial amount of planning and preparation: operators must obtain permission from the school district, gain buy-in from school and community members, find a produce source, create publicity materials, and manage finances and stand logistics. Navigating the legal requirements can seem like an added burden, particularly when local agencies are unclear about which regulations apply.

Keep in mind that the laws governing school produce stands were created with positive goals in mind, such as ensuring food safety and protecting farmers. You may need to take time to work with the agencies charged with administering these laws, to learn about their perspectives, and to provide them with information about your stand that can ease their concerns. Maintaining a positive working relationship with these agencies can help mitigate challenges down the road and open the door for other schools and communities to start their own produce stand.

Fortunately, many of the legal requirements for school produce stands are relatively easy to meet. However, they do require advance planning, and some have modest fees associated with them. They are also not to be taken lightly – some of these policies include penalties (such as fines or misdemeanor charges) for those who are found in violation of the law. We encourage you to discuss the following requirements with applicable state and local agencies.

SOWING THE SEEDS OF SUCCESS

Working with school & school district staff

Though you will need to consult with many different stakeholders, it is especially critical that you work closely with relevant school and school district representatives, as they are ultimately responsible for approving the operation, location, and hours of your produce stand. They will likely have their own regulations that may apply to you (for example, policies governing liability or the use of school properties).

Depending on your local context, once you have settled on the programmatic and logistical details you may find it useful to create a formal agreement that establishes clear expectations for all parties – such as a joint use agreement (JUA) or memorandum of understanding (MOU). See the resources section for more information on how to develop effective agreements.

Just as importantly, school partners can provide support and lend credibility to your program as you navigate the regulatory process. Some members of the school community who could be important allies include:

- ▶ School board
- ▶ Principals and school staff
- ▶ School district risk management office
- ▶ School nutrition services
- ▶ School facilities director/real estate office
- ▶ School district wellness committee
- ▶ Parents and parent-teacher associations (PTAs)



TIP

Although your local environmental health officer has discretion to determine food safety requirements for “temporary food facilities” (which includes school produce stands), a persuasive argument can be made that school produce stands should comply with the same food-handling requirements as California Certified Farmers’ Markets, due to their similar operations. These requirements include food safety standards for transportation, storage, display, and sampling of produce. We recommend that stand operators take time to meet with their local environmental health officer early to discuss how they propose to operate their stands, including food safety precautions. For food safety requirements for Certified Farmers’ Markets, see the resources section.

Health Permits & Food Safety Requirements

To protect consumers from food-related illnesses, California’s Retail Food Code specifies food safety and handling requirements for retail sales of food, including fresh produce, and it requires retailers to obtain an operating permit (a.k.a. “health permit”) through their local county health department. The type of license or permit required depends on the kind of food prepared and sold and the venue (or “food facility”) where the food is prepared and served.² Generally, the greater the food safety risk associated with a particular type of food facility, the more specific the regulations for food storage, preparation, and service. While the Retail Food Code is a state law, it is administered by county health departments’ local environmental health officers.

How the Retail Food Code applies to school produce stands

Certain types of direct marketing (notably, Certified Farmers’ Markets and on-site produce sales at farms) are exempted from the health permit requirement; however, school produce stands do not qualify for this exemption and must acquire a health permit. Because school produce stands are a relatively new way of selling produce, the Retail Food Code does not have a distinct category for them. As a result, school produce stands fall under the catchall category of “temporary food facilities” – facilities that operate at a fixed location for the duration of some community event.³ The definition of community event includes a public gathering, which would include public sales of produce.⁴ As a temporary food facility, each school produce stand location must be inspected by and obtain a health permit from its county health department.

Because the temporary food facility is a catchall category, the Retail Food Code does not specify the food safety standards that apply to obtain the permit. Instead, the local county environmental health officer must determine the requirements based on the type and extent of food service activity to be conducted, the foods that are to be prepared or served, and the length of the event.⁵ While school produce stands must obtain a health permit to operate, those who work at the stands do not have to undergo training to obtain food handler cards or certificates. However, the person who is in charge of the school produce stand must demonstrate that she has an adequate knowledge of food safety principles as they apply to the produce stand.⁶

How to apply for a health permit

Contact the environmental health division at your local county health department, which is responsible for issuing new permits, conducting inspections, and setting permit fees. The resources section includes a website that lists contact information for health departments across the state.

Produce Dealer's License

To protect farmers from unfair business practices, California law requires most people and businesses that buy and resell farm products, including fresh produce, to obtain a produce dealer's license through the California Department of Food and Agriculture.⁷ Certain types of businesses or organizations are exempt from this requirement, but none of the exceptions apply to school produce stands.⁸ This requirement does not apply when growers are selling their produce directly to the public (for instance, when produce is from a school garden/farm or a farmer).

How the requirement applies to school produce stands

All school produce stands that buy and resell produce are required to obtain a produce dealer's license. License fees are dependent on volume; in 2012 (the time this publication was issued) the fee was \$136 per year for operations that spend less than \$20,000 annually on produce.

How to apply for a produce dealer's license

The Market Enforcement Branch of the California Department of Food and Agriculture administers applications and licenses. See the resources section for a link to their website and the application.

TIP

Unlike the health permit, produce dealer's licenses are issued to the produce buyer, not to the produce stand. If you are purchasing for multiple stands, you only need one license.



Scale Registration

In order to protect consumers from deceitful business practices, California law requires that any weighing or measuring devices used for retail sales, including produce, be inspected for accuracy and approved by the county department of weights and measures (also known as the county “sealer”).⁹

TIP

Price your fruits and vegetables by the piece or the bag (rather than by weight) and you won’t need a registered scale.

How the requirement applies to school produce stands

School produce stands that use scales as part of their retail operation must comply with the registration requirements. However, most of the produce stand operators we interviewed did not sell by weight, opting for simpler methods such as prepackaged or by-the-piece produce.

How to register a scale

At the local level, the county department of weights and measures (also known as the county “sealer”) is responsible for accepting applications, inspecting and certifying scales, and setting fees. See the resources section for a link to find your county office.



COMMON QUESTIONS

Here are other common legal questions encountered during our research. If you have additional questions, contact us by visiting our website at www.changelabsolutions.org.

Q Do we need to worry about liability and insurance concerns?

California law requires schools to insure themselves against liability for injury, death, and property damage. It also requires that groups using school property after-hours bear the costs of insurance against liability risks. It's important to work with the school district to determine whether the district's insurance covers potential liability from the produce stand operations. Depending on your school district's insurance policy and the type of organization operating the produce stand, additional liability insurance coverage may be needed. Nonprofit organizations that operate school produce stands should also review their coverage with their insurance provider to see what is covered and make any necessary changes.¹⁰

Q Is it possible to accept CalFresh/Supplemental Nutrition Assistance Program (SNAP) or Women, Infants and Children (WIC) benefits at our school produce stand?

CalFresh/SNAP vendor requirements do not expressly prohibit school produce stands from becoming authorized to accept benefits, but practical considerations could pose barriers to doing so. In order to become a certified SNAP vendor, operators must apply through the USDA, demonstrate that they stock a minimum amount of staple foods, and acquire the infrastructure needed to accept EBT (electronic benefit transfer) cards.

School produce stands can easily meet the minimum requirements for staple foods since they primarily sell fruits and vegetables, but the other requirements can be difficult to meet. California has a program designed to help farmers' markets, farm stands, flea markets, and other nontraditional retailers accept SNAP benefits by providing free wireless terminals to accept EBT cards (for more information, contact the California EBT Project office, listed in the resources section). Of the school produce stand operators we interviewed, just one currently accepts SNAP/EBT.

Currently, school produce stands cannot qualify to accept WIC benefits. However, schools that choose to start a California Certified Farmers' Market can apply to accept benefits under the WIC Farmers' Market Nutrition Program.





Do staff and volunteers running the stand need a criminal background check, since they are on school property?

To protect children, California law requires criminal screening for teachers and certain staff members and volunteers who work with children at school. Staff and volunteers who work with youth in a “pupil activity program” – such as academic programs or extracurricular activities sponsored by a school district – must pass a criminal clearance.¹¹ Volunteer supervisors for breakfast, lunch, or recess; nonteaching volunteer aides, including parents volunteering in a classroom or at a field trip; or a community member providing non-instructional services under the immediate supervision of school district personnel are not required to obtain criminal clearance.¹²

The school produce stands we surveyed are not operated as pupil activity programs, since their primary function is to sell produce to adults. Children who visit the produce stands are generally accompanied by a parent or guardian. Under these circumstances, staff and volunteers working at a school produce stand are not required to be criminally screened. If the school produce stand is integrated into the school’s educational or after-school program, staff or volunteers may need to pass a criminal background check.

1 USDA. Food Desert Locator. US Department of Agriculture, Economic Research Service. Available at: www.ers.usda.gov/data/fooddesert/index.htm.

2 Cal. Health & Safety Code § 113700 *et. seq.* All further statutory references are to the California statutory codes.

3 Health & Safety Code § 113930.

4 Health & Safety Code § 113755.

5 Health & Safety Code § 114335.

6 Health & Safety Code § 113947.

7 Food & Agric. Code § 56181.

8 Food & Agric. Code § 55610.

9 Bus. & Prof. Code § 12500.5.

10 California Educational Code § 35208.

11 Educ. Code § 49024(a).

12 Educ. Code § 49024.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Photos: Oakland Unified School District (OUSD), East Bay Asian Youth Center (cover and page 8), Central California Regional Obesity Prevention Program (CCROPP) (page 7), Tim Wagner for HEAC (top, page 10), and Karen Parry (pages 9 and 10 unless otherwise noted).

This publication was made possible from a grant from Kaiser Permanente.

© 2012 ChangeLab Solutions

PUTTING DOWN ROOTS

TAKING THE NEXT STEPS IN YOUR COMMUNITY

As more schools, local governments, nonprofit organizations, and residents mobilize to create healthy food options in their communities, they will have to experiment to find successful models, overcome logistic barriers, and gain buy-in from the community. The following resources can support this work:

California Produce Dealer's License

California Department of Food and Agriculture, Market Enforcement Branch
www.cdfa.ca.gov/mkt/meb/licensing_process.html

Health Permits

California Department of Public Health, Local Health Departments
www.cdph.ca.gov/programs/immunize/pages/californialocalhealthdepartments.aspx

Scale Registration

California Department of Food and Agriculture, County Liaison Office
www.cdfa.ca.gov/exec/county/county_contacts.html

Applying to Accept CalFresh/SNAP

State of California Electronic Benefit Transfer (EBT) Farmers Market Program
www.ebtproject.ca.gov/CommercialInformation/farmersmarket.shtml

Food Safety Guidelines (for California Certified Farmers' Markets)

UC Davis Small Farm Program: Food Safety at Farmers' Markets and Agritourism Venues
www.sfp.ucdavis.edu/farmers_market/safety

Information on California Certified Farmers' Markets

California Department of Food and Agriculture, Certified Farmers' Market Program
www.cdfa.ca.gov/egov/farmersmarket

ChangeLab Solutions: California Farmers' Markets and Farm Stands
www.changelabsolutions.org/publications/CA-farmers-markets-farm-stands

Farmers Market Coalition
www.farmersmarketcoalition.org

Information on Farm to School

California Farm to School
www.cafarmtoschool.org

More Resources from ChangeLab Solutions

Serving School Garden-Grown Produce to Students
www.changelabsolutions.org/publications/school-garden-produce

Joint Use resources
www.changelabsolutions.org/childhood-obesity/joint-use

Establishing Land Use Protections for Farmers' Markets
www.changelabsolutions.org/publications/establishing-land-use-protections

Green for Greens: Finding Public Financing for Healthy Food Retail
www.changelabsolutions.org/publications/green-for-greens

