



**COUNTY OF KAUAI
OFFICE OF ECONOMIC DEVELOPMENT**

SUNSHINE MARKET RULES

Pursuant to and by virtue of the authority set forth in Sec 23-3.4, Kaua'i County Code, and Chapter 91, HRS, the Director of the Office of Economic Development of the County of Kaua'i adopts the following rules and regulations for the Sunshine Markets.

General Provisions

Purpose. The Sunshine Markets are permitted to operate at sites provided by the County so that produce grown on Kaua'i, value-added products, locally produced honey, and live farm-raised fish grown and produced by Kaua'i farmers can be made available to the public at reduced prices.

Definitions. When used in these Rules, the following words or phrases shall have the meaning given below unless it shall be apparent from the context that a different meaning is intended:

"Farm produce" means vegetables, fruits, flowers, nuts and other agricultural products grown on Kaua'i.

"Locally Produced Honey" means honey that has been collected from beehives on Kaua'i.

"Recyclable Paper Bag" means a bag that meets all of the following requirements: (1) contains no old growth fiber; and (2) is one hundred percent (100%) recyclable overall and contains a minimum of forty percent (40%) post-consumer recycled content.

"Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine washable fabric and/or is made of durable material.

"Value-Added Products" means products made of fifty percent (50%) raw agricultural commodities/ingredients grown on the vendor's premises or certified as a Kaua'i-grown product. The value of labor, intellectual property, packaging, or other factors or components used in the final Value-Added Product shall not be included in the aforementioned 50% requirement.

"Farmer/Vendor" means a farmer growing produce/product on the island of Kaua'i, that has a valid permit to sell their produce/product in the Sunshine Markets.

"Director" means the Director of the Office of Economic Development.

"Market Coordinator" means the volunteer vendor designated by the Director or designated staff member.

"Market Monitor" means the person who administers the Sunshine Market Monitor program through Garden Island RC&D with approved County funds.

"Suspension" means suspension from all Sunshine Markets the vendor participates in.

“Cancellation” means permanent cancellation of the vendor’s permit to sell in the Sunshine Markets.

“Produce/Products” means Farm produce, Locally Produced Honey, Value-Added Products and/or live farm-raised fish grown by Kauai farmers.

“County” means County of Kaua’i.

Rules

1) Application Requirements

1.1 All potential farmer/vendors shall obtain, complete, and submit an application for a revocable permit issued by the Office of Economic Development. Upon approval of the application by the Director, the farmer/vendor shall be issued a display permit to sell. The “Permit To Sell” shall be displayed at all times during the market. The permit is good only for the markets approved and indicated on the permit. Failure to display the permit shall result in a two week suspension. Subsequent violation shall result in cancellation of the farmer/vendor’s permit

1.2. All farmer/vendors shall provide a list of the Produce/Products they intend to sell in the Sunshine Markets, to the Office of Economic Development at the time of application and every year thereafter. This list shall include the selling price of each Produce/Product. Farmer/vendors shall not sell items not on their list. Any additions to the list shall be submitted to Office of Economic Development for approval before the additional items are offered for sale. Failure to provide the list, or sale of items not on the list, shall result in a two week suspension. Subsequent violation shall result in cancellation of the farmer/vendor’s permit.

1.3. A farmer/vendor shall grow at least 50% of the Produce/Product that are sold at their booth, before selling Produce/Product authorized for sale from other Kaua’i farmers. A list of Farm Produce that is grown by another farmer must be submitted with the farmer’s application. All Produce/Product listed by the other farmer will have their farm inspected and all produce/products will be confirmed by the Director and/or other designated staff members.

1.4. All farmer/vendors shall provide a plot plan of their farm where the Produce/Products are grown and intend to sell to the Office of Economic Development at the time of application and every year thereafter. The Director and/or other designated staff members shall have the authority to inspect all farms and production facilities to confirm agricultural and Value-Added Products listed on the farmer/vendor’s permit application.

1.5. All farmer/vendors shall comply with the provisions of the National Organic Program Final Rule as published 12/21/00 and effective April 21, 2001, Statute 205.101, if they knowingly sell or label a non-conforming product as “organic”.

1.6. The farmer/vendor is an independent contractor and not the agent, employee, partner or joint venturer of the County. The farmer/vendor shall indemnify, hold harmless and defend the County from any and all claims that may be brought against the County on account of any injuries or damages sustained by any person and/or property, due to the negligent acts or omissions by the vendor or his or her employees or representatives during, before or after the Sunshine Market or as a result of having this permit. The farmer/vendor shall sign an indemnification agreement developed by the County Attorney holding the County harmless and releasing it from all liability prior to selling any Produce/Product in the Sunshine Markets.

2) Market Requirements

2.1. The farmer/vendor shall obtain and maintain in force automobile liability insurance covering any vehicle used to transport and sell Produce/Products at the Sunshine Market. This insurance shall include no fault and bodily injury coverage of not less than \$300,000 per occurrence and property damage coverage of not less than \$30,000 per occurrence. Evidence of this insurance coverage shall be furnished to authorized persons upon request, and failure to have this insurance and a valid no-fault insurance card shall be sufficient grounds for cancellation of the farmer/vendor's permit.

2.2. Stalls or locations may be reassigned or replaced by the Market Coordinators or Market Monitor for chronic late arrival or lack of regular weekly participation. All stalls or locations are at the pleasure of the Director and no farmer/vendor shall have a vested interest in any location or stall. Farmer/vendor stalls may be reassigned or replaced by Market Coordinators or Market Monitor.

2.3. Farmer/vendors shall be in their assigned stalls no later than 15 minutes before the scheduled start of the market. The market time start time shall be the customary and published time. Farmer/vendors shall remain in their stalls until 15 minutes after the published end time of the market and shall vacate the market premises no later than 30 minutes after the published end time of the market. During inclement weather and poor patronage, the Market Coordinator or Market Monitor may end the market early when it is safe to do so. Failure to abide by this rule shall result in a two week suspension. Subsequent violation shall result in cancellation of the farmer/vendor's permit.

2.4. The farmer/vendor shall display all required permits at the farmer/vendor's Sunshine Market booth.

2.5. Prices shall be posted for every category of Produce/Product sold without exception in a manner so that the average customer will know the price of an item without having to ask. Failure to abide by this rule shall result in a four week suspension. Subsequent violation shall result in cancellation of the vendor's permit.

2.6. Farmer/vendors shall not sell until the Market Coordinator, Market Monitor, or a representative of the Director has given the signal for the market to begin. Produce/Products for sale shall be covered and unavailable to the customers until this signal is given. There shall be no "pre-selling" or "reserving". This is to eliminate pre-market sales, including sales to other farmer/vendors, and to ensure that customers arriving at the proper market time have the same opportunity to purchase scarce Produce/Products as those who arrive early. Any sales activity on County property before this signal is a violation of the Sec 23.3.1 of the Kaua'i County Code 1987, as amended. Failure to abide by this rule shall result in a four week suspension. Subsequent violation shall result in cancellation of the vendor's permit.

2.7. Only Farm Produce/Product grown on Kaua'i, Value-Added Products, locally produced honey, and live farm-raised fish grown by Kaua'i farmers shall be sold at the Kauai Sunshine Markets. Farmer/vendors selling carrots, tomatoes, cucumbers shall bring to market a sample of said vegetables with tops or stems attached for comparison with any offered for sale without tops or stems. For mangoes, lychee, rambutan, longan and related orchard crops where the Kaua'i season has not begun or has ended, the farmer/vendor shall furnish an example of fruit on a branch for comparison. Pineapple peduncles shall exhibit signs of recent harvest. Violation of this rule is grounds for immediate cancellation of a vendor's permit.

2.8. Prohibited products at the Sunshine Markets include, but are not limited to the following: meat, meat products, fish (except for live farm-raised fish grown by Kaua'i farmers), shellfish, fish and shellfish products including smoked meat and fish.

2.9. Sales reports shall be handed in to the Market Coordinator or Market Monitor at the conclusion of each market. Failure to make a report shall be cause for a two week suspension and further failure shall result in cancellation of the permit. Farmer/vendors are responsible for complying with any and all state and federal regulations related to the taxation, receipting, recording and reporting of their transactions and the payment of taxes owed. Failure to report and pay taxes on sales is a violation of state law.

2.10 Each farmer/vendor is required to confine their vehicle, table, tent, containers, Produce/Products within the marked parking stall and a maximum 8 feet further from the end of the parking stall lines by width of the marked parking stall.

2.11. The Sunshine Markets are to be kept clean and safe. The farmer/vendor shall execute all operations in a safe and sanitary manner. Food safety, safe vehicle operation, and safe uncluttered market areas are required. No boxes or other items shall be placed on the ground in front of the farmer/vendor's table or placed in any manner that a member of the public might trip on those boxes or items. All trash, boxes, debris and produce generated by the farmer/vendor's operations shall be completely removed from county property and properly disposed of elsewhere by the farmer/vendor. Failure to comply with Market Coordinator's safety and sanitation instructions shall result in a four week suspension. Subsequent violation shall result in cancellation of the farmer/vendor's permit.

2.12. Farmer/vendors shall comply with the County of Kaua'i's Re-usable, recyclable paper bag ordinance.

3) Rules for Value-Added Products. Value-added farmer/vendors shall:

3.1 Become a qualified member of the "Kaua'i Made" program and retain that status as long as the farmer/vendor sells their Produce/Product first, then their Value-Added Product(s) second, at the Sunshine Markets. Every product offered for sale must be an approved "Kaua'i Made" product.

3.2 Submit to the Office of Economic Development copies of permits establishing that any Value-Added Product requiring a kitchen will be produced in a certified facility as specified by State and Federal laws. Said product(s) shall be labeled as required by State and Federal laws.

3.3 Comply with any and all requirements of the State Department of Health for retail sales without any obligation on the part of the County to assist such farmer/vendor or adapt the markets as a result of the sale of processed products.

3.4 Provide the County a Certificate of Insurance establishing that the vendor is carrying product liability insurance in the amount of one million dollars (\$1,000,000) naming the County as an "additional insured" to the policy. Farmer/vendors shall submit a Notice of Renewal to the County on each anniversary of said product liability insurance policy or whenever a new product is added to the policy or upon selling of a new product in the market.

(A) The Certificate of Insurance shall be completed by a duly authorized representative of the insurer certifying that the liability coverage(s) is written on an occurrence form and that the coverage(s) will not be cancelled, non-renewed, or materially changed by endorsement or through issuance of other policies of insurance without thirty (30) days advance written notice to the County. All coverage required by the farmer/vendor will be primary over any insurance or self-insurance program carried by the County.

(B) Farmer/vendor shall furnish the County with original certificates and endorsements effecting required coverage(s). All certificates and endorsements are to be received and approved by the County before a Value-Added Product or locally produced honey is sold. The County reserves the right to require complete certified copies of all required insurance policies, including endorsements affecting the coverage required at any time.

(C) Failure to secure and maintain the required insurance shall be considered a major breach of the privilege of selling at the Sunshine Market. Should the County be forced to expend funds that would have been covered under the specified insurance, the farmer/vendor shall agree to reimburse the County for such funds.

4) Enforcement.

4.1. Violations of the rules shall result in suspension from the market, and repeated or flagrant violations shall result in cancellation of the offender's permit. Determination to cancel a permit shall be made by the Director or a designated representative at the recommendation of the Market Coordinators or OED staff member. The Market Coordinators and Market Monitor operate under the authority of the Director and may suspend Farmer/vendors for up to two weeks for infractions of the rules.

4.2. Appeals of cancellations or suspensions shall be made in writing to the Office of Economic Development and shall detail the reasons for why the penalty should not be exacted. These reasons shall have to do with the findings in fact and not interpretation of the rules which shall be the sole responsibility of the Director or a designated representative.

4.3. Farmer/vendors may petition for a change of rules by means of a petition signed by thirty farmer/vendors holding Sunshine Market permits. The petition shall refer to the rule to be amended and shall have the specific language of the proposed change detailing the advantage to County and to the farmer/vendor of adopting the amendment. The Director may initiate a change of the rules through a process of public hearing, if such a change is deemed to be in the public interest.

OFFICE OF ECONOMIC DEVELOPMENT - 4444 Rice Street, Ste 200; Līhu'e, HI 96766
Phone 241-4946 Fax 241-6399

CERTIFICATION

It is hereby certified that the foregoing Administrative Guideline for the Sunshine Market Value-Added Ordinance and Administrative Rules were adopted on May 28, 2012 by the County of Kauai – Office of Economic Development pursuant to the provisions of the Hawaii Administrative Procedure Act, Chapter 91 HRS, as amended, and that the notice of public hearing on the foregoing document was published in The Garden Island newspaper on April 11, 2012. The public hearing was held on May 15, 2012.