Selecting the Appropriate Legal Structure
What is a Business Entity?

- Anything other than a natural person that can enter contracts, incur debts and hold assets in its own name.

1. Corporations
2. LLCs
3. Cooperatives
4. 3LC
5. Nonprofit
Limited Liability Company (LLC)

• Who’s in control?
  – Member-Managed: Better for LLCs with fewer members
  – Manager-Managed: Better for larger LLCs
• Who owns it? Members.
• Liability: Traditionally there is no personal liability for members
• Formation
  – Articles of Organization: Name, address, etc.
  – Operating Agreement: contract between members of an LLC which govern its affairs and business operations and the relationships of its members and managers
    • LLC does not require an operating agreement
Is an LLC for you?

• Advantages
  – Limited personal liability
  – Flexibility in management
    • You choose how the LLC operates: membership, management, etc.

• Disadvantages
  – Filing procedures different in every state
Cooperatives

• Co-ops are groups of individuals or businesses who come together to form a working group.
• The group pools its resources to assist in developing and marketing
• Benefits: small groups who generally would not have the resources to market on their own
  – Strength in numbers
Cooperatives

Organizational style very similar to a corporation

• Control: Directors or officers
• Money: shareholders
• Liability: limited liability
• Formation: Articles of Incorporation
Is a Cooperative for You?

• Advantages:
  – Access to established marketing groups
  – Access to supplies

• Disadvantages
  – Less control
  – Percent of profits must go towards co-op
Nonprofit Corporation

• Corporation established specifically for the purpose of serving a public need
  – Profits go towards furthering that public need
• Organized like a corporation (members, directors, officers)
• Money: Directors/officers may be paid reasonable compensation
• Liability: same as corporation
• Tax: **most agricultural nonprofits are eligible for Tax-Exempt Status if they file with the IRS
Nonprofit Corporation Formation

• Articles of Incorporation
  – Birth certificate of corporation (demonstrates corporation is formed and is recognized formally by the state where the corporation was formed)
  – Traditionally includes:
    • Name of the corporation
    • Name and address of each incorporator
    • Statement of the corporation’s purpose

• Bylaws
  – Establish procedure, responsibility and meeting regulation
  – Adopted by the Incorporators

*Corporations not required to have bylaws*
Is a Nonprofit for you?

• If you primarily want to make a profit, then no.
• However, if you a religious organization or community development, for example, that wants to grow, then yes.
  – The profits would just need to go back towards the public interest.
Nonprofit Organizations: Applying for Tax Exempt Status
Are Nonprofit And Tax-exempt Statuses The Same?

- **No.** Becoming nonprofit and becoming tax-exempt are different processes, done by different government agencies.
  - **States** grant nonprofit status.
  - The **federal government** grants tax-exempt designation.

- To apply for federal tax-exemption, you need to have been granted nonprofit status first. Further, **not all nonprofits are eligible to be tax-exempt.**
Forming a Nonprofit Organization with Tax-Exempt Status

1. File **Articles of Incorporation** (or other required organizing document) with the appropriate agency in their state (usually the Secretary of State).

2. File for an **Employee ID number** (Form SS-4) AND **Apply for 501(c)(3) status** with the Internal Revenue Service (Form 1023).
Requirements for Nonprofit Articles of Incorporation

1. **Limit the organization’s purpose**: religious, charitable, educational, literary or scientific.

1. **Limit activities that undermine or distract from the purpose**, and none of its earnings can **advantage/benefit any private shareholder or individual**

1. **Must permanently dedicate assets** of the organization to a tax-exempt purpose
   - If an organization dissolves, its assets must be distributed for an exempt purpose, or to the government (local, state or federal) for a public purpose.
Advantages of Having Tax-Exempt Status

- Exemption from federal corporate and income taxes for most types of revenue.

- Organizations designated as 501(c)(3) are able to solicit tax deductible contributions.

- You can apply for grant funds directly from foundations that donate to tax-exempt entities.
Conventional and Innovative Land Use Arrangements
I will address:

1. Zoning and Land Use Generally

2. Examples of conventional and innovative Land Use arrangements

3. Accessing and reading city ordinances

4. Becoming a part of the planning process
1. Zoning and Land Use Generally

Legal Background

• City governments are delegated powers to protect the public health, safety, and welfare of the community
• Cities regulate land use primarily through zoning
• In 1916, New York City was the first to write a comprehensive zoning plan
New York City, 1916
Use District Map
New York Public Library
1. Zoning and Land Use Generally

Goals of Innovative Land Use Arrangements

• Transform vacant land
• Increase value and productivity
• Promote long-term sustainability
• Improve the “health, safety, and welfare” of the city
2. Examples of Conventional and Innovative Land Use Arrangements

Problematic Land Use Arrangements

- Neighborhoods of detached single-family homes.

- Over-scaled, Non-Sustainable Infrastructures.
2. Examples of Conventional and Innovative Land Use Arrangements

Urban Landscapes: “green” land use
- Farming and Gardening
- Productive Forests and Meadows

Benefits of Urban Landscapes:
- Educational opportunities
- Stormwater management
- Reduction in resources necessary to sustain the city
- Improvement of air quality, soil, and water
- Restoration of biodiversity – native plants and animals

Example: New York’s High Line

Photo credit: David Berkowitz (flickr)
2. Examples of Conventional and Innovative Land Use Arrangements

Mixed Use Neighborhoods

Neighborhood Centers

District Centers

City Centers

Live + Make districts

from the Detroit Works Project Strategic Framework: Land Use
2. Examples of Conventional and Innovative Land Use Arrangements

Residential Neighborhoods

- Green Residential
- Traditional Low-Density
- Traditional Medium-Density
- Green Mixed-Rise

*from the Detroit Works Project Strategic Framework: Land Use*
3. Accessing and Reading City Ordinances

- City Codes and Zoning Ordinances are typically available on a City’s website
  - nyc.gov
  - detroitmi.gov
  - Planning.city.cleveland.oh.us

- Look for Zoning Maps, which will allow you to determine your property’s zoning district
3. Accessing and Reading City Ordinances

New York allows “agricultural uses” without special permits in all Residence Districts, but include limitations on odor, dust, and sale of products.

However, agricultural uses do not have those limitations in Manufacturing Districts.

City of New York Zoning Resolution
Article II: Residence District Regulations
Chapter 2: Use Regulations

22-10
USES PERMITTED AS-OF-RIGHT
[. . .]
22-14
Use Group 4
[. . .]
B. Open uses
[. . .]
Agricultural #uses#, including greenhouses, nurseries, or truck gardens, provided that no offensive odors or dust are created, and that there is no sale of products not produced on the same #zoning lot#

City of New York Zoning Resolution
Article IV: Manufacturing District Regulations
Chapter 2: Use Regulations

42-10
USES PERMITTED AS-OF-RIGHT
[. . .]
42-14
Use Group 17
[. . .]
C. Miscellaneous #uses#
Agriculture, including greenhouses, nurseries or truck gardens
3. Accessing and Reading City Ordinances

*Detroit City Code - Chapter 61: Zoning*

Article VII: Residential Zoning Districts

Division 4. R3 Low Density Residential District

DIVISION 4. R3 LOW DENSITY RESIDENTIAL DISTRICT

[. . .]

Sec. 61-8-64. Conditional other uses.

[. . .]

(2) Greenhouse as provided for in ARTICLE XII.DIVISION 3.Subdivision H of this Chapter

(3) Hoophouse as provided for in ARTICLE XII.DIVISION 3.Subdivision H of this Chapter

(4) Signs as provided for in ARTICLE VI of this Chapter.

(5) Urban farm as provided for in ARTICLE XII.DIVISION 3.Subdivision H of this Chapter

Detroit similarly permits agricultural uses by zoning districts in its Zoning Ordinance.

However, Detroit specifies permitted uses in sub-districts, like a “Low Density Residential District.”

Detroit also separately permits narrow uses like “greenhouse” and “urban farm.”
4. Becoming a Part of the Planning Process

- Attend public hearings or submit written comments
- Join pro-farm organizations
- Speak directly with your City Council, City Planners, or Planning Commissions
Interpreting Contracts in Urban Agriculture
Basic Elements of a Contract

- All contracts must contain **FOUR** elements:
  - **Offer**
    - Must be a clear and definite promise
    - An invitation to negotiate is not an offer
  - **Consideration**
    - Something of value must be exchanged
    - This includes money, tangible objects, performing an act, **NOT** performing a legal right
  - **Acceptance**
    - Must be clear
  - **Performance** of the contracted obligations

Credit: [http://earthfriendlylandscapes.blogspot.com/2012/09/why-contracts-are-important.html](http://earthfriendlylandscapes.blogspot.com/2012/09/why-contracts-are-important.html)
Questions to ask when entering into any contract

• **Who** are the people involved in the transaction?
• **What** **purpose** is the contract serving?
• What is the contract’s **start/end date**?
• Is there a **penalty** if you want to end the contract before the agreed upon end date?
• What is each **party responsible** for under the rules of the contract?
Employment Contracts

• Used between an employer and their employee that lays out the rules and conditions of employment

Example: Don’s Garlic Connection needs someone to run their booth at the farmers market every Saturday from 9 a.m.-5 p.m. James interviewed for the position, and Don wants to hire James. Don would write an employment contract that both he and James would sign to make the terms of his employment binding
Elements of an Employment Contract

- **Overview of job responsibilities**
  - “James will be responsible to set up and clean up the booth, interact with customers, handle sales of products and deal with any customer service issues that may arise”

- **Salary**
  - “James will receive $10 per hour”
Elements of an Employment Contract, Continued

- **Termination of Employment**
  - “The employee contract can be terminated for cause at any time by the employer”
  - *For cause* = a legitimate reason (tardiness, poor work performance, absenteeism, theft, etc.) to end employment

- **Note:** At-will employment allows for termination for any legally sound reason by the employer. Many courts prefer the contract explicitly state if employment is at-will
Volunteer Agreements

• Used to set out the expectations for volunteers work and clarify their role in the organization.

• Example: Sam wants to volunteer at Mitchell’s Growers food co-op. Before Sam starts working at the co-op, Mitchell’s Growers should give Sam a volunteer agreement that both Sam and the co-op will sign.
Elements of a Volunteer Contract

• Training
  • “Sam will be expected to attend three training seminars before he can start working without supervision in the co-op’s garden”

• Expenses
  • “We will repay out of pocket expenses including: travel to and from home to the food co-op and during your volunteering.”
Elements of Volunteer Agreements, Continued

• Expectations of Volunteers
  • “Sam is expected to work 10 hours a week at the co-op. If he is unable to make it in, he is expected to give his supervisor advanced notice he will be missing. Sam is expected to follow the co-ops policies and procedures”
Vendor Agreements

- Used when you market your products or services at an event that allows vendors
- **Example**: Sandy’s Salads wants to a booth at Katie’s Market to sell her fresh produce. Sandy would enter into a Vendor Agreement with Katie’s Market.
Elements of a Vendor Agreement

• **Hours of Operation**
  • “Katie’s Market will remain open from 8 a.m. until 4 p.m. every Saturday from March 1st, 2014 until December 15th, 2014”

• **Installation and Tear Down**
  • Sandy’s Salad will be responsible for setting up their booth at 7:30 a.m., and shall remove their booth and products from the site by no later than 6 p.m.
Elements of a Vendor Agreement, Continued

• Payment
  • Sandy’s Salad will pay Katie’s Market $5,000 in return for one assigned space during the 2014 season

• Appearance
  • Sandy’s Salad is responsible for keeping their designated area clean and organized during the hours the market is open to the public.
Lease Contracts

• A lease contract is an agreement between an owner of property and a renter who desires to have temporary possession of the property.

• **Example**: Molly Murphy owns three acres of land that she is not using, and Bob wants to rent the land from Molly. Molly would enter into a leasing agreement with Bob so he can use the land in exchange for rent payments to Molly.
Elements of Lease Contracts

• **Identify the Property**
  • “The 3 acre plot of land to be rented is located at 132 Woodbridge Lane, Detroit Michigan 48223.”

• **Price**
  • “Bob will pay Molly $700 a month for twelve months beginning on January 1st, 2014”
Elements of a Lease Contract, Continued

- **Restrictions**
  - “Bob can make no permanent structural changes to the property, including erecting windmills, additional buildings or expansions to the existing house”

- **Rules and Responsibilities**
  - “Bob is responsible for all utility cost and basic maintenance of the property. He is expected to obey all zoning ordinances placed on the property”
Building Brand Recognition Through Intellectual Property Protections
**Intellectual Property**

- IP rights protect information or knowledge in creations

**3 MAIN FORMS**

- Trademarks
- Patents
- Copyrights

© ® SM TM
Trademarks

• Words, phrases, designs, or a combination that identifies the source of goods and/or services of one party from another
• Distinguishes the trade origins of identical or related goods or services
Patents

• Exclusive rights granted to an inventor for a period of time in exchange for the public disclosure and protection of an invention

• Patent applications will set forth one or multiple claims defining the invention, which must meet relevant requirements such as novelty and non-obviousness

• [http://www.uspto.gov/patents](http://www.uspto.gov/patents)
• [http://www.google.com/patents](http://www.google.com/patents)
Copyrights

- Form of protection of literary, dramatic, musical, artistic, and certain other forms of intellectual work, which can be published or unpublished
- The work must be fixed in a tangible medium, and original (ex. pictures, sound recordings, literary works)
- The only time a copyright must be registered with the US Copyright Office is if you want to sue for infringement
- [http://www.copyright.gov/](http://www.copyright.gov/)
Trademarks

• What are they?
  – Words, phrases, designs, or a combination that identify the source of goods or services of one party from another

• Why do you need them?
  – Protects brands names and logos of your goods and services
  – Allows you to bring forth lawsuits against unlawful uses in commerce of your trademark
Trademark Advantages

- Exclusive right to use your trademark nationwide (state registration allows use within only that one state)
- Public notice of your trademark ownership
- Increase enterprise value
- Right to use the federal registration symbol
- Ability to bring actions in federal court
- Listing in the USPTO database
- Marketing tool
- Build brand image by enhancing reputation
How to Obtain a Trademark

Before you begin the application process to register your trademark, you will want to conduct a search through the Trademark Electronic Search System (TESS) on the USPTO website. Listed are the basic steps in conducting this search.

Select a Search Option
- Basic Word Mark
- Word and/or Design Mark (Recommended)

Search your Trademark idea by term
- Enter your Trademark idea
- Use quotation marks to search entire phrases

Check to see if your Trademark is already in use
- Search results will indicate related Trademarks as “LIVE” or “DEAD”
- Details given on each related mark (ex. registered classes)
### How to Obtain a Trademark

When choosing a mark consider:

<table>
<thead>
<tr>
<th>Avoid confusion</th>
</tr>
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<tbody>
<tr>
<td>• If a trademark already exists, your mark application will not be approved</td>
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<table>
<thead>
<tr>
<th>Strength/Weakness of Trademark</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Fanciful and arbitrary - strongest</td>
</tr>
<tr>
<td>• Suggestive – strong</td>
</tr>
<tr>
<td>• Descriptive – weaker</td>
</tr>
<tr>
<td>• Generic - weakest</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public recognition</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Ease/Ability of individuals to spell, remember, or pronounce your trademark</td>
</tr>
</tbody>
</table>
How to Obtain a Trademark

Once you have conducted a search through TESS, you can proceed to filling out the initial application form through the Trademark Electronic Application System (TEAS) on the USPTO website. Listed are the pieces of information required when submitting your application.

- Ownership of the trademark
- Name and address
- Depiction of the trademark
- Goods and/or services
- Application filing fee
- Basis for filing
- Specimen for use-based applications
- Signature
Certification and Compliance Options
“Why would I CHOOSE to comply with MORE regulations?”

Federal Agencies: Who They Apply to & How They Can Help

**FOOD & DRUG ADMINISTRATION (FDA):**

- [www.fda.gov](http://www.fda.gov)
- Applies to ALL food products except meat, poultry, and processed egg products
- Regulates food safety and nutritional labeling
- Center for Disease Control (CDC):
  - [www.cdc.gov/foodsafety](http://www.cdc.gov/foodsafety)
- Division of Nutrition, Physical Activity, & Obesity funds state programs designed to address obesity and chronic disease problems
- In MI, see [www.michigan.gov/preventobesity](http://www.michigan.gov/preventobesity)

**U.S. DEPARTMENT OF AGRICULTURE (USDA):**

- [www.usda.gov](http://www.usda.gov)
- Applies to ALL meat, poultry, and processed egg products
- Includes Agricultural Marketing Service and the Animal and Plant Health Inspection Service

**FARM SERVICES AGENCY (FSA):**

- [www.fsa.usda.gov](http://www.fsa.usda.gov)
- Provides information about disaster assistance, farm loans, and related programs for family-sized farms

**FOOD AND NUTRITION SERVICE (FNS):**

- [www.fns.usda.gov/fns/services.htm](http://www.fns.usda.gov/fns/services.htm)
- Provides information about the Child & Adult Care Free Program, Commodity Supplemental Food Program, Farmers’ Market Nutrition Program, Fresh Fruit & Vegetable Program, National School Lunch Program, Supplemental Nutrition Assistance Program (food stamps), and Emergency Food Assistance Program

**ENVIRONMENTAL PROTECTION AGENCY (EPA):**

- [http://www.epa.gov/pesticides/](http://www.epa.gov/pesticides/)
- Governs pesticide use on farms of all sizes, including the registration, distribution, sale, and use of legal pesticides

**Additional Agencies:**

- **Federal:** Animal & Plant Health Inspection Services (APHIS); Agricultural Marketing Service (AMS); even the Federal Trade Commission (FTC)
- **State:** agricultural practices; cottage food laws; licensing & permitting; occupational safety
Why Pursue National Certification?

- Consumer Education
- Consumer Confidence
- Industry Best Practices
- Systematized Production Review

What are the Main Certification Options?

- Federal & International
- Private Participant-Regulated
- Private 3rd Party Verification
What USDA Organic Regulates

- Standards for any farm, wild crop harvesting, or handling operation that sells any food or agricultural product labeled as “organic”
- Certifies:
  - Farms, Handlers & Processors selling $5,000+ gross in organic products annually
  - Vendors that handle and sell products online or otherwise (not in stores)

How to Qualify and Apply

- Five Stage Process
  - Adopt organic practices & apply to a USDA-accredited certifying agent (CA)
  - Submit application and fees to CA
  - CA reviews applications to verify practices comply with USDA organic regulations
  - CA Inspector conducts an on-site inspection
  - CA reviews the application and the inspector’s report to determine if the applicant complies with the USDA organic regulations
What Certification Costs

• Vary according to:
  – CA fees
  – Operation Size
• Application Fee
• Annual recertification
• Annual Renewal Fee
• Annual assessment on sales/production
• Inspection Fees
• Cost offsets available via USDA Organic Certification Cost-Share Programs

What the Benefits are

• Transparency for customers
• An internationally recognized verification program
Certification Programs

Certified Naturally Grown farmers and beekeepers share a commitment to work within the natural biological cycles that are necessary for a truly sustainable farming system - a system that works in harmony with micro-organisms, soil flora and fauna, pollinators, plants and animals.

CNG offers certification of the following types of operations:
- Produce (including maple)
- Apiaries (for honey)
- Livestock (including poultry and eggs)

Building on Organic Standards
A set of internationally accepted standards and practices for organic agriculture exists, but there's always discussion around the edges of what should officially be considered organic. We took the USDA's Organic standards as a starting point for our produce and livestock programs, to minimize confusion. As a private non-profit organization, we have the freedom to set our own standards, and we've chosen to do so in particular instances. CNG's apiary standards were generated "from scratch" (the NOP doesn't define standards for beekeepers) but in keeping with organic principles.

Certified Naturally Grown is not affiliated with the USDA National Organic Program. Our certification programs do not confer permission to use the word 'organic'.

Apply Now
What CNG Regulates

• Certifies small-scale, direct-market farmers and beekeepers who:
  – Don’t use synthetic fertilizers, pesticides, herbicides, fungicides or GMO seeds;
  – Align with National Organic Standards.

• Certifies:
  – Produce (including maple)
  – Apiaries (for honey), and
  – Livestock (including poultry and eggs).

How to Qualify and Apply

• Six Step Process:
  – Complete appropriate application: Produce, Apiary, or Livestock
  – Create your public online farm profile on the CNG website. Pay dues (on a sliding scale based on the size of the operation and profit margins)
  – Sign and return a Declaration of Compliant Practices
  – Arrange an on-farm inspection within two growing season months
  – Conduct an on-farm inspection of another farm, annually
  – A decision is made within four weeks.
What Certification Costs

- **Annual contribution varies from $75 - $200**, based on the type of certification, operation size and profit margins.
- Contributions may be made in multiple payments over time.
- Beginning farmers and those facing unusual hardships can apply to the **Scholarship Fund**.

What the Benefits are

- CNG verification and monitoring is based on the **participatory guarantee system**.
- The **annual peer-review** inspections ensure the program’s integrity and rely on nearby farmer-inspectors.
- Increasing **national brand recognition**.
- Increased **exposure to customers** committed to supporting small producers.
Welcome
The Non-GMO Project is a non-profit organization committed to preserving and building sources of non-GMO products, educating consumers, and providing verified non-GMO choices.

read more

Find Non-GMO Choices    Take Action Now    Get the Facts

Support the efforts
DONATE

BLOG
What Non-GMO Project Regulates

- Certifies GMOs are not in meats, produce, pesticides, fertilizers, livestock feed, veterinary inputs, cleaning products and the supply chain for value-added products
- **Verifies applicant processes** using the Non-GMO Project Standard (updated annually after a public comment period)
- Verifies: traceability of products or inputs; segregation and clean-out of GMO contamination; preventative measures; and, when needed, DNA

How to Qualify and Apply

- **Nine-Step Process**
  - Submit an Enrollment Inquiry Form
  - Complete Data Template for Cost Estimate
  - Review & Approve Customized Costs
  - Sign Participating Company Agreement
  - Pay Enrollment Fees
  - Sign Licensing Agreement
  - Complete Data Upload
  - If needed, provide additional documentation
  - Schedule On-Site Inspection
What Certification Costs

- Costs vary with applicant practices
- Custom cost estimates
- Costs associated with verifying & switching to non-GMO sources in product supply chain
- Annual site analysis using an Internal Control System
  - Annual random 3rd party on-site audit of 10% of Non-GMO Project farms
  - For certified organic farms, no additional inspection beyond those required by the USDA Organic program are required.

What the Benefits are

- Transparency for Customers
- Uniform, industry-wide, outcomes-based Standard and Verification Program doesn’t undermine process creativity and autonomy
- Efficient access to co-packers and ingredient suppliers
- For certified organic farms, no additional inspection beyond those required by the USDA Organic program are required.
What are the Other Certification Options?