



MERRYMEETING
FOOD COUNCIL

FOOD SOVEREIGNTY ORDINANCE

FAQ

1 The Maine Food Sovereignty Act defines direct producer-to-consumer transactions as food at the "site of production". Many FSOs now in circulation define producer-to-consumer transactions as covering the following conditions "at roadside stands, fundraisers, farmers' markets, and community social events." Does this create an area divergent from the State law? If not, how?

Potentially, yes. The Maine Food Sovereignty Act (7 M.R.S. §281 et seq.) (the "Act") defines "Direct producer-to-consumer transaction" as "a face-to-face transaction involving food or food products at the site of production of those food or food products." The Act further grants to municipalities the right under its home rule authority to adopt ordinances regarding direct producer-to-consumer transactions. If those ordinances go beyond the definition, the ordinance may be considered going beyond the authority granted by the State. While the memo provided by Senator Jackson and Senator Hickman states that the intent of the Act was to be permissive, it also limits that permissiveness to regulating "direct to producer-to consumer transactions" only, not defining them. Municipalities may enact home rule ordinances regulating direct producer-to-consumer transactions, but cannot amend the definition of what is such a transaction.

2 Are municipalities liable if unsafe food is sold and community members become sick? Are they protected by the Maine Tort Claims Act, or some other section of law?

Likely not liable. The Maine Tort Claims Act protects a governmental entity from liability for the undertaking of a legislative act. The adoption of a FSO likely would be covered under this protection. See 14 M.R.S. §8104-B(1).

3

There are two prominent template documents available for municipalities seeking to implement an FSO. How can communities seeking to implement an FSO navigate drafting an FSO?

We would recommend reviewing all Maine Food Sovereignty Act definitions for compliance with the Act before drafting an FSO. Please see the associated Municipal Ordinance Template Guide document provided regarding general descriptions of sections of typical Maine municipal ordinances.

4

Is it likely that the State of Maine would pursue a lawsuit against a food producer in a community with a Food Sovereignty Ordinance based on the sale location of the food item if the producer was still selling directly to the consumer for personal consumption (i.e. otherwise following the law)?

It is unclear. This would be a facts and circumstances situation that would need to be analyzed on a case-by-case basis. It also depends upon the language of the regulations that State agencies might promulgate to guide regulation and enforcement under the law.

5

How would implementing a Food Sovereignty Ordinance impact existing food sales made by individuals who operate without proper State licensing and inspections, for example, at community suppers, or bake sales, etc?

To be as compliant with State statute as possible, an individual operating under a Food Sovereignty Ordinance (FSO) should be making sales pursuant to the definition of a direct producer-to-consumer transaction. Transactions outside the FSO would need to be allowed under other ordinances.

6

Does implementing a Food Sovereignty Ordinance (FSO) put communities without FSOs at risk in that there is now clearly a law that is being disregarded related to what they are doing?

Potentially. It would be advisable that if a community is operating under an unwritten FSO that it implement a formal ordinance for clarity.

7

Is there a way for this to be extended to work with Wabanaki people/nations vs. a municipality?

We would recommend consulting with an expert on the process and procedures regarding regulations affecting indigenous people/nations.

8

Is it recommended to have insurance if you are producing food under the stipulations of the Maine Food Sovereignty Act in a community with a Food Sovereignty Ordinance?

Anyone growing and selling products for human consumption should be concerned about potential liability and should consider incorporating and purchasing insurance. A Food Sovereignty Ordinance could potentially have specific licensing requirements at the municipal level one of which requires a certain type of insurance to be obtained.

9

May the “site of production” in the Maine Food Sovereignty Act of 2017 be construed to be the town in a community with a Food Sovereignty Ordinance in place?

A reasonable reading of the definition seems to suggest that the site of production is narrower than the entire municipality. However, this is an interpretation that could be clarified by the State enforcement agency.

10

Would a statement within a Food Sovereignty Ordinance reminding consumers/patrons to make informed decisions about products they purchase for consumption address concerns around food safety liability?

Ordinances are typically drafted to regulate a specific issue. They do not direct the general population regarding how to interpret a given ordinance or provide further education regarding additional responsibility. A general statement to this end could go into the preamble or an FAQ if the municipality wanted it to, but this would not be a waiver to any liability and likely would not be an enforceable aspect of the Ordinance. See Answer to Question 17 for further information.

11

Should a Food Sovereignty Ordinance make only a broad statement about where food that is produced and processed in the town could be sold, or list specific venues? For example, a community supper, fundraiser or farmers market.

See question 1 regarding the definition of direct producer-to-consumer transactions. If the transaction is not at the site of production, it is not within the definition and outside the scope of a Food Sovereignty Ordinance.

12

Can people from outside of a community with a Food Sovereignty Ordinance (FSO) buy food from producers in a community with an FSO, and this is covered by the Maine Food Sovereignty Act?

There does not appear to be any prohibition on a resident from outside the community legally purchasing products from producers in the community with an FSO.

13 How has the passing of LD95 (Right to Food amendment to Maine's Constitution) influenced Food Sovereignty Ordinances?

Given the passing of the constitutional amendment during the November 2021 election, we do not believe this changes anything with Food Sovereignty Ordinances. If anything, the passage of the constitutional amendment would likely encourage municipalities to adopt Food Sovereignty Ordinances.

14 How should foraged foods be viewed under the Maine Food Sovereignty Act?

Foraged foods likely would meet the definition of "Food or food products" under the Act and could be sold as such under an FSO.

15 Do farmers markets have authority to require licensing and insurance (which FSOs exempt), and enforce the need for them in communities operating with an FSO in place?

Yes. 7 M.R.S. §415 which regulates Farmers' Markets allows a market to impose more stringent requirements on its sellers than the prohibitions provided in statute. Additionally, as discussed above, FSO likely would not extend to producers selling at Farmers' Markets.

16 If a farmers market allows unlicensed food vendors under an FSO provision, is the market entity liable if unsafe food is sold and someone becomes sick?

As discussed in question 15, an FSO would likely not override any rules and regulations required by a Farmers' Market.

17 The Local Food Rules template, section 6E, allows for a waiver of liability. Is there some standardized text that an unlicensed producer can use for this purpose?

We would recommend any unlicensed producer engage with legal representation to draft an agreement that would indemnify the producer and waive any liability. This agreement would need to be tailored to the individual producer's needs. This would be like the release and waiver you sign before your child goes on a school field trip or you go on an amusement park ride or partake in a 10K road race. The Maine Courts have added general requirements regarding such releases and waivers, all of which must be followed, and which still may not be enough, depending upon the facts presented, to avoid liability.