BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA
ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 31 OF THE LAKE COUNTY CODE REGARDING THE COUNTY OF LAKE EDIBLE FOOD RECOVERY PROGRAM

WHEREAS, Senate Bill (SB) 1383 (Lara, 2016) established goals of a 75 percent reduction of the statewide disposal of organic waste, and a 20 percent increase of edible food recovery, by the year 2025; and

WHEREAS, the implementing regulations for SB 1383 in California Code of Regulations, Title 14, Division 7, Chapter 12, requires counties to implement an edible food recovery program to educate commercial edible food generators; increase commercial edible food generator access to food recovery organizations and food recovery services, monitor commercial edible food generator compliance; and increase edible food recovery capacity if there is insufficient capacity to meet edible food recovery needs; and

WHEREAS, the regulations require the edible food recovery program to include an enforceable ordinance to reduce food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered and redistributed to food recovery organizations to feed people in need; and

WHEREAS, the Board of Supervisors believes it is necessary and proper to address climate change and limit global temperature rise by reducing greenhouse gas emissions from organic waste and promote social equity among all county residents by ensuring that they have access to the basic food needs.

NOW THEREORE, the Board of Supervisors of the County of Lake does ordain as follows:

Section 31-1.. Title.

This article shall be known as, and may be cited or referred to as "The Edible Food Recovery Ordinance."

Section 31-2.. Findings and Purpose.

It is the intent of the Board of Supervisors to address climate change and limit global temperature rise by reducing greenhouse gas emissions from organic waste. The purpose of this Chapter is to promote the recovery of edible food and thereby reduce methane emissions from organic waste in landfills and help food insecurity in local communities. Finally, the purpose of

this Chapter is to satisfy the County's obligation to establish an edible food recovery program under Senate Bill 1383 (SB 1383), the Short-Lived Climate Pollutant Reduction Act of 2016, and the implementing regulations issued by the California Department of Resources Recycling and Recovery (CalRecycle) (Title 14, Division 7, Chapter 12 of the California Code of Regulations).

Section 31-3. Definitions.

3.1 *Tier One Commercial Edible Food Generator* means the following:

(1) Supermarkets, as defined below;
(2) Grocery Stores, as defined below, with a total facility size equal to or greater than 10,000 square feet;
(3) Food Service Providers, as defined below;
(4) Food Distributors, as defined below, and,
(5) Wholesale Food Vendors, as defined below.

If the definition in 14 CCR section 18982(a)(73) of Tier One Commercial Edible Food Generators differs from this definition, the definition in 14 CCR section 18982(a)(73) shall apply to this Chapter.

For the purposes of this Chapter, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.

3.2 *Tier Two Commercial Edible Food Generator* means the following:

(1) Restaurants, as defined below, with 250 or more seats or a total facility size equal to or greater than 5,000 square feet;
(2) Hotels, as defined below, with an on-site Food Facility and 200 or more rooms;
(3) Health facilities, as defined below, with an on-site Food Facility and 100 or more beds;
(4) Large Venues, as defined below; and,
(5) Large Events, as defined below.

If the definition in 14 CCR section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR section 18982(a)(74) shall apply to this Chapter.

For the purposes of this Chapter, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.

3.3 *Edible Food* means food intended for human consumption, or as otherwise defined in 14 CCR section 18982(a)(18). For the purposes of this Division XXX, "Edible Food"

is not refuse if it is recovered and not discarded. Nothing in this Chapter requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

3.4 *Food Distributor* means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR section 18982(a)(22).

3.5 *Food Facility* has the same meaning as in Section 113789 of the Health and Safety Code.

3.6 *Food Recovery* means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR section 18982(a)(24).

3.7 *Food Recovery Organization* means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities. "Food Recovery Organization" includes, but is not limited to:

(1) A food bank as defined in Section 113783 of the Health and Safety Code;
(2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code; and,
(3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code. A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Chapter pursuant to 14 CCR section 18982(a)(7)

If the definition in 14 CCR section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR section 18982(a)(25) shall apply to this Chapter.

3.8 *Food Recovery Service* means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator.

3.9 *Food Service Provider* means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR section 18982(a)(27).

3.10 *Grocery Store* means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and is inclusive of any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR section 18982(a)(30).

3.11 *Health Facility* has the same meaning as in Section 1250 of the Health and Safety Code.

3.12 *Hotel* has the same meaning as in Section 17210 of the Business and Professions Code.

3.13 *Inspection* means a County electronic or onsite review of records, containers, and an entity's collection, handling, recycling, or landfill disposal of organic waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Chapter, or as otherwise defined in 14 CCR section 18982(a)(35).

3.14 *Large Event* means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR section 18982(a)(38) differs from this definition, the definition in 14 CCR section 18982(a)(38) shall apply to this Chapter.

3.15 *Large Venue* means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. A venue facility includes, but is not limited to, a public, non-profit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or public attraction facility. A site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR section 18982(a)(39) differs from this definition, the definition in 14 CCR section 18982(a)(39) shall apply to this Chapter.

3.16 *Restaurant* means an establishment primarily engaged in the retail sale of food and drinks for on premises or immediate consumption, or as otherwise defined in 14 CCR section 18982(a)(64).

3.17 *Share Table* has the same meaning as in Section 114079 of the Health and Safety Code.

3.18 *Supermarket* means a full-line, self-service retail store with gross annual sales of $2,000,000.00, or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR section 18982(a)(71).

3.19 *Wholesale Food Vendor* means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR section 18982(a)(76).

Section 31- 4 Requirements for Commercial Edible Food Generators.

4.1 Tier One Commercial Edible Food Generators must comply with the requirements of this Section upon the adoption of this ordinance, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR section 18991.3

4.2 Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

4.3 Tier One and Tier Two Commercial Edible Food Generators shall comply with the following requirements:

(1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.

(2) Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:

(A) The collection of Edible Food for Food Recovery; or

(B) Acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

(3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

(4) Allow the County to access the premises, conduct inspections, and review electronic and hard copy records pursuant to 14 CCR section 18991.4:

(5) Maintain, and retain for five years, records that include the following information, or as otherwise specified in 14 CCR section 18991.4:

(A) A list of each Food Recovery Service or Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR section 18991.3(b).

(B) A copy of all contracts or written agreements established under 14 CCR section 18991.3(b).

(C) A record of all of the following information for each of those Food Recovery Services or Food Recovery Organizations:

(i) The name, address, and contact information of the Food Recovery Service or Food Recovery Organization.

(ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

(iii) The established frequency that food will be collected or self-hauled.

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

4.4 Tier One Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the County according to the following schedule:

(1) On or before August 1, 2022, for the period of January 1, 2022 through June 30, 2022.

(2) On or before May 1, 2023, and on or before May 1 each year thereafter, for the period covering the entire previous calendar year.

4.5 Tier Two Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the County according to the following schedule:

(1) On or before May 1, 2025, and on or before May 1 each year thereafter, for the period covering the entire previous calendar year.

4.6 Food Recovery Reports submitted by Tier One and Tier Two Commercial Edible Food Generators shall include the following information:

(1) The name and address of the Commercial Edible Food Generator;

(2) The name of the person or persons responsible for the Commercial Edible Food Generator's Edible Food Recovery Program;

(3) A list of all contracted Food Recovery Services or Food Recovery Organizations that collect Edible Food from the Commercial Edible Food Generator; and,

(4) The total number of pounds of Edible Food donated through a contracted Food Recovery Organization or Food Recovery Service during the reporting period.

4.7 Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance issued by the California Department of Education pursuant to Senate Bill 557 (2017).

Section 31-5. Requirements for Food Recovery Organizations and Services.

5.1 Food Recovery Services collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR section 18991.3(b), shall maintain, and retain, for five years, records that include the following information, or as otherwise specified by 14 CCR section 18991.5(a)(1):

(1) The name, address, and contact information for each Commercial Edible Food Generator from which the Service collects Edible Food;

(2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month;

(3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month; and,

(4) The name, address and contact information for each Food Recovery Organization the Food Recovery Service transports Edible Food to for Food Recovery.

5.2 Food Recovery Organizations collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR section 18991.3(b), shall maintain, and retain for five years, records that include the following information, or as otherwise specified by 14 CCR section 18991.5(a)(2):

(1) The name, address, and contact information for each Commercial Edible Food Generator from which the Organization receives Edible Food;

(2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month; and,

(3) The name, address, and contact information for each Food Recovery Service that the organization receives Food from for Food Recovery.

5.3 Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the unincorporated areas of the county and contract with or have written agreements with one or more Tier One or Tier Two Commercial Edible Food Generators pursuant to 14 CCR section 18991.3(b) shall submit Food Recovery Reports, as defined below, to the County according to the following schedule:

(1) On or before August 1, 2022, for the period of January 1, 2022 through June 30, 2022.

(2) On or before May 1, 2023, and in or before May 1 each year thereafter, for the period covering the entire previous calendar year.

5.4 Food Recovery Reports submitted by Food Recovery Services or Organizations shall include the following information:

(1) Total pounds of Edible Food recovered during the reporting period from Tier One and Tier Two Edible Food Generators with whom the reporting entity has a contract or written agreement pursuant to 14 CCR section 18991.3(b).

(2) Total pounds of Edible Food recovered during the reporting period from Tier One and Tier Two Edible Food Generators in Lake County with whom the reporting entity has a contract or written agreement pursuant to 14 CCR section 18991.3(b).

5.5 In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, Food Recovery Services and Food Recovery Organizations operating in the county shall upon request provide information and consultation to the County regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the County and its Tier one and Tier Two Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the County shall provide the requested information within 60 days, unless a shorter timeframe is specified or the County agree to a longer timeframe.

Section 31-6. Inspections and Investigations.

6.1 The Lake County Health Services Department shall conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators to confirm compliance with this Chapter by Tier One and Tier Two Commercial Food Generators, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the County to enter the interior of a private residential property for Inspection.

6.2 Regulated entities shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the County's employees during such Inspections and investigations. Such Inspections and investigations may include in-person or electronic review of Edible Food Recovery activities, records, or any other requirement of this Chapter described herein. Failure to provide or arrange for access to an entity's premises or access to records for any Inspection or investigation is a violation of this Chapter and may result in penalties accordingly.

6.3 Any records obtained by the County during its Inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code section 6250 et seq.

6.4 Representatives of the County are authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

6.5 The Lake County Public Services Department shall receive written complaints, including anonymous complaints, regarding entities that may be in violation of this Chapter. Complaints shall include the name and contact information of the complainant, if the complainant is not anonymous; the identity of the alleged violator, if known; a description of the alleged violation including location(s) and all other relevant facts known to the complainant; any relevant photographic or documentary evidence to support the allegations in the complaint; and the identity of any witnesses, if known.

Section 31-7 Enforcement

7.1 *Administrative Fine.* Violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of an administrative fine by the County. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the County shall commence an action to impose penalties via an administrative citation and fine.

7.2 *Notice of Violation.* Before assessing an administrative fine, the County shall issue a Notice of Citation requiring compliance within 60 days of issuance of the Notice. The Notice shall include:

(1) The name(s) of each person or entity to whom it is directed;
(2) A factual description of the violations, including the regulatory section(s) and/or ordinance section(s) being violated;
(3) A compliance date by which the respondent is to take specified action(s); and,
(4) The penalty for not complying before the specified deadline.

For repeat, grossly negligent, and/or willful violations, the County may require compliance within fewer than 60 days or may immediately issue an administrative citation and fine.

7.3 *Extensions to Compliance Deadlines.* The Lake County Public Services Department may extend the compliance deadline set forth in a Notice of Violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadline impracticable, including the following:

(1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

(2) Delays in obtaining discretionary permits or other government agency approvals;
(3) Deficiencies in Edible Food Recovery capacity and the existence of a corrective action plan imposed by CalRecycle pursuant to 14 CCR section 18996.2 due to those deficiencies; or,

7.4 *Administrative Citations.* If the respondent fails to correct the violation by the compliance date or as otherwise provided in subsection (b), the County shall issue an administrative citation and fine. The citation shall include a description of the administrative citation appeal process, including the designated hearing officer, the time within which the administrative citation may be contested, and instructions for requesting a hearing.

7.5 *Amount of Fine.* At the discretion of the County, administrative fines for each violation of this Chapter may automatically accrue each day that the cited violation persists, including during the collection period (if any) specified in the Notice of Violation. If the violation is corrected on or before the specified compliance date, no penalty shall be imposed under this Section. The Notice of Violation shall specify whether administrative fines will accrue daily. Administrative fines shall be as follows:

(1) For a first violation, the amount of the base penalty shall be $50.00 to $100. 00 per violation and, if applicable, per day.
(2) For a second violation, the amount of the base penalty shall be $100.00 to $200.00 per violation and, if applicable, per day.
(3) For a third or subsequent violation, the amount of the base penalty shall be $250.00 to $500.00 per violation and, if applicable, per day.

7.6 *Factors Considered in Determining Penalty Amount.* The following factors shall be used to determine the amount of penalty for each violation within the appropriate penalty range:

(1) The nature, circumstances, and severity of the violation(s);
(2) The violator's ability to pay;
(3) The willfulness of the violator' misconduct;
(4) Whether the violator took measures to avoid or mitigate violations of this Chapter;
(5) Evidence of any economic benefit resulting from the violation(s);
(6) The deterrent effect of the penalty on the violator; and,
(7) Whether the violation(s) were due to conditions outside the control of the violator.

7.7 *Appeals.* Persons receiving an administrative citation for an uncorrected violation may request a hearing to appeal the citation. A notice of appeal stating the grounds of

appeal with specificity shall be filed with the Clerk to the Board of Supervisors by the applicant within ten (10) calendar days after mailing or personal delivery of a notice of the action to be appealed. The Board of Supervisors shall hear the applicant or a designated representative and receive any relevant information and documents.

7.8 *Other Remedies.* Other remedies allowed by law may be used to enforce this Chapter. Violations of this Chapter shall constitute a public nuisance and may be subject to the actions, enforcement, and remedies available pursuant to Chapter 13 of the Lake County Code.

Section 31-8. Severability.

If any provision of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, including, but not limited, being preempted by state law, that portion of this Ordinance shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof or other applications of the Ordinance which can be given effect with the invalid provision or application and, to this end, the provisions of this Ordinance are declared to be severable. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 31.9. Environmental Review.

This Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protections of the environment, specifically for climate protection. There are no unusual circumstances that would cause this ordinance to have a significant effect on the environment.

Section 31.10. Effective Date

This ordinance shall be effective thirty (30) days after its passage.

Section 31.11. Publication.

Within 15 days after the passage of an ordinance it shall be published once, with the names of the members voting for and against the ordinance, in a newspaper of general circulation in the County of Lake.

The foregoing Ordinance was introduced before the Board of Supervisors on the _____ day of _____ 2022, and passed by the following vote on the _____ day of _____ 2022.

AYES:

NOES:

ABSENT OR NOT VOTING:

COUNTY OF LAKE

_____
Chair, Board of Supervisors

ATTEST:
SUSAN PARKER

Clerk to the Board of Supervisors

By: _____

APPROVED AS TO FORM:
ANITA L. GRANT
County Counsel

By: _____