

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

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

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

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

13 WHEREAS, the regulations require the edible food recovery program to include an
14 enforceable ordinance to reduce food insecurity by requiring commercial edible food generators
15 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

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

20 NOW THEREFORE, the Board of Supervisors of the County of Lake does ordain as
21 follows:

22 **Section 31-1.. Title.**

23 This article shall be known as, and may be cited or referred to as “The Edible Food
24 Recovery Ordinance.”

25 **Section 31-2.. Findings and Purpose.**

26 It is the intent of the Board of Supervisors to address climate change and limit global
27 temperature rise by reducing greenhouse gas emissions from organic waste. The purpose of this
28 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

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

5 **Section 31-3. Definitions.**

6 3.1 *Tier One Commercial Edible Food Generator* means the following:

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

13 If the definition in 14 CCR section 18982(a)(73) of Tier One Commercial Edible
14 Food Generators differs from this definition, the definition in 14 CCR section
15 18982(a)(73) shall apply to this Chapter.

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

18 3.2 *Tier Two Commercial Edible Food Generator* means the following:

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

27 If the definition in 14 CCR section 18982(a)(74) of Tier Two Commercial Edible
28 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"

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

4 3.4 *Food Distributor* means a company that distributes food to entities including, but
5 not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR section
6 18982(a)(22).

7 3.5 *Food Facility* has the same meaning as in Section 113789 of the Health and
8 Safety Code.

9 3.6 *Food Recovery* means actions to collect and distribute food for human
10 consumption which otherwise would be disposed, or as otherwise defined in 14 CCR section
11 18982(a)(24).

12 3.7 *Food Recovery Organization* means an entity that engages in the collection or
13 receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible
14 Food to the public for Food Recovery either directly or through other entities. "Food Recovery
15 Organization" includes, but is not limited to:

- 16 (1) A food bank as defined in Section 113783 of the Health and Safety Code;
- 17 (2) A nonprofit charitable organization as defined in Section 113841 of the Health and
18 Safety Code; and,
- 19 (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the
20 Health and Safety Code. A Food Recovery Organization is not a Commercial Edible
21 Food Generator for the purposes of this Chapter pursuant to 14 CCR section
22 18982(a)(7)

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

26 3.8 *Food Recovery Service* means a person or entity that collects and transports
27 Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or
28 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).

1 3.10 *Grocery Store* means a store primarily engaged in the retail sale of canned food;
2 dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and is inclusive of any area
3 that is not separately owned within the store where the food is prepared and served, including a
4 bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR section
18982(a)(30).

5 3.11 *Health Facility* has the same meaning as in Section 1250 of the Health and Safety
6 Code.

7 3.12 *Hotel* has the same meaning as in Section 17210 of the Business and Professions
8 Code.

9 3.13 *Inspection* means a County electronic or onsite review of records, containers, and
10 an entity's collection, handling, recycling, or landfill disposal of organic waste or Edible Food
11 handling to determine if the entity is complying with requirements set forth in this Chapter, or as
12 otherwise defined in 14 CCR section 18982(a)(35).

13 3.14 *Large Event* means an event, including, but not limited to, a sporting event or a
14 flea market, that charges an admission price, or is operated by a local agency, and serves an
15 average of more than 2,000 individuals per day of operation of the event, at a location that
16 includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf
17 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.

18 3.15 *Large Venue* means a permanent venue facility that annually seats or serves an
19 average of more than 2,000 individuals within the grounds of the facility per day of operation of
20 the venue facility. A venue facility includes, but is not limited to, a public, non-profit, or
21 privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or
22 civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground,
23 museum, theater, or public attraction facility. A site under common ownership or control that
24 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.

25 3.16 *Restaurant* means an establishment primarily engaged in the retail sale of food
26 and drinks for on premises or immediate consumption, or as otherwise defined in 14 CCR
27 section 18982(a)(64).

28 3.17 *Share Table* has the same meaning as in Section 114079 of the Health and Safety
Code.

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2 3.18 *Supermarket* means a full-line, self-service retail store with gross annual sales of
3 \$2,000,000.00, or more, and which sells a line of dry grocery, canned goods, or nonfood items
4 and some perishable items, or as otherwise defined in 14 CCR section 18982(a)(71).

5 3.19 *Wholesale Food Vendor* means a business or establishment engaged in the
6 merchant wholesale distribution of food, where food (including fruits and vegetables) is
7 received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other
8 destination, or as otherwise defined in 14 CCR section 18982(a)(76).

9 **Section 31- 4 Requirements for Commercial Edible Food Generators.**

10 4.1 Tier One Commercial Edible Food Generators must comply with the requirements
11 of this Section upon the adoption of this ordinance, and Tier Two Commercial Edible Food
12 Generators must comply commencing January 1, 2024, pursuant to 14 CCR section 18991.3

13 4.2 Large Venue or Large Event operators not providing food services, but allowing
14 for food to be provided by others, shall require Food Facilities operating at the Large Venue or
15 Large Event to comply with the requirements of this Section, commencing January 1, 2024.

16 4.3 Tier One and Tier Two Commercial Edible Food Generators shall comply with
17 the following requirements:

- 18 (1) Arrange to recover the maximum amount of Edible Food that would otherwise
19 be disposed.
- 20 (2) Contract with, or enter into a written agreement with Food Recovery
21 Organizations or Food Recovery Services for:
 - 22 (A) The collection of Edible Food for Food Recovery; or
 - 23 (B) Acceptance of the Edible Food that the Commercial Edible Food
24 Generator self-hauls to the Food Recovery Organization for Food
25 Recovery.
- 26 (3) Shall not intentionally spoil Edible Food that is capable of being recovered by
27 a Food Recovery Organization or a Food Recovery Service.
- 28 (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).

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

- 3 (i) The name, address, and contact information of the Food
4 Recovery Service or Food Recovery Organization.
5 (ii) The types of food that will be collected by or self-hauled to
6 the Food Recovery Service or Food Recovery
7 Organization.
8 (iii) The established frequency that food will be collected or
9 self-hauled.
10 (iv) The quantity of food, measured in pounds recovered per
11 month, collected or self-hauled to a Food Recovery Service
12 or Food Recovery Organization for Food Recovery.

13 4.4 Tier One Commercial Edible Food Generators shall submit Food Recovery
14 Reports, as defined below, to the County according to the following schedule:

- 15 (1) On or before August 1, 2022, for the period of January 1, 2022 through June
16 30, 2022.
17 (2) On or before May 1, 2023, and on or before May 1 each year thereafter, for
18 the period covering the entire previous calendar year.

19 4.5 Tier Two Commercial Edible Food Generators shall submit Food Recovery
20 Reports, as defined below, to the County according to the following schedule:

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

23 4.6 Food Recovery Reports submitted by Tier One and Tier Two Commercial Edible
24 Food Generators shall include the following information:

- 25 (1) The name and address of the Commercial Edible Food Generator;
26 (2) The name of the person or persons responsible for the Commercial Edible
27 Food Generator's Edible Food Recovery Program;
28 (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).

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

3 5.1 Food Recovery Services collecting, receiving, or coordinating the collection of
4 Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators,
5 via a contract or written agreement established under 14 CCR section 18991.3(b), shall
6 maintain, and retain, for five years, records that include the following information, or as
otherwise specified by 14 CCR section 18991.5(a)(1):

- 7 (1) The name, address, and contact information for each Commercial Edible
Food Generator from which the Service collects Edible Food;
8 (2) The quantity in pounds of Edible Food collected from each Commercial
9 Edible Food Generator per month;
10 (3) The quantity in pounds of Edible Food transported to each Food Recovery
Organization per month; and,
11 (4) The name, address and contact information for each Food Recovery
12 Organization the Food Recovery Service transports Edible Food to for Food
Recovery.

13
14 5.2 Food Recovery Organizations collecting, receiving, or coordinating the collection
15 of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators,
16 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):

- 17 (1) The name, address, and contact information for each Commercial Edible Food
18 Generator from which the Organization receives Edible Food;
19 (2) The quantity in pounds of Edible Food received from each Commercial Edible
Food Generator per month; and,
20 (3) The name, address, and contact information for each Food Recovery Service
21 that the organization receives Food from for Food Recovery.

22 5.3 Food Recovery Organizations and Food Recovery Services that have their
23 primary address physically located in the unincorporated areas of the county and contract
24 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
25 Recovery Reports, as defined below, to the County according to the following schedule:

- 26 (1) On or before August 1, 2022, for the period of January 1, 2022 through June
30, 2022.
27 (2) On or before May 1, 2023, and in or before May 1 each year thereafter, for the
28 period covering the entire previous calendar year.

1 5.4 Food Recovery Reports submitted by Food Recovery Services or Organizations
2 shall include the following information:

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

10 5.5 In order to support Edible Food Recovery capacity planning assessments or other
11 studies conducted by the County, Food Recovery Services and Food Recovery
12 Organizations operating in the county shall upon request provide information and
13 consultation to the County regarding existing, or proposed new or expanded, Food
14 Recovery capacity that could be accessed by the County and its Tier one and Tier Two
15 Commercial Edible Food Generators. A Food Recovery Service or Food Recovery
16 Organization contacted by the County shall provide the requested information within 60
17 days, unless a shorter timeframe is specified or the County agree to a longer timeframe.

14 **Section 31-6. Inspections and Investigations.**

15
16 6.1 The Lake County Health Services Department shall conduct Inspections and
17 investigations, at random or otherwise, of any collection container, collection vehicle
18 loads, or transfer, processing, or disposal facility for materials collected from generators
19 to confirm compliance with this Chapter by Tier One and Tier Two Commercial Food
20 Generators, Food Recovery Services, and Food Recovery Organizations, subject to
21 applicable laws. This Section does not allow the County to enter the interior of a private
22 residential property for Inspection.

23 6.2 Regulated entities shall provide or arrange for access during all Inspections (with
24 the exception of residential property interiors) and shall cooperate with the County's
25 employees during such Inspections and investigations. Such Inspections and
26 investigations may include in-person or electronic review of Edible Food Recovery
27 activities, records, or any other requirement of this Chapter described herein. Failure to
28 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.

1
2 6.4 Representatives of the County are authorized to conduct any Inspections or other
3 investigations as reasonably necessary to further the goals of this Chapter, subject to
4 applicable laws.

5 6.5 The Lake County Public Services Department shall receive written complaints,
6 including anonymous complaints, regarding entities that may be in violation of this
7 Chapter. Complaints shall include the name and contact information of the complainant,
8 if the complainant is not anonymous; the identity of the alleged violator, if known; a
9 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.

10 **Section 31-7 Enforcement**

11 7.1 *Administrative Fine.* Violation of any provision of this Chapter shall constitute
12 grounds for issuance of a Notice of Violation and assessment of an administrative fine by
13 the County. Absent compliance by the respondent within the deadline set forth in the
14 Notice of Violation, the County shall commence an action to impose penalties via an
15 administrative citation and fine.

16 7.2 *Notice of Violation.* Before assessing an administrative fine, the County shall
17 issue a Notice of Citation requiring compliance within 60 days of issuance of the Notice.
The Notice shall include:

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

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

25 7.3 *Extensions to Compliance Deadlines.* The Lake County Public Services
26 Department may extend the compliance deadline set forth in a Notice of Violation if it
27 finds that there are extenuating circumstances beyond the control of the respondent that
make compliance within the deadline impracticable, including the following:

- 28 (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's 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

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

5 7.8 *Other Remedies.* Other remedies allowed by law may be used to enforce this
6 Chapter. Violations of this Chapter shall constitute a public nuisance and may be subject
7 to the actions, enforcement, and remedies available pursuant to Chapter 13 of the Lake
8 County Code.

9 **Section 31-8. Severability.**

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

18 **Section 31.9. Environmental Review.**

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

24 **Section 31.10. Effective Date**

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

26 **Section 31.11. Publication.**

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

1 The foregoing Ordinance was introduced before the Board of Supervisors on the _____ day of
2 _____ 2022, and passed by the following vote on the _____ day of _____
3 2022.

4
5 AYES:

6 NOES:

7 ABSENT OR NOT VOTING:

8
9 COUNTY OF LAKE

10
11
12 _____
13 Chair, Board of Supervisors

14
15 ATTEST:
16 SUSAN PARKER

17 Clerk to the Board of Supervisors

18
19
20 By: _____

21
22 APPROVED AS TO FORM:
23 ANITA L. GRANT
24 County Counsel

25 By:  _____
26
27
28