

**ORDINANCE NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS,  
COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

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**AN ORDINANCE ADDING CHAPTER 4.106 TO TITLE 4 OF THE SAN MATEO  
COUNTY ORDINANCE CODE, ESTABLISHING AN EDIBLE FOOD RECOVERY  
PROGRAM**

The Board of Supervisors of the County of San Mateo, State of California,  
ORDAINS as follows:

**SECTION 1. Findings**

The Board of Supervisors finds and determines that:

**WHEREAS**, on September 17, 2019, the County adopted a resolution declaring a climate emergency that threatens the economic, social well-being, health and safety, and security of the County of San Mateo; and

**WHEREAS**, increasing greenhouse gases (GHGs) will cause global temperatures to rise 1.5 degrees Celsius by as early as 2030, which in San Mateo County will cause sea levels to rise (up to six feet or more by 2100 under certain scenarios), contribute to increasingly extreme weather including intense rainfall, storms, heat events, and heightened risk of large wildfires; and

**WHEREAS**, the County has taken a number of actions to address climate change, including: helping to launch Peninsula Clean Energy; facilitating the Regional Integrated Climate Action Planning Suite (RICAPS) program that brings together the County and its 20 cities to plan and implement measures to reduce GHG emissions; launching Climate Ready SMC to better prepare San Mateo County for the changing climate; facilitating the

formation of the Flood and Sea Level Rise Resiliency District in partnership with the City/County Association of Governments; and completed the Government Operations and Unincorporated Area Climate Action Plans that will include measurable climate-related goals and actions; and

**WHEREAS**, the decomposition of organic waste disposed of in landfills generates methane, a climate superpollutant 72 times more potent than carbon dioxide over a 20-year horizon; and

**WHEREAS**, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 requires the County of San Mateo to reduce, reuse, and recycle (including composting) solid waste generated in the County to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

**WHEREAS**, Assembly Bill 341 of 2011 places requirements on businesses and multi-family property owners generating a specified threshold amount of solid waste to arrange for recycling services and required the County of San Mateo to implement a mandatory commercial recycling program; and

**WHEREAS**, Assembly Bill 1826 of 2014 requires businesses and multi-family property owners generating a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires the County to implement a recycling program to divert organic waste from businesses subject to the law, and requires the County to implement a mandatory commercial organics recycling program; and

**WHEREAS,** Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016, places requirements on multiple entities including the County of San Mateo, other jurisdictions, residential households, commercial businesses and business owners, commercial edible food generators, solid waste haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets, reduce greenhouse gas emissions generated from the production of methane from the landfilling of organics and also help reduce food insecurity by requiring commercial edible food generators arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

**WHEREAS,** Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016, places requirements on multiple entities including the County of San Mateo, other jurisdictions, residential households, commercial businesses and business owners, commercial edible food generators, solid waste haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets, reduce greenhouse gas emissions generated from the production of methane from the landfilling of organics and also help reduce food insecurity by requiring commercial edible food generators arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

**WHEREAS,** on January 28, 2020, the Board approved the funding of a countywide edible food recovery pilot program aimed at reducing the amount of edible food disposed of in landfills and diverting it towards people in need, resulting in over 4.5

million additional pounds of food recovered in 2020, as well as an estimated reduction of 8,730 metric tons of carbon dioxide equivalent (MTCO<sub>2</sub>e) GHGs, or the equivalent of taking 1,853 passenger vehicles off the road.

**SECTION 2.** Chapter 4.106 is hereby added to Title 4 of the San Mateo County Ordinance Code, to be entitled, and to read, as follows:

## **CHAPTER 4.106 - ESTABLISHING AN EDIBLE FOOD RECOVERY PROGRAM**

### **4.106.010 - Application.**

The provisions of this Chapter shall apply to all Edible Food Recovery as defined herein within the unincorporated areas of San Mateo County.

### **4.106.020 - Definitions.**

For the purposes of this Chapter, the following terms have the following meanings:

- (a) “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this Ordinance. For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.
- (b) “Edible Food” means food intended for and fit for human consumption and collected or received from a Tier One or Tier Two Commercial Edible Food Generator. For the purposes of this Ordinance, “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.
- (c) “Edible Food Recovery” means actions to collect, receive, and/or re-distribute Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food Generators that otherwise would be disposed.
- (d) “Food Distributor” means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores.
- (e) “Food Facility” has the same meaning as in Section 113789 of the Health and Safety Code.

- (f) “Food Recovery Organization” means an entity that engages in the collection or receipt of Edible Food from Tier One or Tier Two Commercial Edible Food Generators and distributes that Edible Food either directly or through other entities, including, but 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 Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

- (g) “Food Recovery Service” means a person or entity that collects and transports Edible Food from a Tier One or Tier Two Commercial Edible Food Generator to a Food Recovery Organization or other entities for Edible Food Recovery. A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- (h) “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.
- (i) “Greenhouse gas (GHG)” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and other fluorinated greenhouse gases as defined in this section.
- (j) “Greenhouse gas emission reduction” or “greenhouse gas reduction” means actions designed to achieve a calculated decrease in greenhouse gas emissions over time.
- (k) “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 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.
- (l) “Inspection” means, for the purposes of Edible Food Recovery, actions to review contracts and other records related to the recovery of Edible Food and may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity’s records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying with the requirements of this Ordinance.

- (m) “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 Ordinance.
- (n) “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. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, 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 other public attraction facility. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, 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 Ordinance.
- (o) “Notice of Violation (NOV)” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.
- (p) “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).
- (q) “Self-Hauler” means, for the purposes of Edible Food Recovery, a Commercial Edible Food Generator which holds a contract with and hauls Edible Food to a Food Recovery Organization or other site for redistribution according to the requirements of this Ordinance.
- (r) “Supermarket” means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), 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).
- (s) “Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:
  - (1) Supermarket.

- (2) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- (3) Food Service Provider.
- (4) Food Distributor.
- (5) Wholesale Food Vendor.

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

(t) “Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

- (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (2) Hotel with an on-site Food Facility and 200 or more rooms.
- (3) Health facility with an on-site Food Facility and 100 or more beds.
- (4) Large Venue.
- (5) Large Event.
- (6) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (7) A Local Education Agency facility with an on-site Food Facility.

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 Ordinance.

(u) “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 189852(a)(76).

#### **4.106.030 - Commercial businesses.**

Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Edible Food Recovery requirements contained in the Requirements for Tier One and Tier Two Commercial Edible Food Generators section of this Ordinance, including the self-hauling provisions.

#### **4.106.040 - Tier One and Tier Two Commercial Edible Food Generators.**

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
- (b) 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.
- (c) 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) Use the CalRecycle Model Food Recovery Agreement or the contractual elements contained in the Requirements for Food Recovery Organizations and Food Recovery Services section of this Ordinance to contract with, or otherwise enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:
    - (A) The collection of Edible Food for Edible Food Recovery from the Tier One or Tier Two Commercial Edible Food Generator's premises; or
    - (B) the acceptance of Edible Food that the Tier One or Tier Two Commercial Edible Food Generator self-hauls to the Food Recovery Organization.
  - (3) Contract with Food Recovery Organizations and Food Recovery Services able to demonstrate a positive reduction in greenhouse gas emissions from their Edible Food Recovery activity. A list of Food Recovery Organizations and Food Recovery Services is available on the County of San Mateo Office of Sustainability website.
  - (4) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
  - (5) Allow the County's enforcement entity to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the County
  - (6) Keep records that include the following information:



- (A) A list of each Food Recovery Organization or a Food Recovery Service that collects or receives Edible Food from the Tier One or Tier Two Commercial Edible Food Generator pursuant to a contract or written agreement as required by this Ordinance.
- (B) A copy of all contracts or written agreements established under the provisions of this Ordinance.
- (C) A record 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 schedule or 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.
- (7) No later than June 30th of each year commencing no later than July 1, 2022 for Tier One Commercial Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food Generators, they shall provide an annual Edible Food Recovery report to County that includes, but is not limited to, the following information: a list of all contracts with Food Recovery Organizations and Food Recovery Services, the amount and type of Edible Food donated to Food Recovery Organizations and Food Recovery Services, the schedule of Edible Food pickup by Food Recovery Organizations and Food Recovery Services, a list of all types of Edible Food categories they generate, such as “baked goods,” that are not accepted by the Food Recovery Organizations and Food Recovery Services with whom they contract, the contact information for the manager and all staff responsible for Edible Food Recovery, and certification that all staff responsible for Edible Food Recovery have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe. With the exception of the food safety and handling training certification, Tier One and Tier Two Commercial Edible Food Generators may coordinate with their Edible Food Recovery contractors to supply this information. The County will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website.

- (8) Mandate their Edible Food Recovery staff learn and follow the donation guidelines and attend trainings conducted by Food Recovery Organizations or Food Recovery Services with which they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid supplying food for collection that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
- (9) Tier One and Tier Two Commercial Edible Food Generators who self-haul Edible Food shall require those transporting Edible Food for recovery to obtain a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe and follow the best practices and standards for proper temperature control, methods, and procedures for the safe handling and transport of food.
- (d) Nothing in this Ordinance 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 pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

#### **4.106.050 - Food recovery organizations and food recovery services.**

- (a) Food Recovery Services operating in the County and collecting or receiving Edible Food directly from Tier One and/or Tier Two Commercial Edible Food Generators via a contract or written agreement established under the requirements of this Ordinance, shall maintain the following records:
  - (1) The name, address, and contact information for each Tier One and Tier Two Commercial Edible Food Generator from which the service collects Edible Food.
  - (2) The quantity in pounds of Edible Food by type collected from each Tier One and Tier Two Commercial Edible Food Generator per month.
  - (3) The quantity in pounds of Edible Food by type transported to each Food Recovery Organization or redistribution site per month.
  - (4) The name, address, and contact information for each Food Recovery Organization or redistribution site that the Food Recovery Service transports Edible Food to for Edible Food Recovery.

- (b) Food Recovery Organizations operating in the County and collecting or receiving Edible Food directly from Tier One and/or Tier Two Commercial Edible Food Generators via a contract or written agreement established under the requirements of this Ordinance, or receiving Edible Food from Food Recovery Services or from other Food Recovery Organizations, shall maintain the following records:
  - (1) The name, address, and contact information for each Tier One and Tier Two Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization from which the organization collects or receives Edible Food.
  - (2) The quantity in pounds of Edible Food by type collected or received from each Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization per month.
  - (3) The name, address, and contact information for other Food Recovery Organizations or redistribution sites that the Food Recovery Organization transports Edible Food to for Edible Food Recovery.
- (c) Food Recovery Organizations and Food Recovery Services operating in the county shall inform Tier One and Tier Two Commercial Edible Food Generators from which they collect or receive Edible Food about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established as required by this Ordinance.
- (d) Commencing no later than July 1, 2022, Food Recovery Organizations and Food Recovery Services operating in the county and collecting or receiving Edible Food from Tier One and Tier Two Commercial Edible Food Generators or any other source shall report to County the following: a detailed Edible Food activity report of the information collected as required under this Ordinance, including weight in pounds by type and source of Edible Food, the schedule/frequency of pickups/drop-offs of Edible Food from/to each Edible Food source or redistribution site, brief analysis of any necessary process improvements or additional infrastructure needed to support Edible Food Recovery efforts, such as training, staffing, refrigeration, vehicles, etc., and an up to date list of Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts or agreements established as required under this Ordinance. The County will assist in the preparation of these reports by providing guidance and a template located on County of San Mateo Office of Sustainability website. This Edible Food activity report shall be submitted quarterly, or at the discretion of County, less frequently, and shall cover the activity that occurred since the period of the last submission.
- (e) Food Recovery Organizations and Food Recovery Services shall contact the County of San Mateo Office of Sustainability to discuss the requirements of this Ordinance before establishing new contracts or agreements with Tier One or Tier Two Commercial Edible Food Generators and in order to maintain existing

contracts or agreements for the recovery of Edible Food with Tier One and Tier Two Commercial Edible Food Generators.

(f) In order to provide the required records to the State, the County, and Tier One or Tier Two Commercial Edible Food Generators, contracts between Food Recovery Organizations and Food Recovery Services and Tier One and Tier Two Commercial Edible Food Generators shall either:

- (1) Use the Model Food Recovery Agreement developed by the State of California's Department of Resources Recycling and Recovery (CalRecycle) and include a clause requiring the Food Recovery Organization or Food Recovery Service to report to the Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts the annual amount of Edible Food recovered and to inform them of the tax benefits available to those who donate Edible Food to non-profits; or
- (2) Include in their contracts the following elements:
  - (A) List/description of allowable foods the Food Recovery Organization/Food Recovery Service will receive.
  - (B) List/description of foods not accepted by the Food Recovery Organization/Food Recovery Service.
  - (C) Conditions for refusal of food.
  - (D) Food safety requirements, training, and protocols.
  - (E) Transportation and storage requirements and training.
  - (F) A protocol for informing the Tier One or Tier Two Commercial Edible Food Generators of a missed or delayed pickup.
  - (G) Notice that donation dumping is prohibited.
  - (H) Provisions to collect sufficient information to meet the record-keeping requirements of this Ordinance.
  - (I) Fees/financial contributions/acknowledgement of terms for the pickup and redistribution of Edible Food.
  - (J) Terms and conditions consistent with the CalRecycle Model Food Recovery Agreement.
  - (K) Information supplying the Tier One or Tier Two Commercial Edible Food Generators with the annual amount of Edible Food recovered and informing them of the tax benefits that may be available to those who donate Edible Food to non-profits.

- (L) Contact name, address, phone number, and email for both responsible parties, including the current on-site staff responsible for Edible Food Recovery.
  - (M) Food Recovery Organizations accepting self-hauling of Edible Food from Tier One and Tier Two Commercial Edible Food Generators must provide a schedule, including days of the week and acceptable times for drop-offs, and information about any limitation on the amount of food accepted, and/or the packaging requirements or other conditions of transport, such as, but not limited to, maintaining proper temperature control, and other requirements for the safe handling and transport of food, the self-hauler must follow for the Edible Food to be accepted.
- (g) Food Recovery Organizations and Food Recovery Services operating in the county shall demonstrate that all persons, including volunteers and contracted workers using their own vehicle, involved in the handling or transport of Edible Food, have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe.
- (h) Food Recovery Organizations and Food Recovery Services operating in the county shall use the appropriate temperature control equipment and methods and maintain the required temperatures for the safe handling of Edible Food recovered from Tier One and Tier Two Commercial Edible Food Generators for the duration of the transportation of the Edible Food for redistribution, including Edible Food transported by private vehicles.
- (i) In order to ensure recovered Edible Food is eaten and to prevent donation dumping, Food Recovery Organizations and Food Recovery Services operating in the County shall provide documentation that all redistribution sites which are not themselves Food Recovery Organizations to which they deliver Edible Food have a feeding or redistribution program in place to distribute, within a reasonable time, all the Edible Food they receive. Such documentation may include a website address which explains the program or pamphlets/brochures prepared by the redistribution site.
- (j) Food Recovery Organizations and Food Recovery Services operating in the County unable to demonstrate a positive reduction in GHG emissions for their Edible Food Recovery operational model cannot contract with Tier One and Tier Two Commercial Edible Food Generators in the county for the purpose of recovering Edible Food as defined in this Ordinance. Food Recovery Organizations and Food Recovery Services contracting to recover Edible Food from a Tier One and Tier Two Commercial Edible Food Generator for redistribution shall consult with the County to document that their overall operational model will achieve a greenhouse gas emissions reduction. Such review may analyze route

review, miles traveled for pick-up and redistribution, amount of food rescued, and the likelihood of consumption after redistribution.

- (k) Food Recovery Organizations and Food Recovery Services operating in the county shall visually inspect all Edible Food recovered or received from a Tier One and Tier Two Commercial Edible Food Generator. If significant spoilage is found, or if the food is otherwise found to be unfit for redistribution for human consumption, Food Recovery Organizations and Food Recovery Services shall immediately notify the County using the process found on the County of San Mateo Office of Sustainability's website. The notice shall include:
  - (1) The type and amount, in pounds, of spoiled food or food unfit for redistribution for human consumption, or provide a photographic record of the food, or both.
  - (2) The date and time such food was identified.
  - (3) The name, address and contact information for the Tier One or Tier Two Commercial Edible Food Generator which provided the food.
  - (4) The date and time the food was picked up or received.
  - (5) A brief explanation of why the food was rejected or refused.
- (l) Contracts between Tier One or Tier Two Commercial Edible Food Generators and Food Recovery Organizations or Food Recovery Services shall not include any language prohibiting Tier One or Tier Two Commercial Edible Food Generators from contracting or holding agreements with multiple Food Recovery Organizations or Food Recovery Services listed on the County of San Mateo Office of Sustainability website.
- (m) Food Recovery Organizations and Food Recovery Services operating in the county shall conduct trainings and develop educational material such as donation guidelines and handouts to provide instruction and direction to Tier One and Tier Two Commercial Edible Food Generators with whom they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid the collection of food that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
- (o) Allow County's enforcement entity or their Designee for Edible Food Recovery to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the County.

#### **4.106.060 - Edible food recovery capacity planning.**

- (a) In order to support Edible Food Recovery capacity planning assessments or other such studies, Food Recovery Services and Food Recovery Organizations

operating in the county shall provide information and consultation to the County upon request, regarding existing, or proposed new or expanded, Edible 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 respond to such requests for information within 60 days.

#### **4.106.070 - Inspections and investigations.**

- (a) County representatives are authorized to conduct inspections and investigations, at random or otherwise, to confirm compliance with this Ordinance by Tier One and Tier Two Commercial Edible Food Generators, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws.
- (b) Regulated entities shall provide or arrange for access during all inspections and shall cooperate with the County's representative during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) access to records for any inspection or investigation is a violation of this Ordinance and may result in penalties described.
- (c) Any records obtained by the County during its inspections or 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.
- (d) County representatives are authorized to conduct any inspections, or other investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.
- (e) The County shall receive written complaints from persons regarding an entity that may be potentially non-compliant with this Ordinance or SB 1383 Edible Food Recovery Regulations, including receipt of anonymous complaints.

#### **4.106.080 - Enforcement.**

- (a) Violation of any provision of this Ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a County Enforcement Official, or representative. The County may commence enforcement actions under this Ordinance by issuing an administrative citation and assessing a fine. County's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance.

- (b) Other remedies allowed by law may be used, including civil action or prosecution as an infraction. The County may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The County may elect to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of County staff and resources.
- (c) Responsible Entity for Enforcement
  - (1) Enforcement pursuant to this Ordinance may be undertaken by the County Enforcement Official or county manager or representative who will interpret the Ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
- (d) Process for Enforcement
  - (1) The County will monitor compliance with the Ordinance randomly and through investigation of complaints, and an inspection program.
  - (2) The County may issue an official notification to notify regulated entities of its obligations under the Ordinance.
  - (3) The County will issue a Notice of Violation to any Tier One or Tier Two Commercial Edible Food Generator found to have Edible Food in any waste collection container, or to any Food Recovery Organization or Food Recovery Service found to have Edible Food recovered from a Tier One or Tier Two Edible Food Generator in a waste collection container which has not been documented by a notice of significant spoilage as required in this Ordinance. Such notice will be provided by email communication immediately upon identification of the violation or within three (3) calendar days after determining that a violation has occurred. If the County observes Edible Food in a Tier One or Tier Two Commercial Edible Food Generator, or Food Recovery Organization, or Food Recovery Service waste container on more than two (2) consecutive occasion(s), the County may assess an administrative citation and fine, pursuant to the Edible Food Recovery penalties provisions contained in this Ordinance, on the Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service.
  - (4) The County shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
  - (5) 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, pursuant to the Edible Food Recovery penalties provisions contained in this Ordinance.



#### **4.106.090 - Administrative fines.**

- (a) The penalty levels are as follows:
  - (1) For a first violation, the amount of the base penalty shall be \$100 per violation.
  - (2) For a second violation, the amount of the base penalty shall be \$200 per violation.
  - (3) For a third or subsequent violation, the amount of the base penalty shall be \$500 per violation.

#### **4.106.100 - Compliance deadline extension considerations.**

- (a) The County may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 4.106.080 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines 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; or
  - (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the County is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

#### **4.106.110 - Appeals process.**

- (a) Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed and consistent with County's procedures in the County's codes for appeals of administrative citations. Evidence may be presented at the hearing. The County will appoint a hearing officer who shall conduct the hearing and issue a final written order.

#### **4.106.120 - Education period for non-compliance.**

- (a) Beginning January 1, 2022 and through December 31, 2023, the County will conduct inspections to determine compliance, and if the County determines that a Tier One Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service is not in compliance, it shall provide educational materials and training to the entity describing its obligations under this Ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

#### **4.106.130 - Civil penalties for non-compliance.**

- (a) Beginning January 1, 2024, if the County determines that a Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service is not in compliance with this Ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this Ordinance as needed.

#### **4.106.140 - Severability.**

If any of the provisions of this Ordinance or the application thereof to any Person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

**SECTION 3.** This ordinance shall be effective commencing on January 1, 2022 with the exception of section 4.106.050 (g), which shall be effective commencing on January 1, 2023.

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