Surplus Food Donation

A GUIDE FOR FOOD SERVICE PROVIDERS IN ALAMEDA COUNTY

Why Donate?

Even with careful planning, food facilities can generate surplus edible food. In Alameda County, it's estimated that nearly 50,000 tons of edible food is discarded by businesses and institutions each year. Meanwhile, one in five county residents don't have reliable access to affordable, nutritious food. Donating surplus food to feed people can help close this hunger gap, while also preventing waste and reducing greenhouse gases.

Federal and state laws protect and encourage food donation. California recently passed two laws: AB 1219, the Good Samaritan Donation Act, protects donors of surplus food from liability while **SB 1383** establishes a state-wide goal to recover and donate 20% of edible food currently going to landfill by the year 2025. Municipalities, industry and institutions will play a role in meeting this goal.

Besides making a positive impact in our communities, businesses that donate surplus food may also realize cost savings from reduced garbage bills and may be eligible for enhanced tax deductions.

This guide helps businesses understand the legal protections, safe food handling requirements, and steps to setting up a surplus food donation program.

Surplus Food Donation

Legal Protections

Permitted food facilities such as restaurants, hotels, grocery stores, food processing facilities, food distributors and caterers that donate shelf-stable items, prepared foods, produce and beverages are *legally protected from criminal and civil liability when food is donated to non-profit or charitable organizations in good faith, using standard safe food handling procedures.*

This includes protection from civil and criminal liability even if a product donated and handled with food safety in mind later causes harm to the recipient. The receiving non-profit organization must distribute it to needy individuals, and needy individuals receiving the food may not pay for it.

Lawsuits arising out of the donation or provision of recovered food are extremely uncommon, and, there have not been any known cases of litigation that involved food donation following the rules above.

The primary legal protections for food donation include:

United States Code, Bill Emerson Good Samaritan Food Donation Act (Title 42, Chapter 13A, Section 1791 (c))

California Good Samaritan Food Donation Act (AB 1219)

California Health and Safety Code (Section 114433)

California Civil Code (Section 1714.25 (a))

California Food and Agriculture Code (Section 58505)

Enhanced Tax Deductions

While businesses can claim tax deductions on food losses, deductions are higher when surplus edible food is donated for human consumption. The *federal enhanced tax deduction* allows businesses to deduct the smaller of: a) twice the basis value of the donated food, OR b) the basis value of the donated food plus one-half of the food's expected profit margin.

> **EXAMPLE**
>
> A restaurant donated prepared food with a fair market value of $100. The basis value of this food was $30. The expected profit margin is the fair market value minus the basis value ($100-$30), which is $70. Under the enhanced deduction, the restaurant is eligible to deduct the smaller of:
>
> a} **Basis value x 2 = $30 x 2 = $60 OR**
> b} **Basis value + (expected profit margin/2) = $30 + (70/2)= $65**
>
> The enhanced deduction is $60, which is substantially higher than the general deduction, which is the $30 basis value.

Always contact a tax preparer for questions and guidance on whether your business qualifies for a tax deduction.

Resources (available online at link listed below)
IRS Publication 526
Charitable Contributions including edible food

Legal Guide to Federal Enhanced Tax Deductions for Food Donations Harvard Food Law & Policy Clinic

California Legislative Information
Food donation tax credits

Find links to the legal protections and resources listed above at **www.StopWaste.org/smart-kitchen-initiative**.

Business Spotlight: Checkers Catering
Checkers Catering & Special Events, based in Livermore, has made surplus food donation part of their day-to-day operations. Donated foods include chicken and pasta dishes, sandwiches, undressed salads and a wide range of baked goods. Checker's non-profit donation partner, Open Heart Kitchen, picks up the donations 3-4 times a week.

"We pretty much donate anything and everything as long as it has been kept at a safe temperature and we would be willing to eat it ourselves. We want good food to go to people before the compost, and the compost before the trash".
—Ryan Smith, Operations Support Manager

Setting Up a Food Donation Program

Step 1: Assess your surplus food

Gauge your food donation needs based on what you've been been throwing away, using the questions below. Note that nutrition value and perishability may limit who you can partner with.

- What types of food do you foresee donating?
- Are foods to be donated shelf-stable, prepared, perishable or a combination? Could they be frozen?
- Do you generate surplus food year-round, after events, or during seasonal kitchen closures?
- What is your available storage space?

Step 2: Develop a Partnership

Check with your food/produce supplier to see if they offer donation pickup. If they don't, or if it's not a feasible option, develop a partnership with a local non-profit organization that can pick up and/or accept your food and serve it to people in need. Questions to consider:

- Does the organization accept the types and amounts of foods you offer?
- How frequently can they accept donations? Regular, recurring donations and/or as-needed?
- What are their requirements for packaging and storing donations prior to pickup/drop-off?
- Can they pick up or are you willing/able to deliver?

Finding Non-Profit Partners

Referral organizations in Alameda County

Alameda County Community Food Bank
(510) 635-3663

All In to End Hunger
(510) 272-6693

Berkeley Food Recovery Network
(510) 502-6027

Nationwide partner locator tools:
sustainableamerica.org/foodrescue
ampleharvest.org/find-pantry

Step 3: Establish a process

Work with your staff and non-profit partner to set up a process.

- Determine appropriate, food-safe packaging materials. Recipient may provide, or you may have to purchase.
- Label surplus foods with item description, date and weight or count.
- Store foods at proper temperature until pickup/drop-off.
- Establish a consistent pickup or drop-off schedule.
- Identify point persons at both organizations.

You may want to consider signing a food donation agreement outlining food donation protocols with your non-profit partner. For examples and templates visit stopwaste.org/smart-kitchen-initiative.

Tracking donations

Maintain a log of your food donations by type and weight and/or gather receipts even if you don't claim enhanced tax deductions. Donation data can help you identify opportunities to prevent surplus food before it happens. For example, if you find yourself repeatedly donating a certain food item, consider changing your menu or quantities prepared.

Feeding animals or composting

If surplus food cannot be safely donated for human consumption, consider partnering with a local farmer or rancher who can accept surplus food as animal feed. If that isn't an option, collect food scraps for composting. Organics collection is mandatory in all but one jurisdiction in Alameda County. For more information visit RecyclingRulesAC.org.

Non-Profit Partner Spotlight: Open Heart Kitchen

Open Heart Kitchen operates the largest hot meal program of its kind in the Tri-Valley Area of Northern California, with over 355,000 meals served to the hungry each year, at multiple locations in Pleasanton, Livermore and Dublin. In addition to food donated through community food drives, Open Heart Kitchen gets donations of prepared foods from a number of business partners including Checkers Catering (see page 2).

Our partnerships with food service businesses that donate surplus prepared food on a regular basis are a huge help in helping us respond to the need."
— Heather Greaux, Executive Director

Safe Food Handling Procedures

Under federal and state law you are protected from civil and criminal liability if surplus food is donated in good faith. This means following the same standard safe food handling procedures for food to be donated as for any other food prepared at your facility.

Preparing foods for donation:

- Prepared foods and meals (e.g. hot trays that remained back-of-house and not served) can be donated. Foods that have been previously served to a consumer cannot be donated.

- Food must be protected from potential contamination at all times through the use of sanitary, food-grade containers.

- Up until pickup or drop-off, hot foods must be held at 135°F or above, cold foods must remain at 41°F or below, frozen foods at 0°F.

Transporting donated foods:

- Food must be protected from potential contamination at all times by ensuring that transport vehicles are clean and free of vermin.

- During transport, use portable coolers, a refrigerated vehicle (ideal) or thermal blankets when possible. If neither are available, label "Process Immediately" and do not let food go out of temperature controls for more than 30 minutes during transport.

More Information

Links to the resources below and more is available at **www.StopWaste.org/smart-kitchen-initiative**.

Safe Surplus Food Donation Toolkit & Best Management Practices (California Conference of Directors of Environmental Health)

StillTasty.com (USDA Guidance on Shelf Life & Expiration Dates)

Legal Liabilities & Tax Benefits (Food Donation Connection)

Legal Guide to Food Donation (University of Arkansas)

Questions?

Starting or improving a food donation program at your business? Contact:

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