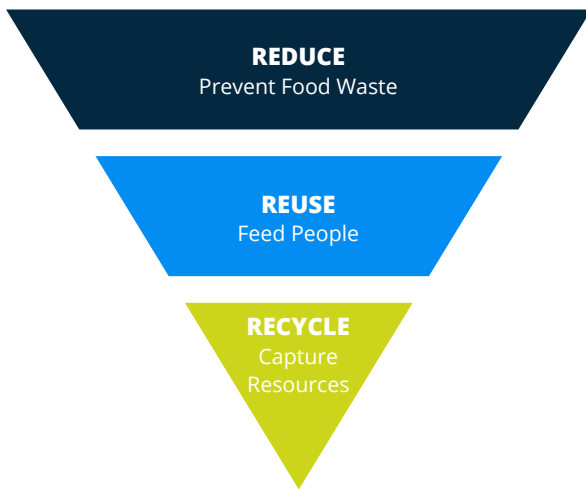


# SB 1383 Food Recovery Requirements Overview

## Does your business generate food waste?

Gone are the days of tossing food into a trash can! A new law, SB 1383, is revolutionizing how businesses handle food waste by mandating food scrap recycling and food recovery programs.



## The #1 Priority: Reduce Food Waste

SB 1383 puts programs in place that are designed to help *Recycle* food waste and *Reuse* it through food donation. The #1 priority, though, should always be to *Reduce* food waste at the source.

Check out this guide for tips!

Developed by the Center for EcoTechnology, San Diego Food System Alliance, and Solana Center



## Why was this law created?

Food makes up the single largest component in our landfills.

**20%**

**of Methane Emissions**

Organic waste in landfills emits 20% of the State of California's methane, a potent greenhouse gas

**500,000 tons**

**of Food is Landfilled**

500,000 tons of food is wasted in San Diego County each year

**1 in 3**

**San Diegans is Food Insecure**

Ironically, while tons of food is disposed, one in three San Diegans is food insecure.

**A food recovery/donation program** ensures that surplus food that can't be used in the kitchen goes to good use: feeding people, not landfills. "Food recovery" is the act of saving, redistributing, and/or donating edible excess food to local organizations, such as food pantries, soup kitchens, and food banks.

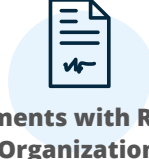
**SB 1383 Targets & Enforcement:** SB 1383 establishes targets to reduce organic waste disposal by 50% by 2020 and 75% by 2025, and to increase edible food recovery by 20% by 2025. Cities and counties are required to implement a variety of programs to advance these goals. The California Department of Resources Recycling and Recovery (CalRecycle) will enforce and penalize for non-compliance.

## How will my business be affected?

SB 1383 sets new requirements:



### Mandated Food Recovery



### Agreements with Recovery Organizations



### Record-keeping

These requirements apply to select industries only, which are categorized into a tier system:

- **Tier 1 Generators\*** = supermarkets, grocery stores, food service providers, food service distributors, wholesale vendors
- **Tier 2 Generators\*** = restaurants, hotels, health facilities, large venues, state agencies, local education agencies

*\*Size restrictions apply. Contact your city for more information.*

#### Mandated Food Recovery Requirement

Tier 1 & Tier 2 generators must donate the maximum amount of edible food that would otherwise be disposed to a food recovery organization or service (e.g. food banks, food pantries, soup kitchens, etc.)

*(SB 1383, Section 18991.3)*

#### Agreements with Recovery Organizations

Tier 1 & Tier 2 generators must comply with the food donation requirement by establishing contracts or written agreements with food recovery organizations or services.

Check with your city for a list of organizations that can receive your surplus edible food.

*(SB 1383, Section 18991.4)*

#### Record-keeping Requirements

Tier 1 & Tier 2 generators must keep the following records:

- A list of each food recovery entity that contracts with your business
- A copy of each contract/written agreement with food recovery entities
- For each food recovery entity your business contracts with:
  - The name, address and contact info of the service or organization
  - The types of food that are collected or self-hauled
  - The established frequency that food is collected or taken to the recovery agency
  - The quantity of food collected or self-hauled, measured in pounds recovered per month

*(SB 1383, Section 18991.4)*

## Key Dates

### January 1, 2022

Starting Jan. 1, 2022, Tier 1 generators must comply with the donation, contract/agreement, and record-keeping requirements. **Cities will conduct inspections of Tier 1 starting Jan. 1, 2022.**

### January 1, 2024

Starting Jan. 1, 2024, Tier 2 generators must comply with the donation, contract/agreement, and record-keeping requirements. **Cities will conduct inspections of Tier 2 starting Jan. 1, 2024.**

# Food Donation Liability Protections & Food Safety

## Food Donation Liability Protections

### Can my business get sued for donating food?

Federal and State food donation laws **protect you from liability** when donating food **as long as the food was handled safely before donation**. Food facilities may legally donate food to any non-profit or directly to individuals/the community.

*Bill Emerson Good Samaritan Food Donation Act*

"A person or gleaner **shall not be subject to civil or criminal liability** arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals."

– *Bill Emerson Good Samaritan Food Donation Act, Title 42, Chapter 13A, Section 1791 – (c)(1)*

### Federal law protecting food donors:

- United States Code, Bill Emerson Good Samaritan Food Donation Act

### California laws protecting food donors:

- California Health and Safety Code, Section 114432 & 114433
- California Food and Agricultural Code, Section 58505
- California Civil Code, Section 1714.25(a)

## Food Safety

"The **County of San Diego Department of Environmental Health** encourages you to donate food. Food donations must be handled according to all standard food safety protocols outlined in the California Retail Food Code (CalCode)."

– *Vanessa Mello, Supervising Environmental Health Specialist, San Diego County Department of Environmental Health and Quality*



**Local food banks have robust processes in place to ensure that food donations are handled safely after they leave your establishment.** The food banks:

- ✓ Require food donation recipients to go through Food Safety Certification and obtain Food Handlers Cards.
- ✓ Require time and temperature monitoring.
- ✓ Provide materials to ensure safe transportation (e.g freezer blankets), and require food donation recipients to undergo safety training.
- ✓ Monitor food donation recipient sites annually for food safety compliance, ensuring their facility has proper materials and protocols in place (e.g. cold storage, temperature control, etc.)

## Local Spotlight: Feeding San Diego

"Food safety is integral to our organization and an absolute necessity in our mission to end hunger through food rescue. As a member of the Feeding America network of food banks, we follow a **strict food safety certification process** developed by Feeding America and ServSafe. This process is paramount in our work with the 292 distribution partners that help us get food out into the community. As a standard, **we provide food safety training at no cost to every community partner** before deliveries begin, as well as **food safety equipment to safely temperature check and transport rescued food**. Every partner must also have a staff member that is **Food Safety Certified** on site at all times during a food distribution. Sites are **monitored annually for food safety compliance** to ensure that our high standards are being met, and we regularly check in with partners. These measures help us provide the freshest, highest quality food to our partners to serve to neighbors in need."

– Patty O'Connor, Chief Supply Officer, Feeding San Diego

### Learn more about Feeding San Diego:

<https://feedingsandiego.org/get-involved/donate-food/>



(858) 452-3663



fooddonation@feedingsandiego.org

  
**FEEDING**  
**SAN DIEGO**



## Local Spotlight: San Diego Food Bank

"The San Diego Food Bank is committed to fighting hunger and food waste through our food recovery program, the Fresh Rescue Program. Through rigorous food safety requirements and training, the San Diego Food Bank ensures that the partnered nonprofit partners responsible for picking up food donations from donors do so as safely as possible. The Food Bank ensures that nonprofit partners are **monitored on an annual basis to ensure their facility has proper materials and protocols in place**, including: cold storage, temperature control, proper food storage, proper food sourcing, general sanitation, food sorting and quality checking. The Food Bank's partnership with San Diego County Department of Environmental Health ensures that food safety best practices are followed at all times. Additionally, all partners that wish to enroll in the Fresh Rescue Program must have or obtain a **Food Handler's Card**, as well as undergo a specialized **Fresh Rescue Training**. All Fresh Rescue agencies have **access to equipment (scales, freezer blankets) that help with safe food transportation and sorting**. Ongoing oversight by Food Bank representatives ensure that donation partnerships are consistently maintained and matters of concern are addressed as soon as possible.

– Kayla Thomson, Food Procurement Supervisor at San Diego Food Bank

### Learn more about San Diego Food Bank:

<https://sandiegofoodbank.org/food-drives/food-industry-donations/>



(858) 527-1419



acarson@sandiegofoodbank.org



# 5 Steps for setting up & maintaining a Food Donation Program

## 1 Identify food fit for donation.

- ✓ **Surplus food in holding.** Food that was in holding for service but not ultimately served.
- ✓ **Excess inventory.** Extra inventory due to an ordering error, event cancellation, etc.
- ✓ **Dated food.** Most "expiration dates" refer to quality, not safety. Food items past the date label can be donated if they still look, smell, and feel safe to eat. (Infant formula is the only exception and cannot be donated past the date label.)
- ✗ Food not fit for human consumption, e.g. moldy, discolored, or rotting food.
- ✗ Food that was in the "danger zone" (41°F-135°F) for over two hours.
- ✗ Any food that was not handled in accordance with standard kitchen health and safety protocols.



## 2 Establish internal logistics.

- ✓ Identify where food donations will be stored.
- ✓ Designate staff champions/leads.

### Special considerations for prepared food:

- Prepared foods must be rapidly cooled from 135°F to 70°F within two hours, and from 70°F to 41°F within four hours.
- Prepared food may require repackaging. This can be done with existing supplies (catering pans, to-go containers, etc.). Repackaged food must be labelled with a date. If possible, include allergen and ingredient information as well.

## 3 Connect with a food recovery organization and establish a written agreement.

- ✓ Contact a local food bank to get connected with a food recovery organization.
- ✓ Establish a contract or written agreement with the food recovery organization. (You must retain a copy on-site.)



- ☎ (858) 452-3663
- ✉ [fooddonation@feedingsandiego.org](mailto:fooddonation@feedingsandiego.org)
- 📍 <https://feedingsandiego.org/get-involved/donate-food/>



- ☎ (858) 527-1419
- ✉ [acarson@sandiegofoodbank.org](mailto:acarson@sandiegofoodbank.org)
- 📍 <https://sandiegofoodbank.org/food-drives/food-industry-donations/>



## 4 Create an SOP and train staff.

- ✓ Develop Standard Operating Procedures to document the food donation logistics and process.



### Sample SOP

#### Section A. Food Eligible for Recovery

- Outline foods that are unfit for donation (use the information provided in this document).

#### Section B. Logistics & Procedures

- Include photos of where food donations will be stored.
- If donating prepared food, include photos or description of re-packaging procedures.

#### Section C. Food Recovery Organization Information

- Include contact information for your food donation recipient partner
- Include pick-up schedule (days of the week & times)

#### Section D. On-site Contacts

- List contacts at your organization who will oversee/monitor food recovery efforts (e.g. chefs, managers, etc.)

- ✓ All staff should be aware of the food donation program so that they can contribute to its success. Ensure that current staff undergo training, and that new staff are trained when they join.



### Staff Training Strategies:

- Assign a couple managers to provide food donation training to all staff. Create a list of all staff and have them sign next to their name once the training is complete.
- Include food donation training in new staff onboarding procedures and orientations.
- Consider offering monthly prizes to food donation champions (e.g. meal passes) to encourage participation.
- Work with the local food bank or your food donation recipient to organize a volunteer day or tour so staff can see where their food donations end up.

## 5 Keep records.

- ✓ For each food recovery organization that you have a contract or written agreement with, keep record of:

- The **name, address and contact info** of the service or organization.
- The **types of food** that will be collected or self-hauled.
- The established **frequency** that food will be collected or self-hauled.
- The **quantity** of food collected or self-hauled, measured in pounds recovered per month.

# A Guide to Food Donation Tax Deductions

## Overview

**Your food donations can save you money!** Use this guide to learn more about how your business can maximize your cost savings through food donation tax deductions. Charitable food donation is eligible for federal tax incentives and enhanced tax deductions, provided that donations meet eligibility criteria. This is a tangible benefit available to your business, and this guide can help you understand which tax benefit is right for you.

**Note:** It is the responsibility of the donating business to obtain the necessary donation receipts and documentation required to claim tax deductions. This document is a brief summary and does not seek to provide legal or tax advice. Seek legal counsel for tax filing.

## Understanding the differences between General and Enhanced Tax Deductions for Food Donations

Businesses can use **either the general tax deduction OR the enhanced tax deduction** to calculate food donation tax savings. *If a food donation does not qualify for the enhanced tax deduction, you may still be able to use the general tax deduction.*

	General Tax Deduction	Enhanced Tax Deduction
<b>What is it?</b>	Claiming a tax deduction in the amount of the donated food's basis value (the cost the business paid to buy the food).	A tax deduction that exceeds the basis value of donated food. Qualifying businesses can deduct the lesser of either:  (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
<b>What are the eligibility requirements?</b>	The donation must be used for charitable purposes and given to a qualified organization as laid out under Section 170 of the Internal Revenue Code (IRC).	The recipient of the donated food must be a qualified 501c3 not-for-profit organization, and the food must be used for the care of the ill, needy, or infants.  The donated food must be used exclusively for charitable purposes.  The food may not be transferred by the recipient organization in exchange for money, other property, or services.
<b>Are there limits?</b>	C-corporations: cannot deduct more than 10% of their taxable income for the year.  Businesses other than C-corporations (including S-corporations, sole proprietorships, and some LLCs): cannot deduct more than 30% of the business' total taxable income for the year.	All businesses –including C-corporations, S-corporations, LLC's partnerships, sole proprietorships, and other business entities– can deduct up to 15% of their taxable income for food donations, as long as the food donation meets the eligibility requirements above.

**What paperwork do I need?**

**General Tax Deduction**

A donation record and/or receipt.

**Enhanced Tax Deduction**

Written statement from the receiving organization with the following information:

- Description of donated food, with date of receipt.
- A statement that the food will be used in compliance with the requirements of IRC 170e3.
- A statement that the receiving organization is recognized as tax exempt as a 501c3.
- A statement that adequate records will be kept and made available to the IRS, if requested.

**Example**

Let's walk through an example scenario: your business donated 500 pounds of onions to a local non-profit organization.

**1** First, we need to understand and identify some important values:

	Definition	Example Values
<b>Basis Value</b>	Cost the business paid to buy the food.	<b>\$200</b>
<b>Fair Market Value</b>	What the food item could have been sold for.	<b>\$300</b>
<b>Profit Margin</b>	Fair Market Value – Basis Value	<b>\$100</b>

**2** Next, let's calculate and compare potential tax deductions under the General Tax Deduction and Enhanced Tax Deduction scenarios. Remember, under the enhanced tax deduction situation, you are eligible to **deduct the lesser of the two calculation methods**:

General Tax Deduction	Enhanced Tax Deduction
<b>Basis Value = \$200</b>	Method 1: <b>Basis Value</b> x 2 <b>\$200</b> x 2 = <b>\$400</b>
	Method 2: <b>Basis Value</b> + ( <b>Profit Margin</b> /2) <b>\$200</b> + ( <b>\$100</b> /2) <b>\$200</b> + (\$50) = <b>\$250</b>

In this scenario, your business could qualify for the enhanced tax deduction of **\$250** for this donation of onions.

**3** Finally, use your tax deductions to determine what your overall tax savings are.

Example: **\$250** tax deduction @ 22% tax rate  
 $\$250 \times .22 = \text{\$55 tax savings}$

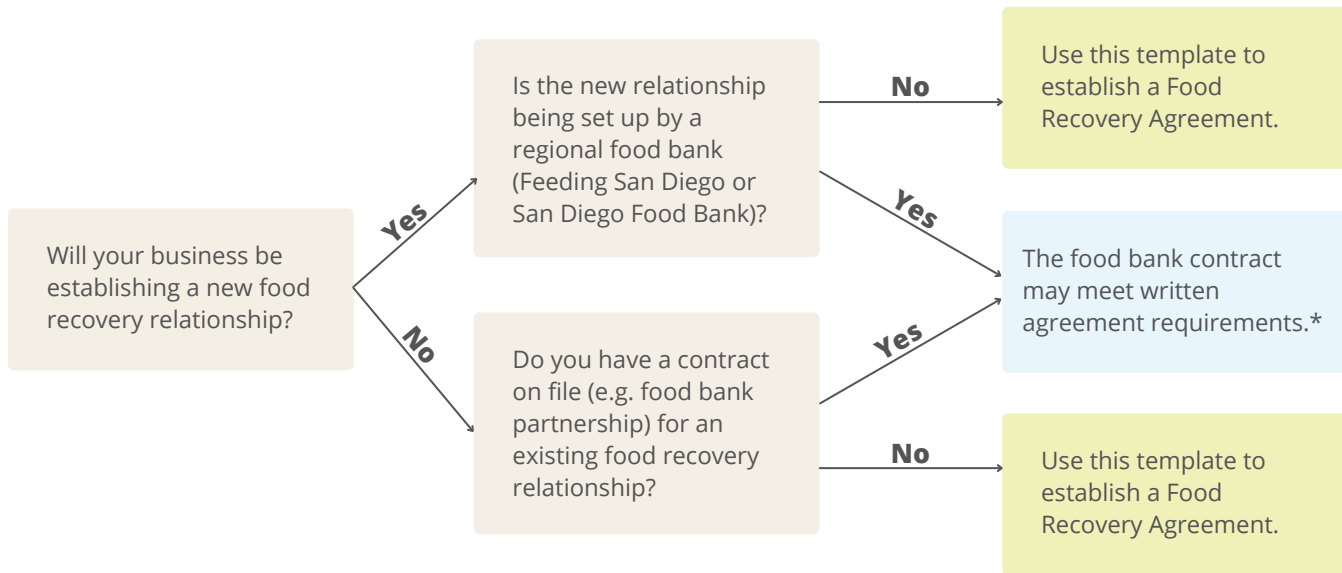
**Note:** Tax deductions lower the total amount of your taxable income. To calculate your tax savings, which is the dollar amount that your business saved as a result of this deduction, multiply your tax deduction by your tax rate.



# Food Recovery Agreement Template

SB 1383 regulation requires Tier 1 and Tier 2 Generators to hold a written agreement with food recovery organizations and/or services that will be recovering their excess edible food. This document is a food recovery agreement template to help businesses fulfill this requirement.

## As a Tier 1 or Tier 2 Generator, does my business need to fill out this template?



\*If a food donor has a relationship (corporate or otherwise) with a regional food bank, and that food bank has direct contracts with food recovery agencies, these existing contracts are sufficient to meet the conditions and requirements of Section 18991.3 of SB 1383 regulation. **The food donor will be required to obtain and maintain a copy of this contract to be in compliance with the recordkeeping requirements outlined in Section 18991.4 of the regulation.**

## How should my business use this template?

After reading and signing the acknowledgements below, complete the worksheet on the back side of this document. There are two columns – one for the food donor to fill out, and the other is to be completed by the food recovery organization or service that will be recovering the donated food.

## Acknowledgments and Signatures

- **Documentation and Recordkeeping:** A physical, hard copy of this completed form must be kept on-site to be in compliance with the recordkeeping requirements outlined in Section 18991.4 of SB 1383 regulation.
- **Food Safety:** All food recovery activities will be executed in compliance with all federal, State, and local regulations for safe food handling.
- **Donation Dumping:** The food donor identified in this agreement certifies that they will not knowingly provide unusable or inedible food, force food recovery after capacity has been reached, or intentionally deliver food outside of the agreed upon food recovery windows (“donation dumping”).

\_\_\_\_\_  
Food Donor Signatory Date

\_\_\_\_\_  
Food Recovery Organization Signatory Date



# Food Recovery Agreement Template

This table is to be completed by both the Food Donor and Food Recovery Organization in their respective sections.

	Food Donor	Food Recovery Organization
<b>Contact Information</b>	<b>Organization Name</b>	
	<b>Primary Contact</b>	
	<b>Hours of Operation</b>	

Indicate the estimated quantity (in pounds) **per week** your organization could donate/recover. If you cannot donate/recover a certain food type, please enter '0'

<b>Types and Quantities of Food (per week)</b>	<b>Non-perishable</b> (Shelf stable packaged food)	
	<b>Perishable</b> (E.g. fresh produce, dairy, meat, etc.)	
	<b>Prepared</b> (Hot, cold, or frozen prepared food)	
	<b>Other</b> _____ _____	

## Food Recovery Logistics

These questions are to be completed collaboratively.

### How often will food be recovered?

- As Needed/On Call
- Daily
- Weekly
- Other: \_\_\_\_\_

### Food will be recovered via:

- On-site pick-ups: the food recovery organization/service will travel to the food donor site, pick-up the food, and transport it back for distribution.
- Self-haul: the food donor will transport and deliver the food to our organization

### Food will be recovered on the following days and times:

*Tip: Use the hours of operation in the table above to determine a schedule.*

# We are proud to participate in a food recovery program.

## How you can help make our food recovery program a success:



**Identify food fit for donation.** Food must have been handled according to all standard food safety protocols, including time and temperature guidelines.

Unsure if a specific food is fit for donation?  
Ask an on-site champion:

"**Expiration dates**" refer to quality, not safety. Food past the date label can be donated if it still looks, smells, and feels safe to eat.



**Place food donations into designated storage space.** Package, label, and date donations if needed.

Our food donation storage space:

## Food donation pick-up dates and times:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday

## Our food donation non-profit partner(s):

Organization: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Organization: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_