

Offered by Councilors Ricardo Arroyo, Gabriela Coletta, Breadon, Lara, Flaherty, Baker, Bok, Louijeune, Murphy, Worrell, Fernandes Anderson and Flynn.



## CITY OF BOSTON IN CITY COUNCIL

### ORDINANCE FORMALLY CREATING THE OFFICE OF FOOD JUSTICE AND ESTABLISHING A FOOD RECOVERY PROGRAM IN THE CITY OF BOSTON

**WHEREAS:** In 2020, the United States Department of Agriculture found that 10.5% of U.S. households were food insecure with higher rates among low-income households, Black and Hispanic households, and households headed by a single parent; *and*

**WHEREAS:** The COVID-19 pandemic exacerbated the existing food insecurity gap, especially for Black, Latinx, Indigenous, and other communities who already faced health and wealth disparities before the pandemic due to systemic racism; *and*

**WHEREAS:** During the initial surge of the pandemic in 2020, calls for food assistance to Project Bread's Food Source Hotline in Boston increased by 262%, while the Greater Boston Food Bank saw an increase of 2,554% in their distribution of food from 2019 to 2020; *and*

**WHEREAS:** The Center for Disease Control and Prevention has found that poor nutrition can lead to serious health problems such as heart disease, type 2 diabetes, obesity, and some cancers; *and*

**WHEREAS:** Access to nutritious food is a critical social determinant of health that has a direct impact on the well-being and lifespans of Boston residents; *and*

**WHEREAS:** The availability of food through supermarkets and convenience stores varies across the City of Boston, and sections of Dorchester, Mattapan, Roxbury, and Hyde Park have no grocery stores within half a mile; *and*

**WHEREAS:** The Supplemental Nutrition Assistance Program (SNAP) offers nutrition assistance to millions of eligible, low-income individuals and families, but there is a significant gap between the amount of people eligible for SNAP and the number of people enrolled in the program; *and*

**WHEREAS:** In 2020, the SNAP gap was estimated to be 68,705 people or 39% citywide in Boston, but neighborhoods like East Boston had SNAP gaps closer to 68%; *and*

**WHEREAS:** A municipal program requiring food generators in the City of Boston to donate a portion of their edible food that would otherwise be disposed would help address food insecurity for residents; *and*

**WHEREAS:** The Massachusetts Department of Environmental Protection estimates that food represents more than 25% of overall solid waste in Massachusetts after recycling, with one million tons of food thrown in the trash each year; *and*

**WHEREAS:** A food recycling program would also prevent food fit for human consumption from being disposed of in landfills, reducing the generation of methane emissions, and alleviating the negative impact on the environment; *and*

**WHEREAS:** On February 24, 2022, the Mayor announced that the Office of Food Access would be renamed the Office of Food Justice, with a commitment to making nutritious, affordable, and culturally relevant food accessible to all Boston residents; *and*

**WHEREAS:** Successful food recovery programs have been implemented in France, Poland, the Czech Republic, Belgium, California, and New York; *and*

**WHEREAS:** The City of Boston has the opportunity to be the first municipality in the country with a program that will directly increase accessibility to healthy and nutritious food for residents, while taking meaningful steps toward environmental sustainability; **NOW THEREFORE**

*Be it ordained by the City Council of Boston as follows:*

That the City of Boston Code, Ordinances be amended in Chapter VI by adding the following after 6-12:

**6-13: Ordinance Formally Creating the Office of Food Justice and Establishing a Food Recovery Program in the City of Boston**

Section 1. Purpose

The purpose of this ordinance is to formally create the Office of Food Justice, which will work to improve accessibility and affordability of healthy food in Boston, and create a food recovery program to be administered by the Office of Food Justice.

Section 2. Definitions

“Allergen disclaimer” means a written statement placed on excess edible food that includes language noting the potential presence of major food allergens in a food (as defined by 21 U.S.C. 321(qq), pursuant to the federal Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).

“Commercial edible food generators” means tier I and tier II commercial edible food generators, as defined in this section. For the purpose of this ordinance, food recovery organizations are not commercial edible food generators:

1. Tier I commercial edible food generators are supermarkets, grocery stores with a total facility size equal to or greater than ten thousand (10,000) square feet, food service providers, food distributors, wholesale food vendors, large restaurants with two hundred fifty (250) or more seats or a total facility size equal to or greater than five thousand (5,000) square feet, hotels with an on-site food facility and one hundred (100) or more beds, large venues and large events, colleges or universities, local or state agencies with large cafeterias, and any public or private school grades kindergarten through twelve (K-12) with on-site food facilities that generate excess edible food.
2. Tier II commercial edible food generators are all other commercial edible food generators that generate excess edible food.

“Excess edible food” means edible food that is not sold or used by a commercial edible food generator and is still safe to be consumed but is being disposed of by the generator. Excess edible food shall not include unpackaged fresh meat, fish or poultry, food damaged by pests, mold, bacteria or other contamination, and food subject to governmental or producer recall due to food safety.

“Food recovery organization” means a not-for-profit organization that provides food without charge or at a charge sufficient only to cover the cost of handling such food to food-insecure individuals, including but not limited to, a food pantry, food bank, soup kitchen, shelter or other community-based organization.

### Section 3. Office of Food Justice

1. Purpose: Every resident in the City should have access to nutritious food, and that food should be affordable, easy to find, and reflect the many cultures of the City of Boston. The Office of Food Justice shall create food-secure communities with vibrant and inclusive food cultures to reflect the diversity of Boston residents.
2. Leadership: The Mayor shall appoint a Director to oversee the Office of Food Justice. The Director or designee shall administer all food security and nutrition programs.
3. The Office of Food Justice shall implement and administer programs and projects related to its purpose, and shall promulgate all rules necessary to effectuate the purposes of this legislation. Such programs shall include, but are not limited to:
  - a. The Food Recycling Program, as outlined in this ordinance
  - b. BosFoodLoveBoston Double Up Food Bucks
  - c. Boston Farmers Market
  - d. Community Fridges
  - e. Farmers Market Coupon Program
  - f. Food Forests
  - g. Summer Eats
  - h. Urban Farming in Boston

4. The Office of Food Justice is authorized to enter into agreements necessary to effectuate programs and projects related to its purpose, and, in connection with agreements entered into under this Ordinance, to enter into and execute all such other instruments and to perform any and all acts, including the allocation and expenditure of duly appropriated funds, as shall be necessary or advisable in connection with the implementation of such agreements and any renewals thereto.

#### Section 4. The Food Recovery Program

1. The Office of Food Justice shall be responsible for the creation and administration of a City of Boston Food Recovery Program.
2. The Food Recovery Program shall require that all commercial edible food generators, to the maximum extent practicable, separate and donate their excess edible food fit for human consumption that would otherwise be disposed of, in accordance with applicable laws, rules, and regulations related to food donation.
3. The Office of Food Justice shall have the following responsibilities related to the Food Recovery Program:
  - a. Publish and maintain on its website: a list of all commercial edible food generators, a list of all food recovery organizations, a model contract between commercial edible food generators and food recovery organizations, procedures for the waiver process, and educational materials.
  - b. Develop and make available educational materials to assist designated commercial edible food generators with compliance with this section. The Office of Food Justice shall also develop educational materials on food waste prevention and minimization.
  - c. Create and administer a process to adjudicate hardship waiver requests.
  - d. Work with Inspectional Services Department to develop, publish, and distribute guidance around food safety requirements for food donation pursuant to 105 CMR 590.000.
  - e. Facilitate contractual relationships between commercial edible food generators and food recovery organizations.
  - f. Work to increase the capacity of food recovery organizations as needed.
  - g. No later than January 1, 2025 and on a quarterly basis thereafter, submit a report in writing to the Mayor and the Clerk and the Clerk shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City Council. Such a report shall describe the operation of the Food Recovery Program including, but not limited to, the amount of food donated, sample educational materials, and the number of waivers provided.

4. Tier I commercial edible food generators shall comply with the requirements of this section commencing January 1, 2025. Tier II commercial edible food generators shall comply with the requirements of this section commencing January 1, 2026.
5. Commercial edible food generators shall demonstrate compliance with the requirements of this section through maintaining a contract or written agreement with a food recovery organization for regular food donations to be picked up or dropped off.
6. Commercial edible food generators donating excess edible foods containing more than one ingredient that are not commercially packaged shall include a list of any major food allergen pursuant to the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) contained within the excess edible food to the maximum practicable or if not possible, an allergen disclaimer.
7. A designated commercial edible food generator may petition the Office of Food Justice for a temporary waiver from some or all of the requirements of this section. The Office of Food Justice may grant temporary waivers upon proof that compliance with this section would cause undue economic hardship. A waiver shall be no longer than one year in duration; however, the Office of Food Justice may renew such waiver.
8. Commercial edible food generators shall comply with the requirements of this section unless the generator demonstrates the existence of extraordinary circumstances beyond its control that make such compliance impracticable. For the purposes of this section, extraordinary circumstances include earthquakes, wildfires, flooding, and other emergencies and natural disasters.
9. Nothing in this section shall require or authorize a commercial edible food generator to donate food that does not meet the food safety requirements of 105 CMR 590.000.
10. To the maximum extent allowable under state law, donations made pursuant to this section shall be covered by M.G.L. Chapter 94, s. 328, which protects eligible food donors that donate and food recovery organizations that distribute wholesome food to nonprofits for distribution for free or at a charge sufficient only to cover the cost of handling from civil and criminal liability.
11. Food recovery organizations shall submit a report to the Office of Food Justice within one year of implementation of this ordinance, and no less than annually thereafter in an electronic format. The report must summarize the amount of excess edible food received from commercial edible food generators in the City of Boston throughout the year, the

amount received from each commercial edible food generator, and any other information as required by the Office of Food Justice. Food recovery organizations may report the required information in the format used by the food recovery organization to track donations in the normal course of business.

#### Section 5. Enforcement

1. The Office of Food Justice shall have enforcement powers hereunder.
2. The enforcement process shall begin on January 1, 2026.
3. Any commercial edible food generator found to be in violation of the provisions of this ordinance after January 1, 2026 shall be punished by a warning and education with ninety (90) days' notice to fix the violation (which can be extended to 180 days) for the first offense and two hundred (\$200.00) for the second offense. For the third and subsequent offense, if the violation is ongoing, each day that the violation persists will constitute a separate violation for which an additional three hundred (\$300.00) dollar fine will be imposed.
4. If an enforcement action is commenced against a commercial edible food generator for noncompliance, the burden of proof shall be upon the commercial food generator to demonstrate extraordinary circumstances.

#### Section 6. Severability

The provisions in this ordinance are severable. If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall continue to have full force and effect.

#### Section 7. Effective Date

This ordinance shall be in full force and effect upon passage and approval. Upon becoming effective, the Office of Food Justice is authorized to implement the Program in a graduated manner, with full implementation for Tier I commercial edible food generators to be achieved by January 1, 2025, and Tier II commercial edible food generators to be achieved by January 1, 2026.

**Filed in Council: March 1, 2023**