



BOSTON CITY COUNCIL

Committee on Government Operations

Lydia Edwards, Chair

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REPORT OF COMMITTEE CHAIR

March 31, 2021

Dear Councilors:

Docket #0216, an ordinance to establish guidelines for permitting retail residential kitchens, was sponsored by Councilor Julia Mejia and referred to the Committee on January 13, 2021. The Committee held a hearing on February 16, 2021 where public comment was taken and working sessions on March 9, 2021 and March 25, 2021.

Summary of Legislation as Filed:

Docket #0216 will amend the City of Boston Code, Ordinances, by allowing for retail residential kitchen permits to prepare cottage foods. Operators of retail residential kitchens would be required to comply with the state sanitary code and would be subject to annual inspections by the Health Division of the City's Inspectional Services Department ("ISD"). Applicants for these permits would be required to obtain all necessary permits and regulatory approvals including approvals from the Zoning Board of Appeal.

Information Gathered at the Hearing:

The Committee discussed the permitting process, the monitoring of the kitchens and sanitation of products in private homes, and the landlord/tenant relationship. The Committee heard testimony from Administration officials who discussed issues concerning jurisdiction, authority, enforcement, and resources. The Committee heard testimony from the following Administration officials: Dion Irish, Commissioner, ISD; Christopher English, ISD Chief of Staff; Dan Prendergast, ISD; Chief John Dempsey, Boston Fire Department; and, Natalia Urtubey, Director, Small Business. Commissioner Irish stated that state law authorizes residential kitchens. Commissioner Irish explained that residential kitchens could play a role in the City's economic recovery. Commissioner Irish explained that the City will create an enforcement mechanism through zoning, rules, and regulations. Commissioner Irish explained that inspections with regard to residential kitchens will be new to ISD but that ISD will develop a program that is safe for all. Commissioner Irish stated that residential kitchens cannot be used for temperature controlled foods. Commissioner Irish stated that the City will talk to employees and the unions to develop best practices. The Committee heard testimony from individuals that supported the proposal and described the benefits of residential kitchens which include spending in the local economy, promoting local farmers, creating a sense of community, and providing an opportunity to earn money especially for those that do not have the capital for commercial kitchens.

The Committee inquired about the current process, discussed the definition of cottage foods, and the classification of temperature controlled foods versus non-temperature controlled foods. ISD

explained that there will be annual inspections and routine sanitary inspections to ensure that the family food source and the business are separate, that conditions are clean and sanitary, and that the kitchen and work space are clean. Mr. English explained that there is not currently an adequate definition in zoning for retail residential kitchens and stated that the City can create a new definition of accessory use in zoning and update the neighborhood tables. Commissioner Irish explained that the authorization is codified at the state level and that ISD will focus on the advertisement, the housing code, and the permits so that the public will have confidence. Commissioner Irish also stated that ISD will work with the Fire Department and will ensure that health and safety codes are adhered to. The Committee discussed life safety issues and the importance of the proper use of smoke detectors. The Committee discussed the meaning of direct to consumer, zoning relief and landlord/tenant relationship, and whether the landlord's permission is required. The Committee discussed the importance of having an understanding of the permitting process. Councilors discussed use and occupancy permits and adhering to health code requirements. Councilors discussed zoning matters and the relevance of zoning if pickup is at the establishment and not overburdening the ZBA.

Information Gathered at the March 9th Working Session:

The following individuals participated on behalf of the Administration: Dion Irish, Commissioner, Inspectional Services Department ("ISD"); Christopher English, Chief of Staff, ISD; Dan Prendergast, Health Inspector, ISD; Bryan Glascock, Deputy Director, Regulatory Planning and Zoning, Boston Planning and Development Agency; Natalia Urtubey, Director, Small Business. The following proponents also participated: Andree Entezari; Irene Nakabonge-lugude, Founder, MANYI Juices; Manisha Sethi, Technology Engineer IndeLish. The Committee discussed proposed amendments to the proposal as filed. The amendments are as follows: under definitions, the definition for retail residential kitchens is amended to state explicitly that while merchandise can be sold directly to the consumer, it cannot be done on premises and a provision under the permit section is removed eliminating the requirement that a permittee must have the Zoning Board of Appeal ("ZBA") approval. The proposed amendments will address the concerns raised at the hearing about traffic and congestion in the residential neighborhoods as well as overburdening the ZBA. The Committee discussed that it is important that ISD has enough inspectors to enforce the provisions of this proposal and to conduct the necessary inspections. The Committee discussed the landlord tenant relationship and the permitting process. The Committee discussed that there is a regulatory component with the ZBA and that the tenant cannot submit a ZBA appeal without the permission of the owner and that there is a permit component with the permit as a permission document. The Committee discussed ZBA relief and Commissioner Irish explained that an applicant would only need a variance if there are going to be sales at home. Commissioner Irish explained that ZBA relief is only required if there are direct sales to consumers at the home. Commissioner Irish explained that the ZBA would be required for sales occurring at the house because of traffic and hours. The Committee discussed fire safety and the sanitary code. Commissioner Irish explained that there are existing sanitary code requirements for fire safety. Commissioner Irish suggested defining residential kitchens in the zoning code so that it is as of right as an accessory use and not conditional. The Committee discussed the training that will be required for residential kitchen operators. The Committee discussed additional language changes to the proposal. Mr. English suggested adding language that would prohibit exterior signage and adding language that the ISD permit number be included in all advertising. Mr. Glascock referred to Article 11 of the City of Boston Zoning Code that regulates signage in residential districts and only allows for temporary or house signage. Mr. Glascock explained that commercial signage is not allowed in residential districts. Commissioner Irish referred to workshops offered by ISD.

Information Gathered at the March 25th Working Session:

The Committee reviewed the proposed changes to the ordinance. The proposed changes include amending the definition of retail residential kitchens, removing ZBA approval to obtain permits, training requirements, compliance standards to include permit numbers on advertisements, and adding language about exterior signage. The following individuals participated at the working session: Dion Irish, Commissioner, Inspectional Services Department; Chris English, Chief of Staff, ISD; Dan Prendergast, ISD, Health Inspector; Bryan Glascock, Deputy Director, Regulatory Planning and Zoning, BPDA; Commissioner John Dempsey, Boston Fire Department; and, Fire Marshal Brian Tully.

The Committee discussed having a registry of retail residential kitchens, working with the Office of Neighborhood Services to provide notice to the neighbors, providing notice to the landlord, and providing a packet to operators that outlines fire safety and applicable labor laws. The Committee discussed that these aforementioned issues be addressed and codified in the ordinance.

Summary of Amendments:

In the definition section, the definition of “Retail Residential Kitchens” is amended by adding the following provision: “with respect to Zoning Code Article 2A which states that merchandise cannot be sold from the home in person.” This change will remove the need for ZBA relief and will eliminate the concern of overburdening the ZBA.

Under Section B, Permits, the words “retail and/or wholesale distribution” are removed in the first section of subsection (a). This change will provide consistency with state law because wholesale is licensed by the state. The amended first sentence is as follows: A Retail Residential Kitchen permit shall be required for any resident who wishes to prepare cottage foods and other foods deemed to be admissible by Inspectional Services Department (ISD), such as juices or teas.

Under the training section, the following provision is added: “a nationally accredited food safety certification exam organization recognized in Massachusetts.” Also, under the training section the following subsections are added: b. ISD shall ensure all Retail Residential Kitchen permittees receive training and any other necessary safety information regarding labor laws, fire safety, and other related information as necessary; and, c. The permittee shall sign and return all required certificates, trainings, and informational packets as required by ISD.

Under the compliance and enforcement section, the following new subsections are added:

- b. *Requirement to Include Permit Number on Advertisements.* The permit number issued by the Department shall be included on all advertisements promoting the Cottage Food Operation.
- c. *Signage.* No exterior signage shall be allowed unless such signage is permitted under the City of Boston Zoning Code or Chapter 16-33 of the City Code of Ordinances.
- The penalties section is *subsection d* and language is added to allow the fine for violations to be up to \$300.00 per day.
- The following language is added as *subsection f* regarding notification requirements: *f. Notification. ISD shall, in coordination with the Office of Neighborhood Services or other related department, give notice to the landlord, or other appropriate entity, that a Retail Residential Kitchen exists at the permittees location.*

A new section, Section G, is added regarding reporting requirements and the language is as

follows: ISD shall prepare an annual report detailing the number of applicants, recipients of Retail Residential Kitchen permits, and other relevant information and submit it to the City Clerk. The City Clerk shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City Council. This section shall sunset on December 31, 2024.

The ordinance will be in effect 30 days after passage as opposed to being effective immediately.

Rationale and Recommended Action:

The docket in its amended draft establishes a permitting process through ISD for residential retail kitchens. The permitting process and ISD inspections will ensure that the workspace is sanitary and that the products are safe. The amended version does not allow for in person sales at the home without zoning relief. The amended docket provides notice to the landlords or other appropriate entity. The docket in its amended draft provides reasonable regulations and oversight for retail residential kitchens to ensure the safety of consumers. The amended docket includes reporting language about residential kitchens and the amount of applicants until the year 2024 to ensure that ISD has the necessary resources. The docket as amended will provide economic opportunities for individuals without being overly burdensome while also maintaining compliance with safety and the sanitary code through the permitting process, inspections, and training.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0216, an ordinance to establish guidelines for permitting retail residential kitchens,

submits a report recommending that this docket ought to pass in a new draft.

For the Chair:

A handwritten signature in cursive script that reads "Lydia Edwards". The signature is written in black ink on a white background.

Lydia Edwards, Chair
Committee on Government Operations



**CITY OF BOSTON
IN CITY COUNCIL**

**AN ORDINANCE TO ESTABLISH GUIDELINES FOR PERMITTING
RETAIL RESIDENTIAL KITCHENS**

WHEREAS, Entrepreneurs across the city without access to the capital needed to start a brick-and-mortar business often get started in their home, relying either on the online marketplace for sales and consulting, or in-person services such as hair care and beauty supplies; *and*

WHEREAS, The Boston City Council Committee on Small Business and Workforce Development held a hearing on October 6, 2020, where it was learned that there are currently 22 instances of food businesses being operated out of the home illegally, in neighborhoods like Dorchester, Roxbury, and Mattapan, with potentially many more going unreported; *and*

WHEREAS, We have an opportunity as a city to empower small business owners in all stages and capacities. Most importantly, to help kickstart their businesses, we can provide retail residential kitchen permits, which is a type of business that allows entrepreneurs to prepare certain types of food in their home to be sold for profit; *and*

WHEREAS, Retail Residential kitchens not only help food entrepreneurs get a leg up in an increasingly volatile market, but it also helps supply local, culturally competent food to neighborhoods that too often exist in areas without access to reliable nutritious food; *and*

WHEREAS, Cities across Massachusetts, including Arlington, Concord, and Newton have codified cottage food operations in their city codes, and Cambridge most recently is set to begin to allow for these kinds of operations as well; *and*

WHEREAS, The City of Boston has previously created innovative pathways to entrepreneurship, such as our Food Truck Program. The time has come again for Boston to encourage new and creative ways to start a business;
NOW THEREFORE

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

SECTION 1. The City of Boston Code, Ordinances, Chapter IX, shall be amended by adding at the end thereof, the following new section and subsections:

9-9.15 RETAIL RESIDENTIAL KITCHENS

A. Definitions

- a. *“Cottage Food Operation”* means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence
- b. *“Cottage Foods”* means non-time/temperature control for safety baked goods, jams, jellies, and other non-time/temperature control for safety foods produced in cottage food operations. Retail Residential Kitchens may not prepare finished products that require hot or cold holding for safety, including meat or fish that is raw or heat-treated, certain cut produce including melons, leafy greens, and tomatoes.
- c. *“Retail Residential Kitchens”* is any cottage food operation that sells directly to the consumer, with respect to Zoning Code Article 2A which states that merchandise cannot be sold from the home in person.

B. Permits

- a. A Retail Residential Kitchen permit shall be required for any resident who wishes to prepare cottage foods and other foods deemed to be admissible by Inspectional Services Department (ISD), such as juices or teas. Residents must apply for the permit through ISD.
- b. The annual fee for a Retail Residential Kitchen permit shall be one hundred (\$100.00) dollars.
- c. Applicants shall obtain all necessary permits and regulatory approvals that may be required to safely operate a Retail Residential Kitchen.

C. Training and Information

- a. ISD will ensure that residential kitchen permittees and anyone working in the kitchen is certified through a nationally accredited food safety certification exam organization recognized in Massachusetts and meets Massachusetts Food Allergens Awareness Training certification requirements.
- b. ISD shall ensure all Retail Residential Kitchen permittees receive training and any

other necessary safety information regarding labor laws, fire safety, and other related information as necessary.

- c. The permittee shall sign and return all required certificates, trainings, and informational packets as required by ISD.

D. Health Code Standards for Permitted Residential Kitchens

- a. *General Guidelines.* All Retail Residential Kitchen Operations shall comply with State Sanitary Code 105 CMR 590. A physical copy of these guidelines shall be given to every permittee.

E. Compliance and Enforcement.

- a. *Inspection.* Retail Residential Kitchens shall receive annual inspections through the Health Division of the Inspectional Services Department (ISD), and shall comply fully with their rules and regulations. Retail Residential Kitchen may also be subject to random compliance inspections.
- b. *Requirement to Include Permit Number on Advertisements.* The permit number issued by the Department shall be included on all advertisements promoting the Cottage Food Operation.
- c. *Signage.* No exterior signage shall be allowed unless such signage is permitted under the City of Boston Zoning Code or Chapter 16-33 of the City Code of Ordinances.
- d. *Penalties.* Any person found to be operating a Retail Residential Kitchen in violation of this Section or in violation of the terms of their permit may be subject to a fine of up to three hundred (\$300.00) dollars per day. The Commissioner of Inspectional Services or their designee may issue a written warning, a notice of violation, a fine, and/or suspension or revocation of permits.
- e. *Enforcement.* The provisions of this section may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40, s. 21D, and M.G.L. Chapter 40U as accepted by the City of Boston.
- f. *Notification.* ISD shall, in coordination with the Office of Neighborhood Services or other related department, give notice to the landlord, or other appropriate entity, that a Retail Residential Kitchen exists at the permittees location.

F. Regulations.

- a. The Commissioner of Inspectional Services shall promulgate rules and regulations necessary to implement and enforce the provisions of this Section.

G. Reporting

- a. ISD shall prepare an annual report detailing the number of applicants, recipients of Retail Residential Kitchen permits, and other relevant information and submit it to the City Clerk. The City Clerk shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City Council. This section shall sunset on December 31, 2024.

SECTION 2. Effective Date.

This ordinance shall be effective 30 days after passage.

Filed in City Council: 3/31/2021