

CITY OF LYNN, MASSACHUSETTS

LYNN CITY COUNCIL

2012-2013

Ward One Wayne A. Lozzi  
Ward Two William R. Trahant, Jr.  
Ward Three Darren P. Cyr  
Ward Four Richard C. Colucci  
Ward Five Brendan P. Crighton  
Ward Six Peter L. Capano  
Ward Seven Richard J. Ford



At-Large Buzzy Barton  
At-Large Daniel F. Cahill  
At-Large Hong L. Net  
At-Large John Timothy Phelan  
City Clerk Mary F. Audley

John Timothy Phelan President  
Richard J. Ford Vice-President

ORDINANCE COMMITTEE AGENDA  
TUESDAY, JUNE 26, 2012  
6:30 P.M. - ROOM 402

**PUBLIC HEARING:**

1. A Proposed Ordinance Amending the Ordinance Prohibiting the Sale of Drug Paraphernalia in the City of Lynn.
2. An Ordinance Creating a Human Rights Commission in the City of Lynn.

**DISCUSSION AND/OR SET DOWN FOR PUBLIC HEARING:**

3. A Proposed Ordinance Amending the Ordinance Establishing Regulations Relative to the Storage, Disposal and Maintenance of Residential and Commercial Refuse Containers and Property Within the City of Lynn (Dated June 21, 2011/Vetoed by Mayor on July 1, 2011).

**4. OTHER BUSINESS:**

/tcy

# CITY OF LYNN

CITY HALL, ROOM 306  
LYNN, MA 01901



PHONE (781) 599-1444  
FAX (781) 599-8875  
JKENNEDY@CLLYNN.MA.US

JUDITH FLANAGAN KENNEDY  
MAYOR

July 1, 2011

Lynn City Council  
c/o John Timothy Phelan, President  
Lynn City Hall, Room 408  
Lynn, MA 01901

Re: Trash Ordinance

Dear Councilors:

I have had the opportunity to review and research the trash ordinance passed by your body on June 21, 2011, and hereby respectfully veto the same. Although I have concerns about many of the provisions contained in the eight pages of the proposed ordinance, in the interest of brevity, I will limit my enumerated reasons for the veto to a select few. Specifically, I find as follows:

1. The definition of "barrel" contained in Section 1:00 limits the size of a curbside container to 32 gallons. In order to put this size into perspective, I visited the Home Depot to examine their barrels. A typical 32 gallon trash can is approximately two feet in height. Most of the trash barrels I have observed throughout the city far exceed this capacity. In fact, when the City of Lynn partnered with Lynn Lumber last year to offer trash barrels at cost to city residents, two of the four models offered (at 34 gallons and 45 gallons) would now be deemed unacceptable under this ordinance.
2. The definition of "bag" contained also contained in that Section limits the capacity of any bags used for disposal to 28 gallons. Again, in order to assess the reasonableness of this limit, I went to Stop and Shop, Market Basket, Wal-Mart and Target to view their selections. The smallest outdoor trash bag offered at all of the stores was 30 gallons. I

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then went on the internet to view the websites of Glad ([www.glad.com](http://www.glad.com)) and Hefty ([www.heftybrands.pactiv.com](http://www.heftybrands.pactiv.com)) to see if I was just shopping at stores that did not stock the smaller size. Neither Glad nor Hefty even manufactures a 28 gallon bag. The standard sizes offered are 30, 33, 39 and 45 gallons.


3. By far the most onerous provision in this ordinance is the three barrel limit imposed by Section 5:00. If residents are faced with the dilemma of either putting out three small trash cans per week or risk being fined, I suspect that many may choose to accumulate trash on their property to place for collection at a later date. This would only exacerbate the rodent problem that we have in the city, and would also put the resident at risk of being fined for violation of our ordinances designed to keep property free of debris.

I am also not swayed by the argument that the phrase "at the discretion of the commissioner of the department of public works" in this section will exonerate residents who violate this provision. Ordinances carry the force of law, and the language should be drafted to provide the reader with a clear expectation of what actions are permitted and which are prohibited. The inclusion of this phrase only further blurs the line between right and wrong.

This ordinance has been through many amendments and refinements over the years, and the result is now a patchwork of unrealistic, confusing and arcane provisions. For example, how many residents can correctly define the distinction between "garbage" and "trash"? I believe it is time for the Council to start from scratch and create an entirely new ordinance that is practical and easy to understand, and sets out clear and sensible expectations of the residents.

Please feel free to contact me if you have any questions.

Very truly yours,

  
Judith Flanagan Kennedy  
Mayor, City of Lynn

JFK/dms

**REFUSE CONTAINERS**

**ORDINANCE  
WITH EMERGENCY**

Offered by Councillor CYR  
In City Council

Date: JUNE 21, 2011

Date Adopted:

Councilor	YES	NO
Cahill	X	
Capano	X	
Colucci	X	
Crighton	X	
Crowley	X	
Cyr	X	
Duffy	X	
Ford	X	
Lozzi	X	
Phelan	X	
Trahant	X	
TOTAL	11	0

Mary F Audley  
City Clerk

Date Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

*VETOED  
See attached  
letter*

In City Council  
Immediate Reconsideration  
Notice of Reconsideration

Councillor	YES	NO
Cahill	<input type="checkbox"/>	<input type="checkbox"/>
Capano	<input type="checkbox"/>	<input type="checkbox"/>
Colucci	<input type="checkbox"/>	<input type="checkbox"/>
Crighton	<input type="checkbox"/>	<input type="checkbox"/>
Crowley	<input type="checkbox"/>	<input type="checkbox"/>
Cyr	<input type="checkbox"/>	<input type="checkbox"/>
Duffy	<input type="checkbox"/>	<input type="checkbox"/>
Ford	<input type="checkbox"/>	<input type="checkbox"/>
Lozzi	<input type="checkbox"/>	<input type="checkbox"/>
Phelan	<input type="checkbox"/>	<input type="checkbox"/>
Trahant	<input type="checkbox"/>	<input type="checkbox"/>

Referred to Law Dept, ISD, Police Dept

Date: June 22, 2011

**EMERGENCY PREAMBLE**

WHEREAS, A Special Emergency exists involving the peace, health and safety of the people or their property in the City of Lynn

WHEREAS, an emergency exists involving: **SEE ORDER ATTACHED**

THEREFORE BE IT VOTED BY THE LYNN CITY COUNCIL THAT THE FOREGOING CONSTITUTES AN EMERGENCY



# CITY OF LYNN

*In City Council* JUNE 21, 2011 page 1 of 8

**IN THE YEAR TWO THOUSAND ELEVEN AN ORDINANCE AMENDING THE  
ORDINANCE ESTABLISHING REGULATIONS RELATIVE TO THE STORAGE,  
DISPOSAL AND MAINTENANCE OF RESIDENTIAL AND COMMERCIAL  
REFUSE CONTAINERS AND PROPERTY WITHIN THE CITY OF LYNN**

**SECTION 1:00 DEFINITIONS**

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"Abutter" means any owner or tenant who abuts a sidewalk.

"Authorized rubbish receptacle" shall be construed as heavy-duty plastic bags that are fastened securely with wire, string or tape and must be stored in barrels with tight fitting covers when stored outside. The term shall also include "barrel" and "bag" as defined below.

"Barrel" means a metal or plastic barrel or other suitable rigid container not exceeding eight pounds in weight when empty, nor exceeding thirty-two (32) gallons capacity. No container may exceed fifty (50) pounds in weight when filled to capacity.

"Bag" is a flexible, disposable, waterproof container not exceeding thirty-six (36) inches in height, twenty-four (24) inches in width, or twenty-eight (28) gallons capacity and specifically designed for rubbish disposal.

"Bundle" is a tied disposable package not exceeding forty-eight (48) inches in length and eighteen (18) inches in diameter or exceeding six cubic feet.

"Commercial waste" consists of any unusual wastes that accumulate on the premises of any commercial enterprise operating for profit not covered by the definition of "ordinary refuse." Tires, mufflers, tailpipes, or other parts of any motor vehicle generated by vehicular repair shops are considered as "commercial waste". Discarded building products, useable or nonuseable, generated by any commercial service company in the construction, alteration or repair of any structure (e.g. brick, earth, plaster, lathing, roofing materials, lumber, plumbing fixtures, etc.) are considered as "commercial wastes". Such wastes shall not be collected by the city.

"Industrial wastes" are waste materials, products or byproducts from factories, processing plants and other manufacturing enterprises including any food processing wastes, highly inflammable material or otherwise dangerous and/or hazardous wastes. Such wastes shall not be collected by the city.

"Joint maintenance" means the following:

sidewalk and shall be responsible for major maintenance such as paving repairs or replacement as deemed necessary;

2. The owner and/or tenant shall be responsible for the cleanliness, removal of debris, weeds and trapped litter from any sidewalk that abuts owned or rented property and shall exercise good and reasonable judgment in maintaining the sidewalk free from debris and litter at all times so as to insure the safe passage of all pedestrian traffic in an atmosphere free from dirt and litter.

"Litter" means refuse, garbage, rubbish or any unwanted waste materials in any amount intended for disposal by any person or persons. It may consist of animal or vegetable waste, paper, cellophane, rubber, glass, metal, plastic and other like materials.

"Littering" means the act of disposal of litter as defined in this section.

"Owner" means any person, proprietary firm or corporation holding title to any real property within the city.

"Person" or "persons" means any individual, firm, corporation or society.

"Refuse" means ordinary refuse which is unwanted, discarded, worthless materials or waste resulting from natural community activities, and consists of the following:

1. "Garbage" is the animal and vegetable waste resulting from the handling, preparation and cooking of food for human consumption;

2. "Ashes" are the residue of the combustion of solid fuel, such as wood, coal, coke or like substances;

3. "Rubbish" is miscellaneous refuse such as paper, rags, wood, excelsior, rubber, leather, glass, crockery, tin cans, corn husks, metallic substances, and like materials;

"Ordinary rubbish" will be collected by the city.

"Sidewalk" means any section of pavement consisting of part of a road layout owned by the city whose outside limits are defined by a curb, gutter or other established line and whose inner limits are defined by a private or public parcel of property.

"Tenant" means any person who rents or otherwise occupies for any purpose any part or parcel of real property in Lynn whether or not a landlord-tenant agreement exists.

## **SECTION 2:00      LITTERING PROHIBITED**

A. Any person(s) littering or otherwise disposing of litter on any street, road, highway or sidewalk in the city shall be in violation of this chapter.

in violation of this chapter.

C. All convenient stores or take-out food restaurants shall provide trash receptacles for the use of customers entering and exiting the premises.

**SECTION 3:00**            **JOINT MAINTENANCE OF SIDEWALKS**

A. All persons (owner(s) and/or tenant(s)) who fail to exercise reasonable daily maintenance in keeping a sidewalk abutting property owned, rented or otherwise occupied shall be in violation of this chapter.

B. All persons in commercial, light and heavy industrial zones, exercising joint maintenance to an abutting sidewalk shall be responsible to dispose of picked up litter or debris in a manner that does not conflict with other sections of this chapter. The sweeping of litter or debris from a sidewalk into the roadway shall be in violation of this Chapter. An area zoned as residential, general residential, apartment house, or in areas where permission has been granted for residential use, the responsibility shall lie with the property owner(s) and tenant(s) thereof.

C. This Ordinance shall apply to all city agencies.

**SECTION 4:00**            **STORAGE OF WASTES PLACED OUT FOR COLLECTION.**

A. No owner, manager or operator of any multiple-family dwelling shall fail to provide at all times one or more trash containers on such property, of a size sufficient to accommodate the regular accumulation of trash from the property.

B. No owner or manager of any multi-family dwelling shall fail to secure trash containers on the property so that they are not spilled or turned over by persons, animals, wind or other elements. Said trash container shall be so covered or otherwise secured as to prevent the trash or other contents thereof from blowing or otherwise escaping therefrom. All trash stored outside must be in covered waterproof and airtight rodent resistant containers.

C. No owner or manager of any multi-family dwelling shall fail to:

Prevent the accumulation of trash on such property and on the public right-of-way adjacent to the property;

Remove trash located on such property and on the public right-of-way adjacent to the property;

Dispose of trash frequently enough so that it does not cause any odor on the property;

Sufficiently bundle or contain recyclable materials so that those materials



are not scattered on the public right-of-way or onto other properties.

D. All trash, litter and refuse located upon private property awaiting collection and kept outdoors shall be stored in an "authorized rubbish receptacle". Trash containers which are not stored outdoors and are only placed outdoors on the day of trash collection need not be equipped with covers. Authorized rubbish receptacles for City rubbish collection shall not exceed fifty pounds per container. Limit on weight does not apply to authorized rubbish receptacles for private collection. Receptacles shall have the resident's street number displayed clearly on the side of the barrel. On the day of collection heavy duty plastic bags can be placed out and can only be put on top of authorized rubbish receptacles and cannot be placed on the ground.

**SECTION 5:00            COLLECTION.**

A. Ordinary Refuse — Collection Schedule and Regulations. Ordinary refuse will be collected by the city or its agents as follows:

1. All containers will be collected weekly at curbside only on scheduled day of collection. Curbside means in front of any building facing on a traveled way in Lynn. Permanent containers (barrels in good repair) will be emptied and returned to curbside. Temporary containers (bags) will be collected as refuse. Containers shall be placed in such a manner so as not to obstruct pedestrian traffic.

2. All refuse must be placed in barrels as defined in Section 1:00. The maximum number of containers that may be placed curbside for collection weekly shall not exceed three (3) containers per unit except at the discretion of the commissioner of the department of public works, in which case it shall not exceed ten (10).

3. All garbage is to be well-drained and separately wrapped before mixing with rubbish.

4. Discarded household furniture, and other materials not otherwise specifically excluded, will be collected if it is barreled, bagged, or bundled in strict compliance with all other sections of this chapter. The responsibility to break down or otherwise reduce the size of household furniture or other bulky items, etc., to acceptable size shall rest on the owner of these materials and not on the city or its agents.

5. Only trash, litter and refuse stored in authorized rubbish receptacles, including heavy duty plastic bags, will be collected by the City of Lynn.

B. Placement of Refuse.

1. All acceptable refuse may be placed out for collection no earlier than 5:00 p.m. on the day before scheduled collection and no later than 7:00 a.m. on the day of trash collection. All acceptable rubbish receptacles shall be removed from the sidewalk no later than 11:30 p.m. on the day of collection. Anyone placing rubbish out after refuse has been collected will be in violation of this chapter.



2. No person, firm or corporation shall place bags of refuse, trash, ashes or garbage into a City of Lynn owned trash receptacle.

3. No person, firm or corporation shall place out for collection any refuse that does not comply with this chapter.

C. Multi-Unit Dwellings and Commercial Buildings.

A unit is defined as follows:

1. A single household, apartment or tenement of any residential building not exceeding six (6) units.

2. In the case of hotels, motels, tourist homes, rooming houses, etc., a unit shall consist of any household, however small, of a building not exceeding four (4) units.

3. Nursing homes, convalescent houses, dormitories or other similar dwellings will not be collected.

4. Any and all condominium units/associations with six or more units must containerize (i.e. dumpster) all trash, at their own expense, in order to have the city collect their trash. In addition, each condominium complex with six or more units must certify, in writing, with the department of public works commission, each year that the trash has been containerized.

5. Any and all condominium units/associations with six or more units who, according to this chapter may have their refuse/trash collected, must participate in curbside recycling in order to do so.

6. Any and all condominium units/associations with six or more units must sign a waiver, release, and/or agreement, drafted by the city solicitor, holding the city harmless and free of any liability for damage and/or injury to person(s) or property, caused by the contracted collection service in order to have their refuse/trash collected in accordance with this chapter.

**SECTION 6:00**      **PROHIBITED ACTIVITIES**

A. No person shall disturb, remove or collect any ashes, rubbish or ordinary garbage from any premises without consent of the owner thereof, nor any ordinary commercial wastes placed out for collection, upon any sidewalk or way, except employees or agents of the city.

B. Private parties, firms or corporations may collect ordinary commercial and/or extraordinary commercial and industrial wastes provided that such collection shall be made only when such wastes are enclosed in tight metal or rigid containers which shall be nonleakable and the vehicle in which such wastes are carried, including garbage and ordinary commercial wastes, shall be subject to supervision of the commissioner of the department of public health and licensed therefor in accordance with statute.

C. No person shall disturb, remove or collect any material which has been placed upon any sidewalk, in accordance with this chapter without the written approval of the commissioner of the department of public works.

D. No person shall place refuse for collection in front of any building where the refuse was not generated.

**SECTION 7:00**      **VIOLATION - PENALTY**

A. Any person(s) who fails to comply with the provisions of Sections 2:00 through 6:00 shall, upon conviction, shall be fined fifty dollars (\$50.00) for a first offense, one hundred (\$100.00) dollars for a second offense, and two hundred (\$200.00) dollars for a third offense and three hundred (\$300.00) dollars for all subsequent offenses. Each container and/or day's failure to comply with Sections 4:00 through 6:00 shall constitute a separate violation. The City of Lynn may issue a warning for a first offense in the sole discretion of the inspector issuing said fine.

B. Disposition of violations of Sections 2:00 through 6:00 may be appealed through the provisions of M.G.L. c. 40U and M.G.L. c. 40, §21D.

**SECTION 8:00**      **MANDATORY RECYCLING PROGRAM**

There is established a program for the mandatory separation of certain recyclable materials from refuse which shall apply to all small businesses participating in the City trash collection program. The program shall be carried out under the supervision of the Commissioner of the City of Lynn Department of Public Works (DPW).

**SECTION 9:00**      **RECYCLING**

It shall be mandatory for each small business in Lynn to separate all designated paper only recyclable materials from other refuse in accordance with the provisions of this section. Small businesses are any businesses which receive City of Lynn Solid Waste Collection Services. On and after the effective date of the ordinance, it shall be mandatory for all of the small businesses which receive City solid waste collection services to separate from other refuse all recyclable materials designated by the Commissioner of the Department of Public Works in rules and regulations issued under this Ordinance. The Small Business Recycling Program includes: newspapers with inserts, cardboard (cardboard need to be flattened and cut into pieces, paperboard (cereal, crackers boxes), junk mail, office and computer paper, telephone books, magazine and catalogues, brown paper bags, glass, bottle, jars (all colors and sizes, aluminum/tin/steel cans, and labeled plastic containers.

**SECTION 10:00**      **RECYCLING RECEPTACLES**

A. The City of Lynn will provide small business owners with one or two

recycling stickers for their immediate participation in the City Small Business Mandatory Recycling program.

B. Materials designated for recycling in rules and regulations promulgated by the Commissioner of the Department of Public Works shall be placed in the small business recycling receptacles.

#### **SECTION 11:00      COLLECTION**

A. The preparation and placement of recyclables shall be accomplished in accordance with rules and regulations to be issued by the Commissioner of the Department of Public Works under this Ordinance. The recycling containers and receptacles shall be placed for collection on the outer edge of the sidewalk, so as not to obstruct the free passage of pedestrians, or in such other place and on days specified by the Commissioner in rules and regulations to be issued under this Ordinance.

B. Recyclables shall not be placed in plastic garbage bags for collection, removal or disposal. Recyclables shall not be placed in the same refuse containers as rubbish or mixed with rubbish or litter for collection, removal or disposal. If separation of recyclable materials from rubbish does not take place, the City may decline to collect said rubbish.

C. Upon placement of recyclables for the City or its contractor at the curbside, pursuant to this section, such recyclables shall become the property of the City. It shall be a violation of this Ordinance if any person, other than authorized agents of the City acting in the course of their employment or contract, collects or causes to be collected any recyclables so placed. Each and every such collection in violation of this section from one or more locations shall constitute a separate and distinct offense. In addition to the penalty provided in Section 13:00 of this section, any violator of this section shall make restitution to the City for the value of recyclables illegally removed.

#### **SECTION 12:00      RULES AND REGULATIONS**

The Commissioner of the Department of Public Works, with the approval of the City Council, may promulgate rules and regulations for the implementation of the Mandatory Paper Recycling program.

#### **SECTION 13:00      PENALTIES**

Whoever violates any provision of Sections 9:00 through 13:00 of this Ordinance, including any rule or regulation promulgated under Section 12:00 of this Ordinance, may be penalized by a non-criminal disposition as provided in G.L. c. 40U and c. 40, § 21D. The penalty for each violation shall be fifty (\$50.00) dollars.

**SECTION 14:00**      **ENFORCEMENT**

The City of Lynn Department of Inspectional Services, the Lynn Police Department, the Department of Public Works and the Lynn Housing Authority shall be the enforcing authorities for the provisions of this Ordinance.

**SECTION 15:00**      **EFFECT OF INCONSISTENT MUNICIPAL WASTE/RECYCLING COLLECTION CONTRACTS**

The Commissioner of the Department of Public works shall have the authority to temporarily enact additional and inconsistent rules and regulations relating to trash, waste and recycling collection when necessary in order to comply with the provisions of any contract for the collection of trash, waste and recyclable materials. All such rules and regulations shall be submitted to the City Council upon enactment and posted on the City of Lynn website

**SECTION 16:00**      **INCONSISTENT ORDINANCES**

All Ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 17:00**      **TIME OF TAKING EFFECT**

This ordinance shall take effect thirty-one (31) days after its final adoption as advertised.