

## **7-13A ACCESS TO RECYCLING PROGRAMS AND SERVICES — LARGE RESIDENTIAL BUILDINGS WITH MORE THAN SIX (6) UNITS.**

### **7-13A.1 Purpose.**

These sections supplement the recycling program established in subsection 7-13.1 *et seq.* and pursuant to G.L. c. 40, §8H by expanding the residential recycling program to include access for the residents of large residential buildings. Large residential buildings have been designated by the Commissioner as residential buildings with more than six (6) units.

(Ord. 2002 c. 1)

### **7-13A.2 Definitions.**

Unless specifically indicated otherwise, the definitions contained in subsection 7-13.3 shall apply and control in these sections.

- a. *Large residential building* shall mean a residential building with more than six (6) units.
- b. *Owner* shall mean a person who owns or is in control of a large residential building.
- c. *Recycling cart* shall mean any container ranging in size from thirty (30) to ninety (90) gallons that is composed of weatherproof material such as plastic or metal and that is clearly marked and/or identifiable as a container for recyclables; the Department commonly refers to certain recycling carts in widespread use throughout the City as “toters.” Recycling carts shall be used only for the containment and collection of recyclables. Recycling carts are hereby specifically exempted from the fee and application provisions of section 23-2 and section 23-11.
- d. *Recycling Coordinator* shall mean that person holding the position, or its equivalent, of Large Apartment Building Recycling Coordinator at the Department.
- e. *Recycling guide* shall mean that publication in its most current form, or its equivalent, published by the Department pursuant to subsection 7-13A.5.
- f. *Resident* shall mean a lawful inhabitant of a large residential building.
- g. *Set out container* shall have the same definition as promulgated in subsection 7-13A.3(p) and is commonly referred to as “blue box.”

(Ord. 2002 c. 1)

### **7-13A.3 Access to Recycling Programs and Services.**

a. Owners shall provide to residents access to the recycling programs and services offered by the City of Boston to the extent herein required.

b. Upon the Department's or the Recycling Coordinator's receipt of a request from a resident, the Recycling Coordinator shall notify the owner of its receipt thereof. An owner, within thirty (30) days of receipt of the notice from the Recycling Coordinator, shall provide access to the recycling programs and services of the City of Boston by installing and maintaining an adequate number of recycling carts in a common area of the premises and within a reasonable proximity not to exceed three hundred fifty (350') feet from a point of egress of a large residential building and as close as practicable to the current waste/trash removal dumpsters or containers for the large residential building; if an owner determines that the installation of recycling carts is impracticable then the owner shall contact the Recycling Coordinator for generation and/or approval to supply residents with access through alternative measures including but not limited to providing a set out container to each unit in the large residential building. If the Recycling Coordinator is unable to generate and/or approve alternative measures as aforesaid then the owner may seek an exemption pursuant to subsection 7-13A.4.

c. Nothing in this section prohibits owners from supplying residents with set out containers.

(Ord. 2002 c. 1)

#### **7-13A.4 Owners Unable to Comply; Exemption.**

a. An owner may submit to the Commissioner a detailed letter requesting exemption from the requirements of these sections within thirty (30) days of the date of final determination under subsection 7-13A.3 regarding alternative measures to providing access to the recycling programs and services. Said detailed letter shall include (i) the owner's reasons for the request for exemption, (ii) the specific steps the owner has taken to evaluate the owner's large residential building and its premises regarding compliance with these sections, and (iii) the specific steps the owner has taken in an attempt to comply with the provisions of these sections. The Commissioner shall, within thirty (30) days of the receipt of the request, respond in writing to the owner by: (i) rejecting the request and directing the specific steps the owner must take to ensure compliance with these sections or (ii) approving the request. The decision of the Commissioner is final and may be appealed only to a court of competent jurisdiction.

b. Any large residential building from which the City of Boston does not collect trash is exempt from the requirements of these sections. Nothing in these sections prohibits such a large residential building from voluntarily providing access to the City of Boston's free recycling services.

(Ord. 2002 c. 1)

#### **7-13A.5 Recycling Guides.**

The Department shall modify its recycling guide titled "Curbside Recycling for Boston For All Residents in Households with 1-6 Units" to reference and include large residential buildings.

Each owner shall ensure that a recycling guide is posted in a clearly visible location as close as practicable to (i) the main entrance to the large residential building or (ii) to the installed recycling carts. Owners shall ensure that a recycling guide is delivered to each unit in the large residential building contemporaneously with installation of the recycling carts. An owner shall deliver a recycling guide to each resident within fourteen (14) calendar days of the onset of the resident's residency.

(Ord. 2002 c. 1)

### **7-13A.6 Inspections, Enforcement, and Penalties.**

a. The Commissioner and the Commissioner of the Inspectional Services Department and any designees thereof shall have the authority to inspect, enforce, and impose penalties under this section.

1. *Inspections.*

(a) *Authority.* In order to properly carry out its respective responsibilities under this section and to ensure that the public health, safety, and environment are protected from the hazards posed by unsanitary and unhealthy conditions, the Inspectional Services Department is authorized (i) to examine or survey at any reasonable time the premises of all large residential buildings and (ii) with prior notice to the owner or the owner's authorized representative, to enter, examine, or survey the large residential building.

(b) *Systematic Area Inspections.* The Inspectional Services Department is authorized to develop and adopt plans for systematic, periodic area-wide inspections of large residential buildings, their premises, and the recycling facilities thereon.

(c) *Interference with Inspection.*

(1) If an owner or an owner's authorized representative, having been notified pursuant to subparagraph (a), knowingly impedes, inhibits, interferes with, restricts, or obstructs entry and free access to the large residential building or the premises where inspection is authorized by this section, the Inspectional Services Department may seek in a court of competent jurisdiction an inspection warrant that allows for the inspection of the site and apprises said owner or owner's authorized representative concerning the nature of the inspection, the scope of the inspection, the justification for the inspection, and may seek the assistance of the police authorities in presenting said warrant.

(2) If a resident or other person knowingly impedes, inhibits, interferes with, restricts, or obstructs entry and free access to the large residential building or the premises where inspection is authorized by this section, the Inspectional Services Department may seek in a court of competent jurisdiction an inspection warrant that allows for the inspection of the site and apprises said resident or other person concerning the nature of the inspection, the scope of the inspection, the justification for the inspection, and may seek the assistance of the police authorities in presenting said warrant.

(3) Nothing in these subsections authorizes the Inspectional Services Department to inspect any areas other than the indoor common areas of a large residential building or the outdoor premises of the large residential building.

2. *Violation.* Violations of this section include, but are not limited to:

(a) The failure to provide access to the recycling programs and services in accordance with subsection 7-13A.3; and

(b) The failure to post a recycling guide in accordance with subsection 7-13A.4 or to deliver a recycling guide to residents in accordance with subsection 7-13A.4; and

(c) The failure to comply with the requirements of this section; and

(d) The interference with an inspection, including inspections conducted pursuant to a validly issued inspection warrant, pursuant to subsection 7-13A.6(1)(c).

3. *Service of Notice of Violation.* Notice of violation shall be served on the owners in the following manner:

(a) Personally, by any person authorized to serve civil process; or

(b) By any person authorized to serve civil process by leaving a copy of the notice of violation at the last and usual place of abode of the violator; or

(c) By sending a copy of the notice of violation by registered or certified mail, return receipt requested, if within the Commonwealth; or

(d) If the last and usual place of abode of the owner is unknown or outside the Commonwealth, by posting a copy of the notice of violation in a conspicuous place on or about the premises and by advertising it for at least three (3) out of five (5) consecutive days in one (1) or more newspapers of general circulation within the City.

4. *Administrative Hearings.*

(a) *Right to Hearing.* Any person upon whom a notice of violation has been served may request a hearing from the Inspectional Services Department by filing a written petition requesting a hearing on the matter with the Inspectional Services Department within seven (7) days after the day the notice of violation was served.

(b) *Hearing Notice.* Upon receipt of a petition, the Inspectional Services Department shall inform the petitioner of the date, time, and place of the hearing in writing.

(c) *Time for Hearing.* The hearing shall commence within thirty (30) days after the day on which the notice of violation was served. The time period in which the cited violations

must be remedied shall be stayed upon receipt of the petition for a hearing until such time as the hearing is held.

(d) *Hearing of Petitioner.* At the hearing, the petitioner shall be given an opportunity to be heard, to present witnesses or documentary evidence, and to show why the notice of violation should be modified or withdrawn. An official record shall be kept of the hearing proceedings and made available to the petitioner upon request. Failure to hold a hearing within the time period specified herein shall not affect the validity of any notice of violation.

(e) *Final Decision After Hearing; Failure to Comply with Final Order.*

(1) Within seven (7) days after the conclusion of the hearing, the Inspectional Services Department shall sustain, modify, or withdraw the notice of violation and shall inform the petitioner in writing of its decision and the reasons therefor. If the Department sustains or modifies the notice of violation, said violation shall be remedied within the time period allotted in the original notice of violation or in the modification.

(2) If a written petition for a hearing is not filed with the Inspectional Services Department within seven (7) days after the notice of violation has been served or if after a hearing the notice of violation has been sustained in any part, then each day's failure to comply with the notice of violation within the time allotted as issued or modified shall constitute an additional and separate violation.

5. *Judicial Appeals.* Any person aggrieved by a final decision of the Inspectional Services Department with respect to a notice of violation or any other order issued under these sections by the Inspectional Services Department, may seek relief in any court of competent jurisdiction as provided by the laws of the Commonwealth.

6. *Penalties.*

(a) *Failure to Comply with Section.* Failure to comply with the provisions of this section shall result in the imposition of penalties by the Inspectional Services Department. For any failure to comply, the Inspectional Services Department shall have the authority to (i) issue a written notice of violation and (ii) seek an injunction from a court of competent jurisdiction instructing the owner to comply with the requirements of this section. Penalties shall be administered only in accordance with the provisions of this section.

(b) *Notice of Violation.* The Inspectional Services Department shall respond to an owner's first failure to comply by issuing a notice of violation to an owner which shall provide an owner with thirty (30) days to correct the violation.

(c) *Failure to Comply with Notice of Violation.* An owner who fails to comply with any notice of violation or other order issued pursuant to these sections by the Inspectional Services Department or its duly appointed agents or representatives shall be subject to a fine of not less than one hundred fifty dollars and no cents (\$150.00) per violation per day and not more than three hundred dollars and no cents (\$300.00) per violation per day.

(d) *Injunctive Relief.* The Commissioner of Inspectional Services may, after an administrative hearing, seek an injunction from a court of competent jurisdiction instructing an owner to comply with a notice of violation.

(e) *Interference After Inspection Warrant Presented.* An owner who refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access or neglects or fails to provide entry and free access to every part of the large residential building where inspection is sought under these sections after an inspection warrant has been obtained and presented in accordance with these sections, shall be subject to a fine not less than one hundred fifty dollars and no cents (\$150.00) and not more than three hundred dollars and no cents (\$300.00) per day.

(f) *Fines.* All fines and penalties assessed and collected under this subsection may be enforced pursuant to G.L. c. 40, section 21D.

7. *Regulatory Authority.* The Commissioner and the Commissioner of Inspectional Services shall have the authority to promulgate rules and regulations necessary to effect and enforce this section.

8. *Delegation of Authority.* The Commissioner and the Commissioner of Inspectional Services shall have the authority to delegate enforcement of this section to any City department authorized to enforce public safety, health, or environmental laws and regulations.

b. Nothing in these sections shall prevent the Commissioner from developing incentive programs directed at owners for the successful and timely implementation of actions designed to provide residents with access to the City's recycling programs and services.

(Ord. 2002 c. 1)

### **7-13A.7 Annual Report.**

In an effort to evaluate the effectiveness of the recycling programs of the City of Boston and of large residential building in the City of Boston, the Department shall annually prepare a report regarding the City of Boston's recycling programs, including the tonnage of recycled materials collected by the Department and the tonnage of trash collected by the Department. This annual report shall specifically and separately detail the recycled tonnage collected from large residential buildings. An original of this annual report shall be filed with the Boston City Clerk and with the Boston City Council no later than March 31 of each calendar year.

(Ord. 2002 c. 1)

### **7-13A.8 Implementation.**

The provisions of 7-13A shall be effective commencing on January 1, 2003. Nothing in this section prohibits an owner from voluntarily providing recycling access to the residents of the owner's large residential building and/or contacting the Recycling Coordinator in order to develop a site-specific recycling access strategy addressing the needs of the owner's large

residential building and/or otherwise taking steps in preparation for compliance with the provisions herein. An owner that provides recycling access to the residents of the owner's large residential building that fulfills the requirements of section 7-13A prior to January 1, 2003 and maintains conforming recycling access after January 1, 2003 shall be exempted from the provisions of these sections.

(Ord. 2002 c. 1)

### **7-13A.9 Severability.**

If any provision of this section shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(Ord. 2002 c. 1)