



CITY OF BOSTON

IN THE YEAR NINETEEN HUNDRED AND NINETY-NINE

AN ORDINANCE

**AUTHORIZING THE COMMISSIONER OF INSPECTIONAL SERVICES DEPARTMENT
TO ISSUE SITE CLEANLINESS LICENSES**

WHEREAS;

the unregulated maintenance and operation of automotive establishments, food and beverage establishments, bulk refuse containers, and bulk refuse container storage lots presents a threat to the public health, safety, environment, and general welfare;

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

Chapter IX of the City of Boston Code Ordinances, is hereby amended by adding the following new section:

Section 9-9.8. Site Cleanliness Licenses

No person shall operate or maintain an automotive establishment, a food and beverage establishment, bulk refuse container storage lot, or a bulk refuse container without first obtaining the Site Cleanliness License required by this ordinance or unless the same is maintained in accordance with said license and any regulation promulgated hereunder.

a. *Definitions.* As used in this subsection, the following words and phrases shall have the meanings given in the following clauses. Where words and phrases are not defined in the following clauses such words and phrases shall have their ordinarily accepted meanings such as the context implies.

1. *Automotive Establishments.* Autobody shop, car wash, garage, gasoline station, motor vehicle repair garage or lot, retail business establishment or other place for the sale, service, repair, or installation of new or used motor vehicles, new or used motor vehicle parts, new or used tires, or new or used motor vehicle accessories, whether or not vehicles are serviced or parts or accessories are installed or used on or off the premises.

2. *Bulk Refuse Containers.* Dumpsters, trash compactors or any other container or receptacle where recyclable materials, debris, refuse, trash, solid waste or like material are contained or stored in any quantity for any period of time.

3. *Bulk Refuse Container Storage Lot.* Lot for the storage, repair, or maintenance of empty or loaded dumpsters, roll-off containers, trash compactors or any other container or receptacle where debris, refuse, solid waste, trash, recyclable material, or like material, are contained or stored in any quantity for any period of time.

4. *Food/Beverage Establishments.* Restaurant, lunchroom, cafeteria, drive in restaurant, take out restaurant, night club, bar or tavern or other retail business establishment open to the public for the sale or service of food, food products or beverages, whether the food, food products or beverages are prepared for consumption on premises; or where food, food products and beverages are sold or served in disposable containers or where the establishment provides disposable tableware, napkins, containers, condiments or other disposable material to the public as a usual business practice.

5. *Lot.* A parcel of land including land under water, whether or not platted, in single ownership, and not divided by a street.

6. *Site Cleanliness License.* The license required by this ordinance and issued by the Inspectional Services Department upon satisfactory review of the Site Cleanliness License Application and Site Cleanliness Plan.

7. *Site Cleanliness Plan.* An operational and maintenance plan for each automotive establishment, food/beverage establishment, bulk refuse container storage lot, or any bulk refuse storage container governed by this Ordinance. The plan shall also include all information included in the Site Cleanliness Plan application as discussed in section (d) below.

8. *Violation.* The operation or maintenance of any establishment or bulk refuse container governed by this Ordinance without a Site Cleanliness License; the failure to operate or maintain the same in accordance with a validly issued Site Cleanliness License; and the interference with an inspection conducted pursuant to a validly issued inspection warrant.

b. *Applicability.* The Site Cleanliness Ordinance shall apply to all existing and future automotive establishments, food and beverage establishments, bulk refuse container storage lots, and bulk refuse containers located within the City.

c. License Required for Site Cleanliness of Establishments and Bulk Refuse Containers.

No automotive establishment, food/beverage establishment, or bulk container storage lot shall operate, and no bulk refuse container shall be used, without first obtaining a Site Cleanliness License from the Commissioner of Inspectional Services. If the Commissioner of Inspectional Services determines that a submitted Site Cleanliness License application is accurate and adequate to keep the site free from debris, refuse, trash, solid waste or like material that is injurious to the public health, safety, and environment, the Commissioner shall issue a Site Cleanliness License for the establishment, bulk refuse container storage lot, or bulk refuse container. Performance of the activities scheduled in the site cleanliness plan shall be a condition of the license and nonperformance of the activities scheduled in the site cleanliness plan shall be a violation of the license and conditions of this ordinance.

d. Contents of License Application. A complete Site Cleanliness License application consists of a completed application form and a Site Cleanliness Plan attached thereto. The Site Cleanliness Application form shall be in a form approved by the Commissioner. A Site Cleanliness Plan shall, at a minimum, include the following information:

- the address of the lot on which the establishment is located;
- the name, address, and telephone number of the owner of the lot;
- the name, address, and telephone number of the operator of the establishment located on the lot;
- the type of establishment and nature of its business;
- a plot plan accurately depicting the lot;
- the location of any bulk refuse container and the location of the bulk refuse container in relation to all abutting lots;
- a weekly schedule detailing the times and days of the week for cleaning and maintaining the site free of windblown litter and refuse;
- the name of a supervisor responsible for overseeing the cleaning and maintenance of the site;
- the name and address of the waste hauling company responsible for servicing the establishment, bulk refuse container storage lot, or bulk refuse container;
- the date, time, and frequency of service by the waste hauling company;

- any and all permits and/or licenses issued by the Department of Environmental Protection relating to the management, storage, and disposal of solid wastes and hazardous materials and hazardous wastes generated, stored, or disposed on site;
 - any and all permits and/or licenses issued by the Boston Fire Department;
 - any and all permits and/or licenses issued by the Inspectional Services Department;
 - any and all permits and/or licenses issued by the Public Works Department;
 - the name, address, and phone number of the pest control company servicing the establishment, bulk refuse container storage lot, or bulk refuse container;
 - any fencing or screening required; and
 - any other information required by the Inspectional Services Department to ensure the site is maintained in a sanitary condition free of debris, refuse, trash, solid waste or like material that is injurious to the public health, safety, and environment.
- e. *Screening/Fencing Requirements.* All bulk refuse containers maintained by establishments governed by this ordinance shall be screened or fenced off from view from public ways, sidewalks, and adjoining properties at all sites other than construction sites, unless said screening would eliminate disposal access to the bulk refuse container.
- f. *Posting Requirements.* The Site Cleanliness Plan and Site Cleanliness License shall be posted in a conspicuous place on the premises in public view.
- g. *Inspections.*
1. *Authority.* In order to properly carry out their respective responsibilities under this Ordinance, 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 to enter, examine, or survey at any reasonable time all establishments and bulk refuse containers licensed hereunder.
 2. *Systematic Area Inspections.* The Inspectional Services Department is authorized to develop and adopt plans for systematic, periodic area-wide inspections of establishments, bulk refuse container storage lots, and bulk refuse containers required to obtain a Site Cleanliness License.
 3. *Interference With Inspection.* If any owner, occupant, or other person refuses, impedes, inhibits, interferes with, restricts, or obstructs entry and free access to the

site, operation, or premise where inspection is authorized by this Ordinance, 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 the owner, occupant, or other person concerning the nature of the inspection, the scope of the inspection, and justification for it and may seek the assistance of the police authorities in presenting said warrant.

- b. *Violation.*** The operation or maintenance of any establishment or bulk refuse container governed by this Ordinance without a Site Cleanliness License; the failure to operate or maintain the same in accordance with a validly issued Site Cleanliness License; and the interference with an inspection conducted pursuant to a validly issued inspection warrant.
- i. *Service of Notice of Violation.*** Notice of Violation shall be served on all owners, operators, and all other persons responsible for the operation and maintenance of the establishment, bulk refuse container storage lot, or bulk refuse container. The Notice of Violation shall be served in the following manner:

 - 1. Personally, by any person authorized to serve civil process; or
 - 2. 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
 - 3. By sending a copy of the order by registered or certified mail, return receipt requested, if within the Commonwealth; or
 - 4. If the last and usual place of abode of the violator 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 out of five consecutive days in one or more newspapers of general circulation within the City.
- j. *Administrative Hearings***

 - 1. ***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 Department within seven days after the day the Notice of Violation was served.
 - 2. ***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.

3. *Time for Hearing.* The hearing shall commence within thirty 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.
4. *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.
5. *Final Decision After Hearing; Failure To Comply with Final Order.*
 - a) Within seven 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 therefore. 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.
 - b) If a written petition for a hearing is not filed with the Inspectional Services Department within seven days after the Notice of Violation has been served, or if after a hearing the Notice of Violation has been sustained in any part, each day's failure to comply with the Notice of Violation within the time allotted as issued or modified shall constitute an additional offense.
- k. *Judicial Appeals.* Any person aggrieved by a final decision of the Inspectional Services Department with respect to the denial of a Site Cleanliness License, the revocation of a site cleanliness license, the issuance of a Notice of Violation, or any other order issued under this Ordinance by the Inspectional Services Department, may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the Commonwealth.
- l. *Penalties*
 1. *Failure to Obtain Site Cleanliness License.* If a person operates an establishment, bulk refuse container storage lot, or bulk refuse container without first obtaining a Site Cleanliness License, the Commissioner of Inspectional Services may seek an

injunction from a court of competent jurisdiction prohibiting the operation of the establishment, bulk refuse container storage lot, or bulk refuse container until a Site Cleanliness License is secured.

2. *Failure to Comply With Terms of Site Cleanliness License.* If a licensee fails to comply with the terms of a Site Cleanliness License, the Commissioner of Inspectional Services may suspend the Site Cleanliness License, after an administrative hearing, and seek an injunction from a court of competent jurisdiction prohibiting the operation of the establishment, bulk refuse container storage lot, or bulk refuse container until the licensee proves to the court its compliance with the Site Cleanliness License. If a licensee fails to comply with the terms of the Site Cleanliness License three times in the preceding, the Commissioner of Inspectional Services may suspend, cancel, or revoke the Site Cleanliness License after an administrative hearing. In the event of suspension or cancellation of the site cleanliness license, other municipal agencies issuing licenses will be so notified.
 3. *Failure to Comply with Notice of Violation.* Any person who fails to comply with any Notice of Violation or other order issued pursuant to this Ordinance by the Inspectional Services Department, or its duly appointed agents or representatives, shall be fined one thousand (\$1,000) dollars per violation per day. Each day's failure to comply with a Notice of Violation or any other order shall constitute a separate violation.
 4. *Interference After Inspection Warrant Presented.* Any owner, occupant, or other person who refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to every part of the structure, site, operation or premises where inspection is sought under this Ordinance after an inspection warrant has been obtained and presented in accordance with g (3)(1) of this Ordinance, shall be fined one thousand (\$1,000) dollars.
 5. *Fines.* All fines and penalties assessed and collected under this Ordinance may be enforced pursuant to G.L. c. 40, section 21D.
- m. *Site Cleanliness License Fee* The fee for the site cleanliness license shall be twenty-five (\$25.00) dollars.

- n. ***Term of License.*** The term of each license shall be one year. Annually on a date set by the Commissioner, all persons who operate or maintain food/beverage establishments, automotive establishments, bulk refuse container storage lots, and bulk refuse containers shall file, renew or amend a site cleanliness plan and obtain a new Site Cleanliness License.

- o. ***Severability.*** If any section provided for under this Ordinance shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of this Ordinance, which shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared severable.

- p. ***Regulatory Authority.*** The Commissioner of Inspectional Services shall have the authority to promulgate rules and regulations necessary to enforce this Ordinance.

- q. ***Delegation of Authority.*** The Commissioner of Inspectional Services may delegate enforcement of this Ordinance to any City department authorized to enforce public safety, health, or environmental laws and regulations.

- r. ***Effective Date.*** This ordinance shall take effect within ninety (90) days of passage.