

## Chapter 112

### RECYCLING AND SOLID WASTE

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**[HISTORY: Adopted by the City Council of the City of Fitchburg 3-18-2014 by Ord. No. 035-2014.<sup>1</sup> Amendments noted where applicable.]**

#### GENERAL REFERENCES

Health — See Ch. 111.

Litter and handbills — See Ch. 128.

Junk dealers and collectors — See Ch. 116.

Property maintenance — See Ch. 138.

#### § 112-1. Findings; public purpose.

A. The City of Fitchburg hereby determines that:

- (1) There is a critical need to eliminate, mitigate and prevent the nuisances and adverse public health effects associated with the collection, processing and disposal of solid waste from whatever source derived, including municipal, industrial, domestic, commercial and other sources or activities;
- (2) The City has entered into a long-term contract for the development, management, operation and closure of the landfill pursuant to the provisions of St. 1991, chapter 531 as amended and known as the Solid Waste Disposal Services Agreement; and
- (3) The City must pay for each ton of solid waste delivered by or on behalf of the City pursuant to the Solid Waste Disposal Services Agreement; and
- (4) The City intends to provide as much choice to residential households in the collection and disposal of solid waste as feasible; and move toward current or future innovative methods of collection and disposal to keep up with trends for the purpose of reducing associated costs; and
- (5) Throughout the commonwealth there exists a severe shortage of environmentally safe and

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1. Editor's Note: This ordinance also repealed former Ch. 112, Recycling and Solid Waste, adopted 6-21-2011 by Ord. No. 099-2011, as amended.

financially sound capacity for the storage, disposal and processing of solid waste. The costs of collecting, processing and disposal of solid waste are increasing; and

- (6) The City will advance all of these interests by encouraging by all available means recycling efforts which recycle solid waste, including but not limited to newspaper, mixed paper, paperboard, corrugated cardboard, glass, aluminum and steel cans, and plastic Nos. 1 through 7, metal, rubber, used tires, yard waste, and other waste ban items rather than placing it in the City's landfill.

B. It is hereby declared an essential public purpose to:

- (1) Establish a program for the automated and semiautomated collection and handling of solid waste which limits eligible residents' production of trash and provides more containment for trash on the property and at curbside for a potentially cleaner more litter-free operation of the City's system for collection, disposal and storage of solid waste.
- (2) Encourage residents to act together effectively to reduce the production of solid waste by recycling an ever-increasing amount of recyclable solid waste, thereby reducing the amounts of solid waste landfilled, thereby additionally reducing disposal costs.

C. This chapter is enacted pursuant to the authority of the City under Art. 2 of the Amendments to the Constitution of the Commonwealth, as established by the ratification of Art. 89 of the Amendments, the Home Rule Amendment; MGL c. 44, § 28C; MGL c. 40, § 8H.

#### **§ 112-2. Program established.**

A. The City of Fitchburg hereby establishes an automated and semiautomated municipal program for the collection of residential solid waste, whereby the program encourages:

- (1) The reduction of household trash, rubbish and refuse by limiting the amount collected;
- (2) The incentive-based separation of recyclables, yard waste, and paper and container materials from trash by the residents of the City;
- (3) The curbside collection of most recyclable materials and dropoff collection for other recyclable materials; and
- (4) The management of collection, processing and disposal of solid waste while enhancing and enforcing recycling goals.

B. Eligible trash and recycling collection.

- (1) Effective July 1, 2012, the following shall be eligible for municipal curbside trash and recycling collection without additional fees:
  - (a) All single-family dwelling units, unless additional carts are rented beyond one trash and one recycling cart;
  - (b) Single detached condominiums, unless additional carts are rented beyond one trash and one recycling cart;
  - (c) Four dwelling units or less, unless additional carts are rented beyond one trash and one recycling cart per unit;

- (d) Dwellings containing five or more units and no more than eight units, unless additional carts are rented beyond the four trash carts and four recycling carts.
  - (2) Participating households may dispose of trash for the City curbside collection program only in City-designated trash-household waste carts for weekly collection on days designated by the Board of Health.
  - (3) No trash will be picked up unless it is placed in a City-issued cart or other arrangements are made and approved by the Board of Health or its agents.
  - (4) Acceptable recyclable materials must be placed in the City-issued recycling cart.
- C. At the inception of the program, eligible households will be issued:
- (1) One sixty-four-gallon wheeled container ("trash-household waste cart") which limits amounts of trash, rubbish and refuse collected at curbside from applicable residences; and;
  - (2) One ninety-six-gallon recycling cart for the storage and bimonthly (every other week) collection of eligible recyclables.
  - (3) In the instances upon request, residents may substitute one thirty-five-gallon cart for either above trash or recycling cart.
- D. The carts are property of the City and/or its contractor and are assigned to a specific address and must remain at that address when ownership or occupancy of a dwelling and dwelling unit is changed.
- E. Each cart has a serial number that will be matched to the eligible property's address.
- F. Property owners are responsible for replacing and paying for any carts that have been damaged (unless damaged by the contractor), taken or removed from any eligible residence for whatever reason. The Director of Public Health shall set a fee for the replacement of carts that have been destroyed, damaged, taken or lost.
- G. Any eligible resident may rent additional trash and recycling carts for a fee as determined by the Director of Public Health.
- H. This program includes:
- (1) Regulated automated and semiautomated curbside pickup of household trash and some recyclable materials from those eligible households described in § 112-2B of this chapter.
  - (2) The collection of yard waste made on a scheduled basis under the supervision of the Board of Health acting through the Health Department.
  - (3) The disposal of all other items not collected at curbside, pursuant to regulations and fees established by the Board of Health.
  - (4) The Director of Public Health shall have the authority to manage and control the program in his/her discretion and shall have the power and authority to enact regulations not inconsistent with this chapter.
- I. The Director of Public Health may, in the exercise of his/her discretion, and subject to the contractual rights and obligations of the City, allow owners of dwellings exceeding eight units and commercial buildings to participate in the program at a fee required pursuant to the City's waste contract. If the Director of Public Health, under an amended contract, allows this expansion of participation, he/she

shall recalculate the fees charged for trash collection to meet the requirements of state law based on associated costs.

### **§ 112-3. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**ALIEN WASTE** — Any household garbage, rubbish or any other discarded refuse, solid waste or recyclable material that is generated from outside the City of Fitchburg or from a place other than the location from which it is collected.

**APPLICANT** — The person named in the application as the owner of property.

**ASHES** — The solid residue from the combustion of fuel used in heating and cooking operations as occurring in households and apartments but not to include such residue from commercial or industrial plants or operations therein.

**ASSOCIATED COSTS** — Those costs that must meet but not exceed projected expenses for the program established under this chapter.

**BOARD OF HEALTH** — The legally constituted Board of Health for the City of Fitchburg or its authorized agents or representatives.

**BULK(Y) ITEMS/WASTE** — All furniture, box springs, mattresses, couches, chairs, rugs, and other bulky material with weights or volumes greater than those allowed for in City designated carts. White goods and CRTs are not considered bulk waste.

**CATHODE RAY TUBE (CRT)** — Any intact, broken or processed glass tube used to provide the visual display in televisions, computer monitors and certain scientific instruments such as oscilloscopes.

**CITY** — The City Fitchburg, a Massachusetts municipality, and shall include all geographic areas, streets and ways and all building and improvements within the municipal boundaries of the City.

**CITY PROGRAM** — The system for municipal recycling and solid waste collection established by this chapter.

**COMMERCIAL HAULER** — A hauler in the business of removal, transport and disposal of all sorts of wastes as a commercial enterprise.

**COMMERCIAL SOLID WASTE** — All types of solid waste generated by stores, offices, institutions, restaurants, warehouses, any commercial use and other nonmanufacturing activities, or similar types of solid waste generated from manufacturing operations.

**CONSTRUCTION DEBRIS** — All waste building materials resulting from construction, remodeling, and repair or demolition operations and includes bricks, concrete, toilets, shower stalls, tubs, sinks and other materials accumulated from remodeling, repair and demolition operations.

**CURBSIDE COLLECTION PROGRAM** — The process of removal of rubbish, trash, refuse, and approved recyclable materials from eligible households as established by this chapter. The trash-household waste and recycling cart are part of the curbside collection program.

**DIRECTOR OF PUBLIC HEALTH** — The duly appointed Director of Public Health appointed by the Board of Health for the City of Fitchburg or his or her authorized representative or designee.

**DISPOSAL** — The removal of trash from one dwelling, commercial or industrial location and transferring, dumping, land-filling or placement into or on any other location, including any land or water or the incineration of rubbish for energy recovery or otherwise.

**DWELLING** — Every building or shelter, including but not limited to rooming houses and temporary housing used or intended for human habitation and every other structure or condition located within the same lot line. The term includes multifamily dwellings with up to and including eight dwelling units. See "residence," below.

**DWELLING UNIT** — The room or group of rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating. "Dwelling unit" shall also mean a condominium unit.

**FACILITY** — An established site or works, and the appurtenances related to it, which is, has been or will be used for the handling, storage, transfer, processing, treatment or disposal of solid waste, including all land, structures, and improvements which are directly related to solid waste activities.

**GARBAGE** — Animal, vegetable or other organic waste resulting from the handling, preparing, cooking, consumption or cultivation of food.

**HAULER** — A person licensed or permitted by the Board of Health to pick up and transport solid waste and/or recyclable materials in the City.

**HAZARDOUS WASTE** — Waste or materials in any amount which is or are defined, characterized or designated as hazardous by or pursuant to federal or state law, or waste or materials in any amount which is so regulated under federal or state law. For purpose of this chapter, the term "hazardous waste" shall also include oil or petroleum products, motor oil, gasoline, petroleum or oil-based materials or products, pathological or biological waste, chemicals or compounds which are explosive, flammable, radioactive or toxic, oil-based paint, automobile batteries, asbestos, ammunition, broken computer or television screens, and any other substance so designated by the Board of Health.

**LANDFILL** — A facility or part of a facility established in accordance with a valid site assignment for the disposal of solid waste into or on land.

**LANDFILL PERMIT/PASS** — The permit or pass issued by the Board of Health allowing access to and use of the landfill or residential drop off area. A landfill permit may be either residential or commercial. The Board of Health shall charge a fee for such permit or pass which shall be determined annually and adjusted reasonably at the discretion of the Board of Health.

**METAL** — Any ferrous or nonferrous waste material or alloy that can be scrapped, which includes but is not limited to appliances, bicycles, automobile parts, and pieces of steel.

**PERSON** — Any individual, partnership, association, firm, legal entity, company, corporation, department, agency, group, or public body.

**PROGRAM** — The system for municipal recycling and solid waste collection established by this chapter.

**PROPERTY OWNER** — The person(s) listed on the most recent deed of record in the Registry of Deeds. For purposes of this chapter, every person described as a grantee on the applicable deed(s) of record is jointly and severally liable for the fees imposed by this chapter and to comply with the obligations imposed by it. For the purposes of this chapter, both the trustee and beneficiaries of a realty trust, so called, shall be owners.

**RECYCLE** —

- A. To recover materials or by-products by diverting them from disposal to:
  - (1) Reuse; or
  - (2) Use as an ingredient or a feedstock in an industrial or manufacturing process to make a marketable product; or

- (3) Use in a particular function or application as an effective substitute for a commercial product or commodity.

B. "Recycle" does not mean to recover energy from the combustion of a material.

**RECYCLING CART** — A wheeled container with a lid issued by the City for the purposes of automated and/or semiautomated collection of approved recycling material from the curbside of eligible households.

**RECYCLING MATERIAL and RECYCLABLES** — Materials which the City has designated as having potential for recycling which are washed and rinsed of residual food products (where applicable) and are not contaminated by significant amounts of toxic substances. These materials include, but are not limited to, newspaper, magazines, glass containers (clear, green and brown), No. 1 through No. 7 plastic containers, and aluminum cans, corrugated cardboard, brown paper bags, white and colored office paper and computer papers separated from other mixed waste and placed for curbside pickup in a City-approved recycling cart or approved container or brought to the residential landfill dropoff or other locations approved by the Massachusetts Department of Environmental Protection and/or the Board of Health.

**RESIDENCE** — Single-family dwellings, single detached condominiums and multifamily dwellings up to and including eight residential units or apartments, whether or not all of them are occupied.

**RESIDENTIAL DROPOFF AREA** — A facility or part thereof approved and established in accordance with a valid site assignment for the receipt of certain designated solid waste, including but not limited to recyclable material, yard waste and other items approved.

**RUBBISH** — Waste materials from typical household and living conditions other than garbage or ashes but does not include waste materials from building construction or repair, nor garden, lawn or tree trimmings. It does not include factory waste or refuse from industrial plants of any character.

**SHARPS (HOME)** — All spent noncommercially generated, hypodermic needles and lancets that have been used or are not in their original, intact and sealed packaging and that result from personal use or from pets at a residence or outside the home. The term "home sharps" does not include needles or lancets generated by home health aides, visiting nurses, or any other person providing a professional service in a private residence.

**SNOW-CONING** — Refers to the excess of trash, rubbish and refuse or recycling placed in a City trash-household waste or recycling cart so that debris is built up beyond capacity of the cart and does not allow the lid of the cart to be closed firmly.

**SOLID WASTE** — Rubbish, garbage, trash, ashes, recyclable materials, discarded furniture, compostable materials, white goods, CRTs, discarded appliances and other refuse not listed on the DEP waste ban list in 310 CMR 19.017, as the same may from time be amended or superseded.

**SOLID WASTE PROGRAM** — The City's program for pickup, transportation and all activities related to disposal of solid waste.

**TRANSPORT and TRANSPORTATION** — The carrying of acceptable waste and recyclables in an approved and lawfully registered vehicle, operated by a duly licensed driver, from the point of collection or pickup within the City to the landfill or any other approved site and to unload such waste at that site.

**TRASH-HOUSEHOLD WASTE** —

- A. All refuse, rubbish and garbage generated on a weekly basis by a typical household. These (allowed) materials may include garbage or all organic waste matter (animal, fish, fruit and vegetables) produced from the preparation of food for human consumption, pizza boxes, soiled paper plates, wax paper, clothing, shoes, boots, rubber (no tires), glassware, whole or broken earthen ware (china), plastics unable to be recycled, toys and small tools and rubbish and refuse

debris from noncommercial sources. Trash does not include yard waste or waste ban items prohibited by the Massachusetts Department of Environmental Protection at 310 CMR 19.017 as the same may from time be amended or superseded.

- B. The following types of waste are specifically excluded (or not acceptable) from the definition of trash: recyclables, waste ban items, yard waste, white goods, CRT materials, bulky waste, hazardous waste; construction and demolition debris from all sources; fluorescent light bulbs, motor vehicles; auto bulks, engine blocks, transmission blocks, heavy machinery, ski mobiles, motorcycles or parts, lawn mowers and yard machinery, tractors, chain link fencing, metal tanks and metal objects, and other large metal scrap items; tree stumps, regardless of size; pathological waste; radioactive materials, toxic and volatile chemicals; explosives; tires; batteries; liquid and semiliquid waste; waste oil, oil sludge, gasoline, and other petroleum products; highly flammable substances, liquid paint, caustic materials, paint thinners or paint removers, pesticides, asphalt, brick, concrete, soil, stones, boulders, dirt, gravel, sand, loam, fill, and other earthen materials; septage or human waste or remains or excrement; medical sharps; and materials banned now or at any future time from the waste stream by the Massachusetts Department of Environmental Protection or by any other state or federal governmental agency, board, official or commission.

**TRASH-HOUSEHOLD WASTE CART** — The wheeled container with an attached lid which closes, issued by the City for the purpose of the limited collection of eligible trash-household trash from eligible households.

**WASTE BAN** — Those items of waste listed by the Massachusetts Department of Environmental Protection at 310 CMR 19.017, as may from time to time be amended. Waste ban items cannot at any time be placed into the trash-household waste or recycling cart for curbside collection or be placed at curbside for the City collection.

**WHITE GOODS** — Large household appliances incidental to the maintaining of a residence, including but not limited to refrigerators, stoves, washers, dryers, trash compactors, dehumidifiers and other similar metal items. White goods or any portions thereof cannot be placed into the City trash-household waste or recycling cart or placed at curbside for City's collection.

**YARD WASTE** — For the purpose of the City program, means leaves, twigs, grass clippings and other easily raked materials, garden waste, grass and other clippings, weeds, brush and other materials customarily incidental to yard and garden maintenance, and branches not exceeding three inches in diameter by four feet in length to be tied in bundles not to exceed 50 pounds. For the purposes of this chapter, Christmas trees shall be included as yard waste. Yard waste cannot be placed into the City trash or recycling cart.

**YARD WASTE BAG** — Thirty-gallon multiply biodegradable paper bags as specified by the City, the contents of which shall not exceed 50 pounds. Yard waste bags containing yard waste shall not be placed in either of the City carts.

#### **§ 112-4. Separation of recyclables and other material; placement for removal.**

- A. Each homeowner or residential occupant participating in the program will benefit from sorting and preparing all recyclable material, and will separate these materials from the trash.
- B. Recyclables shall be washed and rinsed of residual food products, and separated from the trash. The City will only provide curbside collection of approved recyclables if property placed in the recycling cart.

- C. Approved curbside recyclables shall be placed into the recycling cart and placed at curbside in a manner specified by the hauler (bimonthly), every other week according to schedule, and removed from the curbside of the roadway no earlier than 12 hours before collection day as identified by the Board of Health or 12 hours after collection.
- D. All recycling materials shall be placed in the recycling cart in a manner so as to prevent the scattering or spilling of the materials on the ground. No recycling cart shall exceed 75 pounds in weight. Snowconing and the placement of recyclables in plastic bags are prohibited.

**§ 112-5. Collection of recyclable materials.**

- A. Massachusetts Code of Regulations, 310 CMR 19.017, the Massachusetts Department of Environmental Protection Waste Disposal Ban Regulations, imposes restrictions on the disposal or transfer for disposal of certain recyclable materials. To ensure conformance with the regulations, any person participating in the City curbside program shall participate in the mandatory recycling program.
- B. The City will provide bimonthly (every other week) automated/semiautomated curbside collection for users of the program who are eligible and have a recycling cart, but only for the following recyclable materials: newspaper with inserts, magazines, catalogs, junk mail, office paper, phone books, paperboard, corrugated cardboard, glass bottles/jars, metal food cans, beverage cans, aluminum foil pie pans, milk and juice cartons, and drink boxes, food cans, and plastics Nos. 1 through 7.
- C. The Board of Health may alter, eliminate or add to this list or change the disposal method by regulations duly adopted.
- D. The recycling cart must be placed at the curbside of the roadway (bimonthly) every other week according to the recycling collection schedule in the City curbside collection recycling cart with a securely closed lid by 6:30 a.m. on the scheduled collection day but no earlier than 12 hours before the scheduled collection.
- E. The Board of Health and its agents and the waste/recycling hauler have full authority to reject any cart or container which violates any portion of this chapter or applicable local, state and federal regulations. Any cart rejected will not be eligible for another pickup until the next scheduled collection.
- F. Other recyclable items may be brought to the landfill dropoff area or to other sites designated and approved by the Director of Public Health.

**§ 112-6. Separation and collection of yard waste.**

- A. Each homeowner or residential occupant participating in the program will benefit from sorting and preparing all yard waste material as defined in this chapter, and will separate these materials from the trash and recycling. The only acceptable containers for the accumulation, storage and curbside collection of approved yard waste materials are:
  - (1) Approved biodegradable bags;
  - (2) Barrels or biodegradable cardboard boxes free of trash and other debris.
- B. All yard waste materials shall be packaged in a manner to prevent the scattering of the materials on the ground or on City streets. Materials in approved containers/bags must not exceed 50 pounds in



weight.

- C. Residents may place an unlimited amount of yard waste in approved containers on the date(s) and time(s) of collection as determined by the Director of Public Health.
- D. Yard waste placed in unapproved containers such as plastic nonbiodegradable bags will not be collected and constitutes a violation of this chapter.
- E. Yard waste must not be placed in the City recycling or trash cart.
- F. For the purpose of this chapter, Christmas trees will be considered yard waste and a collection period shall be scheduled by the Board of Health in January of each calendar year.
- G. Brush not exceeding three inches in diameter and four feet in length may be disposed as yard waste. Brush must be tied securely in bundles not exceeding 50 pounds per bundle for pickup at curbside.
- H. Yard waste shall not be disposed of or raked onto and left on any paved street or public right-of-way.
- I. Yard waste may be brought to the landfill compost area or at other sites designated and approved by the Director of Public Health.

**§ 112-7. Collection and disposal of trash-household waste.**

- A. The City will provide weekly automated/semiautomated curbside collection of trash-household waste from only one trash cart from eligible households, unless additional carts are rented from the City. If the user has trash in excess of the capacity of the trash cart(s), the City will not pick it up but the resident may dispose of it by obtaining a landfill permit pass for a fee determined by the Board of Health or by renting additional carts from the City or by engaging a commercial hauler. In any event, the user may not leave excess trash not in trash carts at the property or at curbside.
- B. All trash-household waste inserted into the trash cart must not be loose and must be placed in tied plastic trash bags to prevent littering or scattering of material on the ground or on City streets.
  - (1) The City will not pick up trash unless the trash cart is placed at curbside in a manner specified by the hauler on the designated weekly collection days according to the collection calendar. The City will not pick up trash unless it is placed in a City-issued trash cart. The City will not pick up any of the following:
    - (a) Waste ban items.
    - (b) Sharps and pharmaceuticals.
    - (c) CRTs.
    - (d) Loose litter or trash not in tied plastic bags.
    - (e) Carts weighing more than 75 pounds.
    - (f) Carts with lids incapable of being closed due to snow-coning or any other reason.
    - (g) Alien wastes.
  - (2) The City and its contractor have the right to reject any cart which does not comply with this chapter or if any other condition exists which in the judgment of the Director of Public Health may cause a hazard or nuisance. Any cart rejected during regular collection will not be picked

up by the contractor until the next scheduled collection day.

- (3) Carts will be issued by the City and distributed on a date set by the Director of Public Health.
- (4) Trash-household waste carts for curbside collection must be properly placed at the curb according to the hauler's instructions no earlier than 12 hours before the scheduled collection day. All carts must be removed from curbside within 12 hours after the collection.
- (5) The City may, on an annual basis, conduct household hazardous waste days.
- (6) Property owners of commercial or industrial properties, multifamily dwellings consisting of nine dwelling units or more and condominiums shall be responsible for the proper storage and disposal of all solid waste, including all trash, garbage, trash-household waste, commercial waste, recyclables, yard waste, white goods, construction debris and CRT materials through commercial haulers and are not eligible to participate in the City-sponsored automated and semiautomated curbside collection cart program except as may be provided in § 112-2I of this chapter.

#### **§ 112-8. Bulk items.**

- A. Bulk items will be collected as part of the curbside collection program as a fee-based program. Fees shall be set on an annual basis by the Director of Public Health. Bulk items shall not be placed at curbside for collection unless the owner or resident of a dwelling has contracted with a commercial hauler or has made arrangements with the Board of Health or a permitted individual or company who will properly dispose of these items.
- B. Eligible residents may dispose of bulk items at the Fitchburg/Westminster Sanitary Landfill for a fee as determined by the Board of Health.
- C. Residents may dispose of bulk items at any other site approved by the Board of Health.
- D. Bulk items left at curbside for longer than 24 hours shall constitute a violation of this chapter.

#### **§ 112-9. Exemptions.**

- A. An owner of residential property does not have to participate in the curbside collection cart program and may be exempted from participating as follows:
  - (1) By contracting with a commercial hauler who possesses a City of Fitchburg commercial permit for the removal and disposal of solid waste, trash, recyclable materials, yard waste, white goods and CRT materials. Any property owner seeking this exemption must annually submit to the Director of Public Health a copy of a signed contract from a duly permitted hauler as well as a plan, in writing, of how said materials will be accumulated, stored and removed from the property.
  - (2) The owner may purchase a residential or commercial landfill permit at a cost established by the Board of Health and by personally transporting the solid waste and recyclables to the landfill at the tonnage rate set by the landfill (commercial permit only) or may engage a commercial hauler and/or place a dumpster on the property in a manner consistent with the regulations of the Board of Health and the Department of Public Works.
  - (3) The Board of Health may allow other exemptions on a case-by-case basis in accordance with written policies formally adopted as regulations by the Board of Health and kept on file in its

office and in the office of the City Clerk.

**§ 112-10. Duty to maintain property free of trash.**

- A. Land. The owner of any parcel of land, vacant or otherwise, is responsible for maintaining the parcel of land in a clean and sanitary condition and free from trash, garbage; rubbish, other refuse and recyclable materials. The owner will clean the parcel of such materials if they are placed there from any source and will correct any condition or accumulation of solid waste caused by or on the parcel or its appurtenance by any person.
- B. Dwelling units. The occupant of any dwelling unit shall be responsible for maintaining in a clean and sanitary condition that part of the dwelling which he exclusively occupies or controls and shall keep it free of solid waste, garbage, trash, rubbish, or any filth or potential causes of sickness. The occupant will not place any trash, rubbish, garbage or recyclable materials on the grounds or common areas or dispose of any solid waste except in appropriate, designated sites or locations or at curbside for municipal collection in accordance with any regulations of the Board of Health.
- C. Dwellings containing less than three dwelling units. In a dwelling that contains less than three dwelling units, the occupant is responsible for maintaining in a clean and sanitary condition, free of garbage, rubbish, other filth or causes of sickness, the stairs or stairways leading to his dwelling unit and the landing adjacent to his dwelling unit if the stairs, and stairways or landings not used by another occupant.
- D. Common areas. In any dwelling, the owner shall be responsible for maintaining in a clean and sanitary condition free of garbage, trash, solid waste, rubbish, or filth or potential causes of sickness that part of the dwelling which is used in common by the occupants and which is not occupied or controlled by one occupant exclusively.
- E. Common ways. The owner of any dwelling abutting a private passageway or right-of-way owned or used in common with other dwellings or which the owner or occupants under his control have the right to use is responsible for maintaining in a clean and sanitary condition free of garbage, rubbish, solid waste, trash, filth or potential causes of sickness that part of the passageway or right-of-way which abuts his property and which he or the occupants under his control have the right to use or which he owns.
- F. Storage of garbage, rubbish and recycling. The owner of any dwelling that contains three or more dwelling units, the owner of any rooming house, and the occupant of any other dwelling place shall be responsible for providing as many receptacles for the storage of garbage, rubbish and recycling as are sufficient to contain the accumulation before final collection or ultimate disposal and shall so locate them to be convenient to the tenant that no objectionable odors enter any dwelling.
- G. The occupants of each dwelling, dwelling unit and rooming unit shall be responsible for the placement of this garbage, rubbish and recycling in the receptacles required in 105 CMR 410.600(C) or at the point of collection by the owner.

**§ 112-11. (Reserved)**

**§ 112-12. Enforcement; violations and penalties.**

- A. Any violation of this chapter which creates, or as a result of which there is created, an accumulation of garbage, offal, solid waste, trash, refuse, filth, or recyclable materials or junk either inside or outside any dwelling, or on vacant land, or on or in water, is hereby declared to constitute a nuisance.

- B. Any act or failure to act, whether it violates this chapter or not, which results in an accumulation of garbage, offal, solid waste, trash, refuse, filth, or recyclable materials or junk, either inside or outside any dwelling, or on vacant land, or on or in water is hereby declared to constitute a nuisance.
- C. Whoever violates any provision of this chapter by doing any act or thing which is enjoined or prohibited or failing to do what is required shall, unless other provision is expressly made in this chapter, by statute, or regulation of the Board of Health, be penalized by a fine of \$300 for each offense. Each day any violation of this chapter continues constitutes a separate offense. Any person acting in concert with a person who violates this chapter, including an employer or employee, agent or servant and all other persons participating in the violation will be separately penalized by a fine of \$300 for each offense to the fullest extent permitted by law.
- D. All invoices for the payment of municipal charges, fees and bills, fines or violations under any provision of this chapter or arising in connection with enforcing the ordinance are due and payable within 14 days after they are mailed or delivered unless a different due date is otherwise provided by law or ordinance. Fees for permits are due when the permit is issued. Any invoice remaining unpaid after its due date will accrue interest from the due date at the rate of interest charged on tax bills under the provisions of MGL c. 59, § 57, as the same may from time to time be amended. The fees and charges assessed under this chapter, together with interest thereon and costs relative thereto, shall be a lien upon the real estate as described in MGL c. 40, § 58. The lien shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds and, if a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under MGL c. 59, § 53, the Director of Public Health, or the collector of taxes, shall certify the charge or fee to the assessors, who shall forthwith add the charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax. If the property to which such charge or fee relates is tax exempt, the charge or fee shall be committed as a tax. A lien under this section may be discharged by filing a certificate obtained from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.
- E. The City may collect and enforce the fees and charges imposed hereunder from persons liable therefor by appropriate legal proceedings in connection with any collection and enforcement by the Director of Public Health.
- F. This chapter imposes duties on residents, owners of property and others. Upon the neglect or violation of any duty imposed by this chapter, that duty may be performed by the Board of Health, the Department of Public Works or employees thereof at the expense of the person charged with the duty. The City may recover its expenses, not exceeding the monetary penalty, in a legal action of contract.
- G. The Chief of Police and all police officers or officers empowered to enforce MGL c. 270, §§ 16 and 16A, which regulates the disposal of rubbish, trash and other forms of solid waste, are directed to enforce those sections vigorously in furtherance of the goals of this chapter.
- H. Any persons who violate this chapter, and those persons acting in concert with them, including their employers or employees, agents or servants and all other persons participating in the violation, shall be liable to the penalty prescribed to the fullest extent permitted by law.
- I. Criminal complaint. This chapter may be enforced by a criminal complaint. Whoever violates any provision of the rules and regulations adopted or enforced by the Board of Health of the City of Fitchburg may be penalized by complaint brought in the District Court or Worcester County Housing

Court. Except as otherwise provided by law, the maximum penalty for any such violation of these rules and regulations shall be \$300 for each offense.

J. Noncriminal disposition.

(1) Notwithstanding the provisions of Subsection A, whoever violates any provision of this chapter may, in the discretion of any agent duly appointed and employed by the Board of Health or the Police Department of the City, be penalized by a noncriminal complaint filed in the District Court or the Housing Court pursuant to the provisions of MGL c. 40, § 21D. For purposes of such noncriminal enforcement, the penalty to apply, in the event of a violation, shall be as follows:

- (a) For the first offense: \$50;
- (b) For the second offense: \$100;
- (c) For the third offense: \$200; and
- (d) For the fourth offense and each subsequent offense: \$250.

(2) For purposes of this subsection, an offense shall not be considered a repeat or subsequent offense unless it occurs on or affects the same property as the first offense. Each day on which a violation exists shall be deemed a separate offense.

K. Mandatory recycling education, enforcement and noncriminal disposition.

(1) Notwithstanding the provisions of Subsection A, whoever violates the mandatory recycling provisions, including but not limited to any person exceeding the trash cart limits and not recycling or any person not recycling or recycling improperly, may, in the discretion of any agent duly appointed and employed by the Board of Health or the Police Department of the City, be issued a written warning for the first offense.

(2) Second offense and subsequent offenses can be penalized by a noncriminal complaint filed in the District Court or the Housing Court pursuant to the provisions of MGL c. 40, § 21D. For purposes of such noncriminal enforcement, the penalty to apply, in the event of a violation, shall be as follows:

- (a) Twenty-five dollars, a sticker will be placed on cart, and written violation letter issued for a second offense;
- (b) Fifty dollars, a sticker placed on cart, a photo sent with a written violation letter for the third offense;
- (c) One hundred dollars for the fourth and subsequent offenses.

(3) For purposes of this subsection, an offense shall not be considered a repeat or subsequent offense unless it occurs on or affects the same property as the first offense. Each day on which a violation exists shall be deemed a separate offense.

**§ 112-13. Interpretation.**

A. Each section, each provision or requirement of any section of this chapter shall be considered separable. If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

- B. Nothing in this chapter is intended to, nor shall it be construed to, diminish or limit the powers, authorities and duties of the Board of Health.
- C. It is the intent of the City of Fitchburg acting by and through its legislative and executive branches to prohibit certain behaviors and conduct as set forth in this article consistent with the Constitutions of the United States and the Commonwealth of Massachusetts and the statutory provisions of the Commonwealth of Massachusetts. Any ambiguity or doubt in interpreting or construing any section, word or provision of this chapter shall be resolved in a manner so as to further the expressed intent of this chapter.