

ORDINANCE NO. 295

CONYNGHAM BOROUGH, LUZERNE COUNTY, PENNSYLVANIA

**AN ORDINANCE PROHIBITING THE PLACEMENT OF
WASTE CONTAINERS OR OTHER STORAGE DEVICES UPON ANY
PUBLIC STREET, STREET RIGHT-OF-WAY, OR SIDEWALK IN THE
BOROUGH OF CONYNGHAM , COUNTY OF LUZERNE, AND COMMONWEALTH
OF PENNSYLVANIA**

Section 101. Title. This Ordinance shall be known as the "Conyngham Borough Waste Container Ordinance".

Section 102. Purpose. This Ordinance is being adopted under Section 1202(5) of the Borough Code, 53 P.S. §1202(5), to: (a) maintain the health, safety, morals, general welfare, cleanliness and beauty of the Borough and its residents; (b) prevent dangerous conditions that obstruct sidewalks and streets and create an appearance of disorder and blight; (c) promote the health, safety, and welfare of the community by preventing hazards associated with waste containers; and (d) facilitate pedestrian and vehicular traffic flow by eliminating nuisances that create the appearance of inefficiency and blight.

Section 103. Definitions. The following words, terms, and phrases, when used in this Ordinance, shall be defined as follows, unless the context clearly indicates otherwise:

Borough- means Conyngham Borough, Luzerne County, Pennsylvania.

Cartway- means a portion of a public street or highway improved, designed, or ordinarily used for vehicular travel, including the berm and shoulder.

Code Enforcement Officer- means the person appointed by Conyngham Borough Council to administer and enforce the ordinances of the Borough including this Ordinance.

Hazardous waste- means any garbage, refuse or a combination thereof, as defined in Act 97, which because of its quantity, concentration, or its physical, chemical or infectious characteristics, may: (a) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or total population; or (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Permit-means a permit issued by the Borough authorizing the temporary placement of a waste container in or upon a public street, sidewalk, or public grounds.

Permittee-means a person or legal entity that obtains or is required to obtain a permit under this Ordinance.

Person- includes any person, partnership, firm, association, corporation, or other legal entity.

Police Department-means the Conyngham Borough Police Department, Luzerne County, Pennsylvania.

Sidewalk- means the portion of a street between the curblines, or the lateral lines of a cartway, and the adjacent property lines, intended for use by the public for pedestrian travel. The term includes ADA ramps, crosswalks, curb cuts and drives, driveways, and fire hydrants.

Solid Waste-means any garbage, refuse, industrial lunchroom or office waste and other material, including solid or semisolid material generated in residential, municipal, commercial or institutional establishments and from community activities, and other solid waste which is within the definition of "municipal solid waste" as set forth in the Pennsylvania Solid Waste Management Act of 1980 (See 35 P.S. § 6018.101 et seq.); but excluding any liquid waste or sludge, all wastes which are defined by existing or future federal or state law or regulations as hazardous waste or industrial residual waste, any waste which may be marketable and which is intentionally segregated for purposes of recycling and materials specifically excluded under applicable county ordinances. ACT 97 the Pennsylvania Solid Waste Management Act of 1980, P.S. 380, No. 97, as now or hereafter amended.

Street- includes the entire width between the boundary line of a way publicly maintained when any part is open to the use of the public for purposes of vehicular travel. The term includes any cartway, street, avenue, boulevard, highway, freeway, road, lane, court, cul-de-sac, alley, public way, public square or any other way intended for public vehicular traffic.

Waste Container- means any movable receptacle or dumpster used for the storage or collection of garbage, refuse, trash, debris, junk, or other solid waste materials, and designed to be hoisted onto a specially equipped truck for emptying or hauling away. The term includes any portable device, container or dumpster measured in cubic yards and intended for the storage of waste, garbage, refuse and junk. The term does not include garbage cans or waste receptacle containers that are emptied by hand without the use of a truck or equipment and are the size of a 50 gallon drum or its equivalent.

Section 104. Permit Required. No person, other than agents or employees of the Borough shall place, maintain, or use, or permit to be placed, maintained or used any waste container on public property, including streets or sidewalks in the Borough without first having obtained a permit from the Borough by filing an application with the Borough in a form prescribed by the Borough. Any application fee for obtaining such permit shall be established by resolution of the Borough Council. If the waste container will be located on a street or sidewalk, the placement of the waste container must be approved by the Borough.

Section 105. Permit Application.

A. The permit application is considered complete when all required information is provided on the permit application and any applicable fee is paid. The fee at the time of this Ordinance is \$25.00 per application/waste container, but may be changed from time to time by resolution of Borough Council.

B. The permit must be issued prior to the placement of the waste container by the applicant.

C. All permits issued under Section 104 above shall be valid for a period of thirty (30) days from the date of placement of the waste container. The permittee must notify the Borough prior to delivery and placement of the waste container.

D. Permits issued under Section 104 shall be nontransferable. Permits may be used only by the permittee to whom originally issued for the waste container at the location for which originally issued as stated on the permit application.

Section 106. Placement and Use Regulations for Waste Containers on Streets or Sidewalks.

A. No waste container shall be placed on any portion of a sidewalk in the Borough unless the street is of insufficient width and the applicant has insufficient private property to accommodate the placement of the waste container on the sidewalk and then only provided pedestrian travel could be temporarily rerouted safely and the area where the waste container is located is blocked off with visible caution tape and does not extend into the travel lane of vehicular traffic.

B. The placement of a waste container upon a street shall not extend into the travel lane of traffic.

C. A waste container placed upon a street shall be illuminated with a warning light, light reflector or a reflectorized material on the front and rear surfaces in such a manner as to indicate the height and width of it, and shall be visible for a distance of not less than three hundred (300') feet between the hours of sunset and sunrise.

D. The location and utilization of a waste container upon a street shall not be in a manner which constitutes a safety hazard to persons or property.

E. The location and utilization of a waste container upon a street shall be in compliance with all applicable federal, state and local laws, rules and regulations applicable thereto, including but not limited to any highway occupancy or other permit required by the Pennsylvania Department of Transportation, in addition to the requirements of this Ordinance.

F. The waste container shall be kept at least twenty (20) feet away from any crosswalk and from any intersection and must be placed so it does not block the view of any motorist pulling into a street.

G. The waste container shall be conspicuously marked with the name, address and telephone number of its owner and a copy of the current effective permit shall be visibly attached to it.

H. During all times when the waste container is in place and use, it shall be covered to protect the contents from being visible, displaced or otherwise creating a health or safety hazard. In all instances, the waste container shall, when necessary, be provided with adequate restraints to prevent inadvertent movement from its original location.

I. At all times, including those times when the waste container is not in use, the waste container and its contents must be maintained in a manner to prevent invasion or removal by someone other than its owner or user.

J. When a waste container is full to its capacity, it must be removed within twenty-four (24) hours of that occurrence. A waste container shall be deemed to be filled to capacity when its contents extend above the top edge of any wall of the waste container or beyond the edges of any door, hatch or other opening in the roof or any wall of the waste container. No overflow of any material shall be permitted from the waste container, nor shall any accumulation of any material next to the waste container be permitted.

K. Hazardous waste shall not be stored in a waste container.

L. Each application for a permit under this Ordinance shall be accompanied by a certificate of insurance issued by an insurance company authorized to do business within the Commonwealth of Pennsylvania certifying that the owner of the waste container has insurance which shall not be cancelled except upon fifteen (15) days advance written notice to the Borough. The owner of the waste container shall have comprehensive liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) for property damage and personal injury, combined single limit,

arising out of or in connection with the placement or utilization of a waste container on any street or sidewalk, with the Borough being named as an additional insured on said policy for such purpose.

M. The permittee shall execute an indemnity agreement, in a form acceptable to the Borough, promising to indemnify, save harmless and defend the Borough, its officials, agents, servants, and employees and each of them, against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorneys' fees for or on account of any injury to any person or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the placement or utilization of a waste container on any street or sidewalk.

O. Only one waste container shall be permitted per property when located on a street or sidewalk.

P. If a chute or similar device or object is to be used with a waste container, it must be deemed structurally sound by the Borough, and liability insurance in the same amount and form as set forth in Section 106 (L) above shall be provided.

Q. The permittee shall assume all risk of damage, and the Borough shall not be liable for any damage to the waste container when the Borough is plowing snow, maintaining the street or sidewalks. Should a Snow Emergency be declared by the Borough, permittee shall immediately remove from the waste container from the street.

R. The permittee shall be responsible for all damages to Borough property which may occur as a result of the placement or use of a waste container. If the permittee does not promptly repair any damage after notice to do so from the Borough, the Borough may repair such damage and recover the cost from the permittee.

S. After the waste container has been removed, the permittee shall clean and restore the waste container location to the fullest extent reasonably possible to the condition of that location and its surrounding area as existed prior to placement of the waste container. If the waste container location area is not cleaned and restored within twenty-four (24) hours of removal of the waste container, then Borough shall cause the area to be cleaned and restored and shall recover the total cost of such cleaning and restoration, plus a twenty (20%) percent surcharge on the total amount, from the permittee.

Section 107. Revocation of Permit. Without limitation as to the utilization of any other legal or equitable remedy or action available to the Borough, civil or criminal, noncompliance with any of the requirements or provisions set forth in this Ordinance or any material false statement or omission made in connection with the application for a permit shall be grounds for revocation of the permit by the Borough. The Borough

reserves the right to revoke any permit issued for a waste container if any conditions of approval are not met or maintained by the permittee.

Section 108. Removal of Waste Containers on Streets or Sidewalks. Upon notice of revocation, or upon placement of a waste container without a permit, the permittee shall remove or cause the waste container to be removed within twenty-four (24) hours of notice by the Borough unless the Borough determines that because of health or safety concerns, immediate removal is required which, in that case, the permittee shall immediately remove or cause the waste container to be removed. The Borough may at the expense of the owner or lessee of the waste container or the permittee remove or cause the removal of the waste container when the waste container is not removed after the twenty-four (24) hours-notice and collect the expenses of the removal and storage of the waste container plus twenty (20%) percent as administrative overhead, which amount shall be in addition to any fine or penalty imposed under Section 111 below.

Section 109. Placement and Use Regulations for Waste Containers on Private Property within the Borough.

- A. No permit or fee is required for the placement and use of a waste container on private property within the Borough.
- B. Hazardous waste shall not be stored in a waste container.
- C. The waste container shall be kept at least twenty (20) feet away from any crosswalk and from any intersection and must be placed so it does not block the view of any motorist pulling into a street.
- D. The location and utilization of a waste container shall not be in a manner which constitutes a safety hazard to persons or property.
- E. During all times when the waste container is in place and use, it shall be covered to protect the contents from being visible, displaced or otherwise creating a health or safety hazard. In all instances, the waste container shall, when necessary, be provided with adequate restraints to prevent inadvertent movement from its original location.
- F. At all times, including those times when the waste container is not in use, the waste container and its contents must be maintained in a manner to prevent invasion or removal by someone other than its owner or user.
- G. When a waste container is full to its capacity, it must be removed within twenty-four (24) hours of that occurrence. A waste container shall be deemed to be filled to capacity when its contents extend above the top edge of any wall of the waste container or beyond the edges of any door, hatch or other opening in the roof or any

wall of the waste container. No overflow of any material shall be permitted from the waste container, nor shall any accumulation of any material next to the waste container be permitted.

H. When a waste container is located on private property for the disposal and removal of garbage on a regular basis, the waste container shall be: (1) located in a side or rear yard; (2) screened on all sides; (3) constructed so as to be accessible to garbage trucks; (4) screened with either: (i) a visually solid, tight fence of sufficient height and screened to obstruct the public's view. Screening gates are required to be solid metal and screen the waste container from view when closed. Gates should swing out to an angle greater than ninety (90%) percent and create an opening of sufficient width for trucks to enter the enclosure. Gates should also swing clear of all fire lanes, public streets and sidewalks. OR (ii) A natural wooded buffer or planting strip shall be maintained at a minimum height at the time of planting to obstruct the public's view of the waste container. It is the responsibility of the owner of the property upon which the waste container is located to maintain the wooded buffer or planting strip in perpetuity.

Section 110. Enforcement of Ordinance. The Code Enforcement Officer or a Police Officer shall have authority to enforce this Ordinance.

Section 111. Penalty for Violation. Any person who fails to comply with any of the provisions of this Ordinance shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not less than three hundred (\$300.00) Dollars and no more than One Thousand (\$1,000.00) Dollars plus the costs of prosecution, and, in default of payment of fine and costs, to imprisonment for a term of not more than thirty (30) days. The fine or penalty imposed under this section may be in addition to any costs and additional amounts collectible under Sections 106 and 108 above. Each day that a violation continues shall be deemed a separate offense.

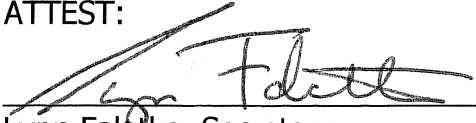
Section 112. Severability. If any section, clause, provisions or portion of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable less the invalid portion.

Section 113. Repealer. All ordinances or parts thereof which are inconsistent with this Ordinance are hereby repealed to the extent of their inconsistencies.

Section 114. Effective Date. This Ordinance shall become effective immediately following its adoption.

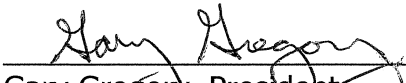
ADOPTED by Conyngham Borough Council, this 18th day of August,
2015.

ATTEST:



Lynn Falatko, Secretary

CONYNGHAM BOROUGH COUNCIL:



Gary Gregory, President

APPROVED BY THE MAYOR:

Mayor