

**CITY OF LYNN**

**Regular City Council Meeting, April 27, 2010  
Council President Timothy Phelan Presiding**

**Eleven Councillors Present.  
Moment of Silence.  
Pledge of Allegiance.**

**Motion made by Councillor Colucci and seconded by Councillor Cyr to accept the Meeting Minutes of April 13, 2010.  
Motion carried.**

**Council President Phelan welcomed the Student Councillors and thanked them on behalf of the Lynn City Council for participating in the city's Student Government Day program.**

**COMMUNICATIONS:**

**Communication from Her Honor the Mayor:**

Dear Councilors:

Please be advised that pursuant to Section 4 of the Ordinance Creating a Residency Compliance Commission in the City of Lynn, I hereby appoint myself, Judith Flanagan Kennedy, to serve as a member of the Residency Compliance Commission. This appointment is effective immediately and will expire on June 30, 2010. Very truly yours,  
Judith Flanagan Kennedy, Mayor

**Motion made by Councillor Trahant and seconded by Councillor Colucci to appoint Judith Flanagan Kennedy to serve as a member of the Residency Compliance Commission, effective immediately and will expire on June 30, 2010.**

**Motion carried by the following ye and nay vote:**

**11 YES 0 NO**

**UNFINISHED BUSINESS:**

**Ordinance Committee Report of April 13, 2010:**

**AN ORDINANCE AMENDING THE ORDINANCE REQUIRING DOOR-TO-DOOR SOLICITORS TO OBTAIN A PERMIT FROM THE CITY COUNCIL OF THE CITY OF LYNN**

Be it Ordained by the City Council of the City of Lynn and by the authority of the same as follows, to wit:-

**SECTION 1:00**

No person, either by himself or by his employees, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house, street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether such person has, carries or exposes for sale, a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, within the corporate limits of the City of Lynn shall do so without first obtaining written permission from the License Committee.

**SECTION 2:00**

No person shall engage in any of the activities set forth in Section One hereof between the hours of 5:00 P.M. and 9:00 a.m. Monday through Saturday. No such activities shall be permitted on a Sunday.

**SECTION 3:00**

A person engaging in the activities as permitted in Section One and Two, must wear a photo identification on their outer clothes so that the same is visible at all times.

**SECTION 4:00**

Any person offending against any of the provisions of this ordinance shall be subject to a fine not exceeding Two Hundred (\$200.00) Dollars for each offense. Any person offending any provision shall be permanently prohibited from soliciting as permitted herein after a second violation.

**SECTION 5:00**

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

**SECTION 6:00**

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

**Motion made by Councillor Cyr and seconded by Councillor Trahant to grant.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

**IN THE YEAR TWO THOUSAND AND TEN AN ORDINANCE PROHIBITING THE  
SALE OF DRUG PARAPHERNALIA IN THE CITY OF LYNN**

**SECTION 1:00**

No person, firm, store or corporation shall sell or offer for sale or distribution drug paraphernalia within the City of Lynn. For purposes of enforcement of this section drug paraphernalia shall be defined pursuant to M.G.L.A c. 94C sec. 1. Drug paraphernalia shall, in addition to the definition under M.G.L.A. c. 94C, sec. 1, also including blunt wrappers and rosebud glass tubes or other non traditional tobacco smoking apparatus.

**SECTION 2:00**

Any loose products, including but not limited to steel wool pads and plastic bags, displayed in a business establishment for sale or distribution, individually, out of the manufacturer's customary packaging, will be considered drug paraphernalia for purposes of section 1:00. In determining whether an object is being sold or offered for sale as drug paraphernalia, the enforcing officer, court and/or reviewing authority should consider all other logically relevant factors.

**SECTION 3:00**

Any person, firm, store or corporation found to be in violation of any provision of this ordinance shall be penalized pursuant to the City's Non-Criminal Disposition for Violations of Ordinances, By-Laws, Rules and Regulations as provided in General Laws, Chapter 40, Section 21 D and subject to a \$300 fine per violation for the second violation or by filing a criminal complaint at the appropriate venue. A violation shall occur for each day that the prohibited items are found to be sold or offered for sale or distribution. All violations shall also be reported to the Committee on Minor Licenses of the City Council. A person, firm, store or corporation found in violation of this Ordinance shall receive one (1) written warning prior to the institution of fines.

**SECTION 4:00**

The Police Department and Department of Inspectional Services shall be the enforcing authority for this ordinance.

**SECTION 5:00**

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

**SECTION 6:00**

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

**Motion made by Councillor Cahill and seconded by Councillor Colucci to grant.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

**Motion made by Councillor Cahill and seconded by Councillor Crighton to suspend the rules to present citations to Health Director Maryann O'Connor, Catherine Dhingra from Girls Inc., Joyce Redford from North Shore Tobacco Coalition, and the youth who assisted in researching and drafting the city's paraphernalia ordinance.**

## **COMMITTEE REPORTS:**

### **Report of the April 27, 2010 Committee on Ways and Means recommending the following to be accepted:**

A Resolution to file and accept grants with and from the Commonwealth of Massachusetts, Executive Office of Energy Affairs for the land and water conservation fund program for multi-park court restoration improvements.

**(Lays over to May 11, 2010).**

**Motion to refer Student Council Orders to full Council.**

**Motion carried.**

**REPORT ACCEPTED.**

### **Report of the April 27, 2010 Committee on Ordinance recommending the following to be accepted:**

1. **A Proposed Ordinance Amending the Zone Ordinance of the City of Lynn (Home Occupations) (Tabled 3/23/10). – Motion to set down for Public Hearing.**  
**REPORT ACCEPTED.**

### **Report of the April 27, 2010 Committee on Public Safety recommending the following to be accepted:**

The following individuals were approved as Constables:

Henry Bornstein, 5 Rockingham Street, Lynn - **Granted**

Nicholas Reisopoulos, 19 Melvin Avenue, Lynn – **Granted**

#### **OTHER BUSINESS:**

**Motion that effective immediately, all Constables must return 25% of their profits to the City of Lynn.**

**Motion carried.**

**REPORT ACCEPTED.**

### **Report of the April 27, 2010 Committee on Minor Licenses recommending the following to be accepted:**

#### **TAXI OPERATORS (NEW)**

Cruz, Miguel, 99 Tremont St. - **Granted**

Hodgdon, Christopher A. 8 Summer St. Pl. #2 – **Granted w/30-60-90 Review**

Livingston, David, 42 W. Baltimore St.-30 Day review - **Granted**

Marroquin, Luis, 124 Essex St. - **Tabled**

Ruiz, Melvin, 12 Border St. B1 – **Granted w/30-60-90 Review**

**LIVERY OPERATOR (NEW)**

Santiago, Anthony, 33 Harwood St.-30 day review - **Granted**

Santiago, Luis, 16 Vine Ave. Winthrop-30 day review - **Granted**

**LIVERY SERVICE (NEW)**

Green Pastures Transportation LLC. 33 Harwood St. 30 day review - **Granted**

**OLD GOLD & SILVER (NEW)**

136 Boston Street, Three G. Rentals, Inc. d/b/a Colortyme - **Granted**

**SIGN LICENSE – RENEW**

122 Boston Street, Lynn Shell - **Granted**

336 Broadway, Wyoma Liquor Store- **Granted**

317 Chestnut Street, La Casa del Chimi- **Granted**

141-143 Eastern Ave., Monte's Inc. - **Granted**

50 Essex Street, Beijing Rest. - **Granted**

535-545 Lynnway, Lynnway Shell- **Granted**

28 Oakville Street., No. Suburban Steel- **Granted**

118 So. Common Street, Cibao Market- **Granted**

1 Union Street, Kennedy Fried Chicken- **Granted**

101 Western Avenue, Greg Rogers, Co. - **Granted**

**FLAMMABLE LICENSE, (RENEWAL)**

154 Lynnway, City of Lynn Seaport Marina- **Granted**

154 Pleasant St., C. Bain, Inc. - **Granted**

766 Summer St., Booma Oil, Inc. - **Granted**

**AUTO REPAIR, FLAMMABLE, (RENEWAL)**

17A Alley St., ARM Garage- **Granted**

182 Alley St., Tom's Taxi Garage- **Granted**

87 Bennett St., West Lynn Auto Service, Inc. - **Granted**

805 Boston St., A.G. Inc. dba Town Line Service- **Granted**

99R Cottage St., Mark A. King, LLC- **Granted**

119 Essex St., Jerry Auto Care, Inc. - **Tabled**

205 Market St., Goodyear Tire Co. - **Granted**

**CANNING:**

Challenger Little League (Adults Only) – June 10-12, 2010- **Granted**

**OTHER BUSINESS:**

**REPORT ACCEPTED.**

**Report of the April 27, 2010 Committee on Public Property recommending the following to be accepted:**

**Bid Opening: 176 Franklin Street / 182-186 Franklin Street**

Chairman Colucci stated that three (3) bids were received:

\$75,000.00 – LynnCam, James Chalmers, Sect., LynnCam TV, 72 Keslar Avenue, Lynn, MA.

Proposed Use: LynnCam TV proposes the purchase to relocate and create professional, retail and commercial office space after a complete renovation. Bid Deposit of \$7,500.00.

\$84,900.00 – Patrick J. McGrath, 20 Heaths Court, Suite #1, Lynn, MA 01905.

Proposed Use: Demolish existing structure and construct residential duplex units with possibility of purchasing adjacent parcel. Bid Deposit of \$8,490.00.

\$151,000.00 – Paramount Development, Inc., 1 Laurel Street, Salem, MA 01970

Proposed Use: Medical Office Building with three (3) office suites per floor – Convertible to fewer, larger offices on each floor. Bid Deposit of \$15,100.00.

**Ordered that the city-owned property at 176 Franklin Street / 182-186 Franklin Street be awarded to Paramount Development, Inc., 1 Laurel Street, Salem, MA in the amount of \$151,000.00 and to return all bid deposits to the unsuccessful bidders. – (Lays over to May 11, 2010).**

**OTHER BUSINESS**

Request from James Marsh, City of Lynn Auditorium requesting to hang a banner through May 30, 2010 on Union Street regarding their upcoming Gilberto Santa Rosa show. – **Granted**

**REPORT ACCEPTED.**

**Report of the April 27, 2010 Committee on Finance recommending the following to be accepted:**

Ordered that the City Comptroller be and is hereby authorized to appropriate One Million One and Fifty Five Thousand Eight Hundred Fifty Two (\$1,155,852.00) Dollars, as allotted to the City of Lynn by Transportation Bond Bill, Chapter 291D of the Acts of 2006, as an available fund. – **(Lays over to May 11, 2010)**

Ordered that the City Comptroller be and is hereby authorized to make the following appropriation transfers:

From the Account of Fire Department Expense:  
 To the Account of Unpaid Bills of Prior Years (Fire): \$1,264.38

**(Lays over to May 11, 2010)**

From the Account of Reserve Fund:  
 To the Account of Information Technology Expense: \$23,500.00

**(Lays over to May 11, 2010)**

From the Account of Mayor’s Staff Payroll:  
 To the Account of Incidental Expense: \$49,112.00

**(Lays over to May 11, 2010)**

Ordered that the City Comptroller be and is hereby authorized to make the following appropriation transfers:

From the Account of Reserve Fund:  
 To the Account of Veterans Benefits: \$80,000.00

**Councillor Colucci attached the following Emergency Preamble:**

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

**WHEREAS, An Emergency relative to a financial transfer from the Account of Reserve Fund to the Account of Veterans Benefits in the amount of \$80,000.00.**

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

**Emergency Preamble was adopted by the following ye and nay vote:**

**11 YES 0 NO**

**Emergency Order was then adopted by the following ye and nay vote:**

**11 YES 0 NO**

Ordered that the City Comptroller is hereby authorized to make the following appropriation from the account of Excess Worker's Compensation Settlements Account: \$240,000.00 and ISD Payroll: \$75,000.00, the total sum of THREE HUNDRED FIFTEEN THOUSAND DOLLARS AND ZERO CENTS to the Worker's Compensation Employee Benefits Expense Account: \$275,000.00 and Unemployment Benefits: \$40,000.00

**Councillor Cyr attached the following Emergency Preamble:**

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

**WHEREAS, An Emergency relative to an Order that the City Comptroller is hereby authorized to make the following appropriation from the account of Excess Worker's Compensation Settlements Account: \$240,000.00 and ISD Payroll: \$75,000.00, the total sum of THREE HUNDRED FIFTEEN THOUSAND DOLLARS AND ZERO CENTS to the Worker's Compensation Employee Benefits Expense Account: \$275,000.00 and Unemployment Benefits: \$40,000.00**

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

**Emergency Preamble was adopted by the following ye and nay vote:**

**10 YES 0 NO**

**Emergency Order was then adopted by the following ye and nay vote:**

**10 YES 0 NO**

**REPORT ACCEPTED.**

### **NEW BUSINESS:**

Ordered that the City of Lynn hereby adopts and accepts the provisions of M.G.L. c. 40U for the purposes of placing liens on properties of owners who fail to pay municipal fines. The City of Lynn shall assess an additional ten (\$10.00) dollar penalty on any fine which remains unpaid and unappealed at the expiration of twenty-one (21) days following the issuance of the citation. Any fine which remains unpaid for thirty (30) days after the

second notice as required by Chapter 40U shall be subject to an additional penalty of twenty-five (\$25.00) dollars. No liens shall be filed at the Essex County Registry of Deeds unless the total amount owed in fines exceeds five hundred (\$500.00) dollars or the City of Lynn has reason to believe that ownership in the property may be transferred.

**Councillor Cyr attached the following Emergency Preamble:**

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

**WHEREAS, An Emergency relative to an Order that the City of Lynn hereby adopts and accepts the provisions of M.G.L. c. 40U for the purposes of placing liens on properties of owners who fail to pay municipal fines. The City of Lynn shall assess an additional ten (\$10.00) dollar penalty on any fine which remains unpaid and unappealed at the expiration of twenty-one (21) days following the issuance of the citation. Any fine which remains unpaid for thirty (30) days after the second notice as required by Chapter 40U shall be subject to an additional penalty of twenty-five (\$25.00) dollars. No liens shall be filed at the Essex County Registry of Deeds unless the total amount owed in fines exceeds five hundred (\$500.00) dollars or the City of Lynn has reason to believe that ownership in the property may be transferred.**

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

**Emergency Preamble was adopted by the following yea and nay vote:**

**11 YES 0 NO**

**Emergency Order was then adopted by the following yea and nay vote:**

**11 YES 0 NO**

Ordered that the City of Lynn hereby adopts and accepts the provisions of M.G.L., C. 40, §. The law allows the City of Lynn to establish a "Disability Commission" with members appointed by the Mayor. The purpose of this Commission is to provide municipal officials and employees assistance, guidance and to make recommendations to improve any issue within the City that may negatively impact people with disabilities.

**Councillor Colucci attached the following Emergency Preamble:**

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

**WHEREAS, An Emergency relative to an Order that the City of Lynn hereby adopts and accepts the provisions of M.G.L., C. 40, §. The law allows the City of Lynn to establish a "Disability Commission" with members appointed by the Mayor. The purpose of this Commission is to provide municipal officials and employees assistance, guidance and to make recommendations to improve any issue within the City that may negatively impact people with disabilities.**

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

**Emergency Preamble was adopted by the following yea and nay vote:**

**11 YES 0 NO**

**Emergency Order was then adopted by the following yea and nay vote:**

**11 YES 0 NO**

**Motion made by Councillor Capano and seconded by Councillor Crowley to remove from the table the Ordinance Requiring Rental Property Owners to Evict Tenants Engaged in Certain Illegal Activities on the Premises.  
Motion carried.**

**IN THE YEAR TWO THOUSAND AND TEN AN ORDINANCE REQUIRING RENTAL  
PROPERTY OWNERS TO EVICT TENANTS ENGAGED IN CERTAIN ILLEGAL  
ACTIVITIES ON THE PREMISES**

WHEREAS, the City of Lynn has experienced problems with drug, violence, and weapons related criminal activity occurring on residential and commercial rental properties;

WHEREAS, these illegal activities jeopardize the health, safety, and welfare of other occupants of the rental property and the surrounding community;

WHEREAS, persons dealing illegal drugs make use of their residences to further their illegal drug activities by, among other things: making drug deals on the premises from contacts made off-premises, keeping illegal drugs on the premises for sale off-premises, making contacts on the premises with potential buyers and suppliers for sales concluded off-premises, keeping profits on the premises from off-premises from illegal drug sales, keeping on the premises weapons and other equipment used for off-premises drug activities;

WHEREAS, persons engaging in off-premises illegal drug activities within a close proximity to their residences are highly likely to use their residences to further their drug activity;

WHEREAS, persons engaging in off-premises illegal drug activity within a close proximity to their residences represent a danger to the health, safety, and welfare of other occupants at the rental property where they reside;

WHEREAS, rental property owners have an obligation to keep their rental properties safe for all tenants and their visitors and to keep the rental properties free of nuisances:

WHEREAS, rental property owners have an obligation to remove tenants engaging in illegal activity that jeopardizes the health, safety, and welfare of other tenants and the surrounding community;

WHEREAS, the City Council believes that requiring rental property owners to evict tenants engaged in illegal activity on the premises will assist in removing nuisances from rental properties, and owners who refuse to do either should be subject to citation, civil penalties, and other penalties or legal actions for failing to abate the nuisance of tenants engaging in illegal activities;

WHEREAS, the City Council desires a targeted approach to removing persons using rental units or the premises for illegal activities and therefore wishes to authorize "partial evictions" that remove from the premises only the person engaging in the illegal activities;

WHEREAS, the City Council wants the nuisance eviction program to be as self-sufficient as possible for several reasons: (1) the City has diminished resources to pay for such activities, (2) the property owners who permit the activities on their property should pay for the program rather than the taxpayers as a whole and the additional costs might encourage property owners to be more diligent in their property management and avoid renting or continuing to rent to persons engaged in illegal activities;

WHEREAS, the fees, assessments of costs, and penalties provided for in this ordinance are based not on the ownership of rental property, but instead are based on the operation of a business renting commercial or residential property and the management of that property;

## **SECTION 1                    DEFINITIONS.**

For the purposes of this Ordinance, the following definitions apply:

1.    **COMMERCIAL RENTAL UNIT.** Any Rental Unit that is rented or offered for rent for commercial, not residential use.
2.    **CONTROLLED SUBSTANCE.** A drug, substance, or immediate precursor, as identified in the Controlled Substance Act, M.G.L. c. 94C.
3.    **DRUG-RELATED NUISANCE.** Any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of weapons, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if the activity occurs within such proximity to the premises that the Tenant's activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the Tenant likely uses the premises to further the drug sale activity.
4.    **ILLEGAL POSSESSION SALE, OR USE OF WEAPON.** Illegal possession by anyone occupying a Rental Unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the weapon in an illegal manner. The term "weapon" shall include but is not limited to so called "BB guns", air guns, paint ball guns, or any pistol, revolver, rifle, or

smoothbore arm from which a shot or pellet can be discharged by any means; any electrical weapon or any exploding object, device or firework. Unlawful use of any bat, billy-club any sharp edged weapon or cutting instrument regardless of the blade length or similar objects shall also be governed by this Ordinance.

5. **OWNER.** An owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any Rental Unit, or the agent, representative including a property manager, or successor of any of the foregoing.
6. **PREMISES.** The Rental Unit and the land on which it and other buildings of the rental complex are located and common areas, including but not limited to, parking facilities, streets, alleyways, laundry, stairwells, yard, roofs, and elevators.
7. **RENTAL UNIT.** A Residential Rental Unit or Commercial Rental Unit irrespective of whether the unit, buildings, or Premises are properly permitted or zoned for the particular use.
8. **RESIDENTIAL RENTAL UNIT.** All dwelling units, efficiency dwelling units, guest rooms, and suites, including one-family dwellings, multi-family dwellings, rooming houses, dormitories, live-work units, units in a hotel occupied by Tenants (and not by transients), and condominiums rented or offered for rent for living or dwelling purposes in the City of Lynn. This term also includes mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or the rent is paid for the land alone.
9. **TENANT.** A tenant, subtenant, lessee, sublessee, any person entitled to use, possession, or occupancy of a rental unit, or any other person residing in the Rental Unit.
10. **THREAT OF VIOLENT CRIME.** Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on or resides on the Premises or to the Owner of the Premises, or his/her agent, threatening commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this Section does not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family"

means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, computers or pagers.

11. **VIOLENT CRIME.** Any crime involving a gun, a weapon, or serious bodily injury and for which a police report has been completed. A violent crime under this Section does not include a crime that is committed against a person residing in the same Rental Unit as the person committing the crime.

## **SECTION 2. INCORPORATION OF EVICTION FOR ILLEGAL ACTIVITY INTO ALL RENTAL AGREEMENTS.**

1. All agreements for the rental of real property in the City of Lynn, whether for residential or commercial purposes, are deemed to include a prohibition against using the Rental Unit and the Premises for illegal activity, or committing or permitting the Rental Unit or the Premises to be used for an illegal act thereon. Such illegal acts include, but are not limited to, the following illegal activity: Drug-Related Nuisance, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime. A Tenant who violates this prohibition is subject to eviction pursuant to this Ordinance.

## **SECTION 3. DUTY OF OWNER TO NOT PERMIT OR MAINTAIN TENANT NUISANCE.**

1. For purposes of this Ordinance, an Owner who causes or permits either of the following is deemed to be creating, permitting, or maintaining a nuisance:
  - a. The Premises to be used or maintained for any Drug-Related Nuisance, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime; or
  - b. A Tenant to use or occupy the Premises if the Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime.

2. As part of a compliance plan after being cited for maintaining a nuisance, or by direct notice from the City to evict a Tenant, an Owner may be required to evict a Tenant who is creating nuisance by causing or permitting illegal activity on the Premises.

3. Information to Tenants. Owners are required to give notice to all Tenants at the commencement of their tenancies relative to the provisions of this Ordinance. The notice must include information to the effect that a Tenant who commits an illegal act on the Premises, as set out in this Ordinance, is required to be evicted. The City Solicitor shall modify the required notice to include any required additional language.

4. The illegal activities described in this Section are not exclusive of the activities or conduct that a Tenant may engage in and be subject to eviction pursuant to this Ordinance or under state law provisions providing for eviction for engaging in illegal activity on the Premises.

#### **SECTION 4. EVICTION OF OFFENDING TENANT.**

1. A Tenant who commits, permits, maintains, or is involved in any Drug-Related Nuisance, Illegal Possession or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides is deemed to be using the Rental Unit for an Illegal purpose pursuant to this Ordinance. Under this Section, "permit" includes allowing a guest,

visitor, or licensee to commit an illegal act on the Premises or use the Premises for the illegal purpose.

2. An Owner may bring an action to recover possession of a Rental Unit on one of the following grounds, which action may be brought under this Ordinance under any appropriate contract or state law provision pertaining to termination of tenancy:

a. The Tenant commits, permits, maintains, or is involved in any Drug-Related Nuisance, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises, or

b. The Tenant has been convicted of a crime and the underlying offense involves any Drug-Related Nuisance, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime, and the crime occurred on the Premises where the Tenant resides or involves the use of the Premises.

#### **SECTION 5. NOTIFICATION BY THE CITY TO REMOVE TENANT.**

1. Evaluation Of Facts And Evidence By City.

a. The Chief of the Lynn Police Department, or his/her designee, is authorized to gather facts and evidence to evaluate whether a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Illegal Possession, Sale, or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides. Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, persons within the community, law enforcement agencies, or prosecution agencies. The Chief of Police's evaluation of whether a tenant is engaged in illegal conduct is to be based on whether the Owner could prevail in a summary process proceeding against the Tenant based on a preponderance of the evidence that the Tenant is engaged in the illegal activities and that eviction under such grounds is permissible under this Ordinance and applicable state law; a Tenant need not be arrested, cited, or convicted of the conduct to justify removing the Tenant from the Rental Unit. Based on such evaluation, the Chief of Police, or

his/her designee, may determine if the Owner of the Premises where the Tenant resides should be required to seek the eviction of the Tenant. In conducting his/her evaluation, the Chief of Police and/or his/her designee shall consider that an eviction may only proceed for just or good cause and cannot be based on inadmissible hearsay.

b. The City's evaluation should not be based on any information regarding the Tenant's alleged illegal activities that the City is not willing or able to release to the Owner and the Tenant. Such information includes, but is not limited to, any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

2. Notice by City to Owner and Tenant.

a. When the Chief of Police or his/her designee determines that a Tenant committed, permitted, maintained, or was involved in any Drug-Related Nuisance, Illegal Possession, Sale or Use of Weapon, Violent Crime, or Threat of Violent Crime on the Premises where the Tenant resides, the City Solicitor will give the Owner written notice, requiring the Owner to file an action for the removal of the Tenants in the unit within 45 days of the date of mailing the notice. If the Owner fails to file the summary process action within the 45 days, the City make take further action against the Owner for maintenance of a nuisance, including the assessment of Civil Penalties pursuant to Section 9.

b. This notice to the Owner to remove a Tenant shall include a summary of the factual basis for requiring the eviction of the Tenant and the availability of documentary evidence supporting the eviction.

c. The City shall serve the notice on the Owner and the Tenant by certified mail, return receipt requested and first class mail. Failure of the Tenant to receive or accept the notice does not preclude the City from requiring the Owner to remove the Tenant. As an accommodation, the City should attempt to notify all Owners who appear in the records of the Assessor's Office and Essex County Registry of Deeds; however, notice to any Owner of record is deemed sufficient notice. Also as an accommodation, the City should also attempt to provide notice to agents of the Owner responsible for managing the subject Premises, if known to the City.

d. Within 45 days of the City's mailing the written notice to remove a Tenant to the Owner, the Owner must respond to the notice in one of the following ways:

i. Provide the City with all relevant information pertaining to the summary process case the Owner has filed or a statement that the Tenant has completely vacated and surrendered the Rental Unit.

ii. Request the City review whether there is sufficient evidence for the Owner to prevail in a summary process hearing and whether the Owner should be required to evict the Tenant. In order to have the City review its decision to issue the notice to the Owner, the Owner must state with specificity why the Owner believes the evidence is insufficient to prevail in a summary process hearing. The City Solicitor shall revoke a notice to remove where there exists insufficient evidence to prevail in a summary process action.

iii. Request the City review whether a settlement evicting only the offending Tenant or leaving a minor offending Tenant in place is possible. The Owner must state with specificity the reasons for the request for settlement.

e. If the Owner requests the City to reconsider the notice or settlement in advance of the Owner filing the summary process, the City Solicitor will notify the Owner of acceptance or rejection of these Owner's requests within 15 days or within such later time as is reasonably practicable after receipt of the Owner's response to the notice.

f. If the City Solicitor rejects either reconsideration of the notice or settlement, the Owner must file the summary process action within 15 days of the date of the City Solicitor's mailing of the rejection of the request. The Owner must also report all relevant information pertaining to the summary process case to the City within the 15 days following the City's rejection of any request.

g. If an Owner fails to take the action to commence a summary process action within the time frames required by this Subsection or fails to submit a report or request to the City within the required time frames, the City may take further action against the Owner for maintenance of a nuisance, including, but not limited to, the assessment of Civil Penalties described in Section 9.

h. An Owner who makes a request for the City to accept assignment, reconsider the notice, or settle a potential summary process action without reasonable justification, in bad faith, or to delay commencing a summary process action, shall be assessed a Civil Penalty as described in Section 9.

3. Availability of Information to Owner and Tenant. The City will make available to the Owner and the Tenant the evidence the City relied on in making its determination that the Tenant should be evicted. The Owner and Tenant must make a written request for the information. The City has the goal of releasing the evidence to the Owner and Tenant within 5 days of receipt of the written request. If the City is not able to release the evidence within the 5 days, the Owner's time for responding to the notice is extended by one day for each day beyond the 5 days. The City will not provide the Owner and Tenant any information the City may have uncovered during its investigation that it would not release to a crime victim including, but not

limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal and/or state law that requires withholding or redacting certain information.

4. Contents of Notice to Tenant. The Notice to the Tenant requiring the Tenant's eviction must include, among other things, a statement where general information concerning evictions is available and the possibility of settlement of the eviction where the offending Tenant is removed or where a minor is the offending Tenant.

5. Within 10 days of the Tenant vacating and surrendering the Rental Unit or the final judgment in a summary process action, the Owner must report the results to the City. At any time after the City issues a notice to remove a tenant to an Owner, the City may request a report on the status of the Tenant's removal.

**SECTION 6. SETTLEMENT OF SUMMARY PROCESS HEARING BY REMOVING OFFENDING PERSON OR WHERE THE OFFENDER IS A MINOR.**

1. The Owner or the City Solicitor may settle a summary process action brought under this Section by removing only the offending Tenant and avoiding the eviction of all persons occupying the unit where the person alleged to be committing the nuisance or illegal activity resides. Such settlement must be approved by the City Solicitor under the following conditions:

a. The person determined by the City who committed the nuisance or illegal activity is excluded from the Rental Unit by Court order;

b. The remaining Tenants stipulate to a judgment in a summary process hearing against them should they permit the excluded person to return to the Rental Unit without first obtaining the permission of the Owner and the Chief of Police; and

c. The remaining Tenants agree to amend their rental agreement with the Owner to include a provision prohibiting the return of the former Tenant who engaged in the illegal activity for a period of at least three years after the execution of this settlement agreement, and that the return of such Tenant constitutes a breach of a material term of the tenancy and good cause for eviction.

2. When the offending Tenant is an unemancipated minor residing in a Rental Unit with the minor's parent or guardian, the Owner may settle a summary process action brought under this Section by permitting the minor and all other occupants to remain in the Rental Unit. Such settlement must be

approved by the Chief of Police under the following condition, unless the Chief of Police finds good cause for different terms:

a. The minor's parent(s) or guardian(s) residing in the Rental Unit stipulate to a judgment in a summary process hearing against them should the minor engage in any other illegal conduct covered under this Section; and

b. The minor's parent(s) or guardian(s) residing in the Rental Unit agree to amend their rental agreement with the Owner to include a provision that includes the following:

i. Any additional illegal conduct, as set out in this Section that the minor Tenant engages in anytime within at least three years following the execution of the settlement agreement constitutes a substantial breach of a material term of the tenancy and also constitutes illegal use of the premises pursuant to this Ordinance and good cause for eviction under either of the aforementioned sections.

3. Either the Owner or the Tenant may request the City to consider settling the eviction either before or after the summary process is filed. The notice to the Tenant that the City is requiring the Tenant's removal will include information on settling the matter pursuant to this Subsection.

**SECTION 7. TENANT REMOVED FROM RENTAL UNIT CANNOT RETURN FOR THREE YEARS.**

1. An Owner may not re-rent to or permit a Tenant who was removed from a Rental Unit pursuant to this Ordinance to reoccupy any Rental Unit in the City of Lynn owned by the Owner for a period of at least three years following the Tenant's vacating the Rental Unit, without first obtaining the approval of the Chief of Police and/or his/her designee.

2. For purposes of this Section, a Tenant is removed from a Rental Unit when the Tenant vacates the Unit either voluntarily after the City has sent a notice to the Owner to seek the Tenant's removal or after a court order evicting the Tenant.

3. An Owner who permits a removed Tenant to occupy a Rental Unit owned by the Owner within three years following the Tenant's removal is subject to remedies by the City as if the Owner had failed to prosecute a summary process action against the Tenant.

4. A Tenant who re-rents from the same Owner within three years after being removed from a Rental Unit owned by the Owner is subject to being evicted under this Section and may be subject to any remedies for nuisance available to the City, including, but not limited to, assessment of civil penalties pursuant to Section 9.

**SECTION 8. CITY REMEDIES FOR OWNER FAILURE TO PROSECUTE SUMMARY PROCESS HEARING OR FOR REPEATED ISSUANCES OF NOTICES TO REMOVE TENANTS.**

3. Upon the failure of the Owner to file a summary process action or to respond to the City Attorney after notice, and/or after having filed an action, if the Owner fails to prosecute the summary process hearing diligently and in good faith, the City of Lynn shall assess a fine of three hundred (\$300.00) dollars per day, with each day constituting a separate offense.

**SECTION 9. PARTIAL INVALIDITY.**

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provisions or applications, and to this end, the provisions and applications of this Ordinance are severable.

**SECTION 10. REPEAL OF INCONSISTENT ORDINANCES.**

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

**SECTION 11. EFFECTIVE DATE.**

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

**Motion made by Councillor Capano and seconded by Councillor Crowley to grant.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

**STUDENT GOVERNMENT AGENDA FOR THE WAYS AND MEANS COMMITTEE  
TUESDAY, APRIL 27, 2010  
COUNCIL ORDERS, RECOMMENDATIONS & REQUESTS  
7:45 P.M.-ROOM 402**

**Council Orders:**

1. Councilor Deleon: Recommends that the Director of the Park and Recreation Program work in conjunction with the Director of Economic and Community Development to sponsor a youth night at the High Rock Observation Tower. (DUFFY)

**Motion made by Councillor Deleon to grant.**

**Motion carried by the following yea and nay vote:**

**6 YES 5 NO (Councillors Carter, Roeung, Field, Lim and Sperouplous voting NO).**

2. Councilor Carritte: Recommends that the Solicitor's Office look into the feasibility of amending the most current version of the City Charter and ordinances to remove all gender specific language and replace with gender inclusive (gender neutral) language. (CAHILL)

**Motion made by Councillor Carritte to grant.**

**Motion FAILED by the following yea and nay vote:**

**5 YES 6 NO (Councillors Lopez, Carter, Cyr, Faieta, Johnson, Speropoulos voting NO).**

3. Councilor Speropolous: Requests the City Solicitor's Office and Chief of Police research the feasibility of converting the property formally know as Raffie's into a police substation. (CAPANO)

**Motion made by Councillor Speropolous to grant.**

**Motion carried by the following yea and nay vote:**

**6 YES 5 NO (Councillors Carritte, Carter, Cyr, Roeung and Johnson voting NO).**

4. Councilor Roeung: Ordered that any pit-bull terriers located within the City of Lynn on any public way, park, woods, school grounds, or having access to thereof, whether on a leash or not, is required to have a muzzle preventing said animal from having the ability to use its jaws for anything other than breathing. (PHELAN)  
Motion made by Councillor Roeung to grant.

**Motion FAILED by the following yea and nay vote:**

**4 YES 7 NO (Councillors Lopez, Carter, Faieta, Field, Johnson, Lim and Speropolous voting NO).**

5. Councilor Lim: Recommends that the Department of Public Works be requested to install basketball hoops at the Strawberry Playground. (CRIGHTON)

**Motion made by Councillor Lim to grant.**

**Motion carried by the following yea and nay vote:**

**7 YES 4 NO (Councillors Carritte, Carter, Faieta, Speropolous voting NO).**

6. Councilor Carter: Recommends that the city create an "Anti-Bullying Task Force" with representatives from the Lynn Police Department, Lynn School Department, Lynn School Committee, Principals, City Officials, Parents and Students to develop an "Anti-Bullying Program" to be conducted in all Lynn Schools. (TRAHANT)

**Motion made by Councillor Carter to grant.**

**Motion carried by the following yea and nay vote:**

**7 YES 4 NO (Councillors Carritte, Faieta, Johnson and Speropolous voting NO).**

7. Councilor Cyr: Recommends variety stores or grocery stores selling lottery tickets, cigarettes, candy, ice cream that is carried out of the premises has to provide a barrel with a lid so customers can dispose of trash properly. (CYR)

**Motion made by Councillor Cyr to grant.**

**Motion carried by the following yea and nay vote:**

**8 YES 3 NO (Councillors Lopez, Faieta and Speropolous voting NO).**

8. Councilor Faieta: Recommends that the Lynn School Department include community Service as part of the school curriculum. (CROWLEY)

**Motion made by Councillor Faieta to grant.**

**Motion carried by the following yea and nay vote:**

**6 YES 5 NO (Councillors Roeung, Field, Johnson, Lim and Speropolous voting NO).**

9. Councilor Johnson: Recommends that the Parks and Recreation Department host a citywide concert at Frasier Field featuring local bands and singers with a \$5.00 charge to offset police detail costs. (FORD)

**Motion made by Councillor Johnson to grant.**

**Motion carried by the following yea and nay vote:**

**11 YES 0 NO**

10. Councilor Lopez: Requests the Lynn School Committee to look into the feasibility of allowing students to leave the school grounds during lunch period.  
(COLUCCI)

**Motion made by Councillor Lopez to grant.**

**Motion FAILED by the following yea and nay vote:**

**4 YES 7 NO (Councillors Carritte, Carter, Cyr, Deleon, Faieta, Johnson and Speropolous voting NO).**

11. Councilor Field: Resolution that the City of Lynn meet the Commonwealth criteria to be considered a green community under the Green Community Act, Chapter 169 of the Acts of 2008.  
(LOZZI)

**Motion made by Councillor Field to grant.**

**Motion carried by the following yea and nay vote:**

**9 YES 2 NO (Councillors Carritte and Carter voting NO).**

**REPORT ACCEPTED.**

**Motion made by Councillor Colucci and seconded by Councillor Crowley to adjourn.**

**Notice of this meeting was posted in the City Clerk's Office at least forty-eight (48) hours in advance.**

**A True Copy Attest:**

**CITY CLERK**