

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2577CV00758 A

CITY OF BEVERLY<sup>1</sup> & others<sup>2</sup>

vs.

623 LANDELL, INC.<sup>3</sup> & others<sup>4</sup>

**MEMORANDUM OF ORDER AND DECISION ON  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

The plaintiffs are six municipalities of the Commonwealth (collectively, the “Municipalities”) that have executed contracts with the defendants (collectively, “Republic”) for weekly residential curbside recycling and trash collection to be completed through at least June 30, 2026. Their one-count Verified Complaint for injunctive relief alleges that, beginning on July 1, 2025, Republic stopped collecting recycling and has provided only intermittent trash collection in the Municipalities. The matter is now before the court on the Municipalities’ motion for preliminary injunction (Paper No. 4) (the “Motion”). Following a hearing on July 22, 2025, for the reasons outlined below, the Motion will be **DENIED** without prejudice.

<sup>1</sup> Acting on authority from its Director of Public Health

<sup>2</sup> City of Malden, acting on authority from its Director of Public Health; City of Gloucester, acting on authority from its Director of Public Health; City of Peabody, acting on authority from its Director of Health and Human Services; Town of Danvers, acting on authority from its Director of Public Health; and Town of Canton, acting on authority from its Director of Public Health

<sup>3</sup> An indirect and wholly-owned subsidiary of Republic Services, Inc.

<sup>4</sup> Allied Waste Services of Massachusetts, LLC, d/b/a Republic Services of Revere, d/b/a Republic Services of Holbrook with offices at 320-A Changer Street, Revere, MA 02151; and Republic Services

## **BACKGROUND**

At the hearing on this matter, the Municipalities relied on the materials included with their Verified Complaint and presented no additional evidence. Those materials consist of affidavits from Beverly's Director of the Board of Health (the "Beverly Affidavit"), Malden's Director of Health and Human Services, Gloucester's Health Director, Peabody's Director of Health and Human Services, Danvers' Director of Public Health, and Canton's Director of Public Health. The affidavits, with near uniformity, state that, beginning on July 1, 2025, Republic ceased collecting recycling from municipal and private service recipients, and has provided only intermittent and inconsistent collection of trash from municipal and private service recipients. They go on to state that on-site inspections by municipal employees have shown dumpsters overflowing with refuse and uncollected recycling that is exposed to the elements, and that the Municipalities have received numerous complaints about rats, areas of harborage for rats, odors, and overflowing dumpsters. Gloucester has reportedly received more than 1,100 complaints from residents and businesses about uncollected trash and recycling. The Beverly Affidavit also includes a spreadsheet documenting the collection status of dumpsters of food establishments within the city, as well as several photos of overflowing dumpsters and other trash receptacles at twenty locations within the city. Each of the six affidavits ends with the same paragraph explaining that, based on the affiant's education and training,

the conditions of overflowing refuse in the City constitutes a public health nuisance for the following reasons:

- a. Accumulation of trash and recycling can lead to an increase in pest activity in and around the area of accumulation;
- b. The attraction of pests causes an undue risk to the general public through potential exposure to various diseases carried by pests;

- c. The accumulation of trash and recycling generates severe malodor affecting the public's quality of life;
- d. Improperly contained trash and recycling can lead to potential water contamination through leachate; and
- e. Accumulation of trash and recycling on the City sidewalks diminish accessibility.

(Verified Compl., Exs. 1-6.) The Verified Complaint brings a single count for "Injunctive Relief – Abatement of Public Health Nuisance" pursuant to G. L. c. 111, §§ 122 & 130. It alleges that Republic's failure to collect trash and recycling amounts to a public health nuisance.

What the Municipalities omit from their submissions, however, is any mention of the labor strike that appears to be the cause of Republic's disruption in collection services. The Municipalities do not dispute that, on July 1, 2025, the same day the disruption in collection services began, Republic employees represented by International Brotherhood of Teamsters, Local 25 (the "Teamsters") went on strike after their collective bargaining agreement expired. In its opposition to the Motion, Republic submitted voluminous affidavits attesting to its efforts to continue collection services in the Municipalities during the strike, including bringing in Republic employees from other geographic areas to complete the work. Republic's affidavits also detail striking workers' efforts to impede Republic's efforts to provide services, including blocking the movement of trucks trying to complete collection routes and mechanically disabling trucks.<sup>5</sup> Republic claims that this ongoing harassment is the only reason trash and recycling

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<sup>5</sup> In a lawsuit pending before the United States District Court for the District of Massachusetts, captioned Allied Waste North America, LLC & 623 Landfill, Inc. v. International Brotherhood of Teamsters, Local 25, Civil Action No. 1:25-cv-11990-BEM, Republic has sought to enjoin the Teamsters from engaging in this conduct. On July 21, 2025, the court in that case denied without prejudice Republic's motion for a temporary restraining order and preliminary injunction, giving Republic the option to "file a supplemental witness list and proposed scope of additional testimony." As of the time of this court's Memorandum of Decision and Order, the parties in the federal court case continue to litigate the request for preliminary injunctive relief.

collection has been disrupted, and that “[t]he current levels of service being provided . . . represent maximum efforts by Republic; there is nothing else Republic can do to increase the services it provides unless and until the Teamsters cease their harassment and abuse of Republic employees and their interference of Republic’s provision of services.” (Defs.’ Mem. in Opp’n to Mot., p. 11.)

### DISCUSSION

The parties agree that the standard applicable to this Motion is different from the one applicable to private parties, and that it does not require a showing of irreparable harm. In actions between private parties, a party seeking a preliminary injunction must show: (a) a likelihood of success on the merits; (b) it will suffer irreparable harm without injunctive relief; and (c) the anticipated harm to be suffered by the movant if the injunctive relief is denied outweighs the harm the opposing party will suffer if the injunction is issued. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). However, irreparable harm is not required when suit is brought by the government “to enforce a statute or a declared policy of the Legislature . . . .” LeClair v. Norwell, 430 Mass. 328, 331 (1999), citing Edwards v. Boston, 408 Mass. 643, 646-647 (1990); Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984) (“When the government acts to enforce a statute or make effective a declared policy of [the Legislature], the standard of public interest and not the requirements of private litigation measure the propriety and need for injunctive relief.”). “A judge, in these circumstances, must first determine whether there is a likelihood of success on the merits of a plaintiff’s claims and then determine whether ‘the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.’” Id. at 331-332, quoting Mass. CRINC, 392 Mass. at 89.

Here, the court acknowledges that the public interest is served by the timely collection of trash and recycling. But even with that acknowledgment, and assuming the Municipalities have a likelihood of success on the merits of their claim,<sup>6</sup> likelihood of success on the merits and the public interest are not the only considerations. “A preliminary injunction ordinarily is issued to preserve the status quo pending the outcome of litigation.” Doe v. Superintendent of Sch. of Weston, 461 Mass. 159, 164 (2011). In other words, it typically seeks to prohibit conduct. Here, however, the Municipalities seek a mandatory injunction – an order that does not prohibit conduct but rather requires it. They ask the court to enter an order requiring Republic to:

- a. Immediately collect all trash and recycling within the Municipalities as required by any contract;
- b. Immediately perform and provide all Contracted Services;  
[and]
- c. Immediately cease and desist from any further activity causing nuisance conditions within the Municipalities.

(Mot., p. 2.) Republic correctly points out that, “[w]here a party seeks a ‘mandatory injunction’ . . . the burden to justify it is heightened.” Drake Partners, LLC v. Wilson, Sonsini, Goodrich &

Rosati, LLP, No. 2184CV02131, 2021 WL 8565959, at \*13 (Mass. Super. Ct. Nov. 7, 2021)

(Ricciuti, J.). “Because a mandatory preliminary injunction alters rather than preserves the status

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<sup>6</sup> The court notes that it is not persuaded by Republic’s argument that G. L. c. 111, § 122, does not apply to the collection and transportation of garbage by virtue of Malden v. Flynn, 318 Mass. 276 (1945), and the enactment of G. L. c. 111, §§ 31A & 31B. Flynn involved a dispute over a city ordinance regarding permits to transport garbage, and the Supreme Judicial Court held that Section 122 had no applicability because the later enacted Sections 31A and 31B specifically conferred upon local boards of health the authority to issue permits for the transportation of garbage. 318 Mass. at 278. The court does not construe Flynn as stating a broad rule that Section 122 has no applicability to the collection of garbage, but rather as simply following the general rule that general statutes yield to specific statutes. See Pereira v. New England LNG Co., 364 Mass. 109, 118 (1973) (“If a general statute and a specific statute cannot be reconciled, the general statute must yield to the specific statute. This is particularly true where, as here, the specific statute was enacted after the general statute.”)

quo, it ‘normally should be granted only in those circumstances when the exigencies of the situation demand such relief.’” Holick v. Boston Med. Ctr., No. 2184CV01454, 2021 WL 5630802, at \*5 (Mass. Super. Ct. Aug. 31, 2021) (Ricciuti, J.), quoting Braintree Labs., Inc. v. Citigroup Global Mkts. Inc., 622 F.3d 36, 40-41 (1st Cir. 2010). “While there appears to be no Massachusetts appellate case focused on this distinction, federal courts, including the First Circuit, reasonably impose a higher burden on the movant to justify a mandatory rather than a prohibitory injunction.” Drake Partners, LLC, 2021 WL 8565959 at \*13, citing 22 Franklin LLC v. Boston Water & Sewer Comm’n, 2021 WL 2982771, at \*2 (D. Mass. July 15, 2021) and Braintree Labs., Inc., 622 F.3d at 40-41.

In addition, the court must consider whether it can fashion an order that is (1) possible for the obligated party to comply with, and (2) possible for the court to enforce. See Levine v. Black, 312 Mass. 242, 244 (1942) (“It is a principle of wide application that relief by injunction will not be granted where the granting of it would be but a futile gesture and would serve no useful purpose in protecting any substantial right or interest of the party applying for it.”). See also Automatic Radio Mfg. Co. v. Ford Motor Co., 272 F. Supp. 744, 749 (D. Mass. 1967), *aff’d*, 390 F.2d 113 (1st Cir. 1968) (“Difficulty of enforcement may itself constitute a sufficient reason for denying injunctive relief.”). An order for injunctive relief must be “clear and unequivocal” to be enforceable, as a finding of civil contempt for violating any such order requires a showing of “disobedience of a clear and unequivocal command.” In re Birchall, 454 Mass. 837, 853 (2009). “Where the order is ambiguous . . . there cannot be a finding of contempt.” Id. at 852; Cooper v. Keto, 83 Mass. App. Ct. 798, 804 (2013).

Republic has submitted multiple affidavits and voluminous materials to support its contention that its failure to collect trash and recycling on a timely basis is the result of striking

workers' interference with Republic's provision of services. At the hearing on the Motion, counsel for the Municipalities neither challenged nor admitted the accuracy of those affidavits.<sup>7</sup> In response to this court's question about what effect an injunction would have if Republic is, as it asserts, doing all it can to provide services, counsel for Beverly stated, "I'm not clear that they are doing everything they can" and took issue with alleged failures by Republic to accurately and timely communicate to the Municipalities which routes they can expect to be completed on which days. However, this type of communication from Republic is not one of the types of relief sought in the Motion.

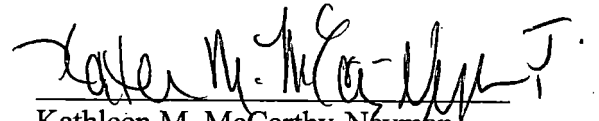
The court is left with an obvious problem affecting the daily lives of the residents and businesses in the Municipalities, but no effective way to remediate it. The court cannot resolve the labor dispute between Republic and the Teamsters. And, based on the record presently before it, the court cannot order the injunctive relief sought by the Municipalities, as such an order would be too vague and ambiguous to survive a claim for contempt, and it would likely be impossible for Republic to comply. See In re Birchall, 454 Mass. at 852-853; Levine, 312 Mass. at 244; Automatic Radio Mfg. Co., 272 F. Supp. at 749.

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<sup>7</sup> The court notes that the Municipalities have not sought injunctive relief against the striking workers who are allegedly preventing Republic from collecting trash and recycling by engaging in conduct such as blocking trucks from completing their routes and mechanically disabling trucks.

## CONCLUSION

For the above-stated reasons, the motion for a preliminary injunction is **DENIED** without prejudice.

  
Kathleen M. McCarthy-Neyman  
Justice of the Superior Court

DATE: July 28, 2025