

RESOLUTION NO. 21-28

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "CHAPTER 5.25, SHOPPING CARTS," RELATED TO THE ADOPTION OF RULES AND REGULATIONS RELATING TO SHOPPING CARTS WITHIN THE CITY OF MARICOPA AND AMENDING THE MARICOPA CITY CODE BY ADDING CHAPTER 5.25 THERETO.

WHEREAS, the City Council believes, after consultation with its staff, that declaring Chapter 5.25, Shopping Carts, as a public record and adopting its provisions by reference to establish rules and regulations related to shopping carts within the City of Maricopa will be in the City's best interest.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona as follows:

That certain document filed with the city clerk and entitled "Chapter 5.25, Shopping Carts," establishing rules and regulations related to shopping carts within the City of Maricopa and amending the City Code by adding Chapter 5.25, is hereby declared to be a public record, and an electronic copy shall remain on file in the office of the City Clerk of the City of Maricopa for examination by the public.

PASSED AND ADOPTED by the City Council of the City of Maricopa, Arizona this 18th day of May, 2021.

APPROVED:



Christian Price
Mayor


ATTEST:



Vanessa Bueras, CMC
City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

Title 5 – BUSINESS REGULATIONS

Chapter 5.25 SHOPPING CARTS

Sec. 5.25.010 - Shopping Carts; definitions.

In this chapter, unless the context otherwise requires:

- (a) *Actual Notice* is defined as oral or written notice delivered to the owner of the shopping cart or retailer at the address on file with the City or, if none, as listed with the Arizona Corporation Commission. It shall be presumed that the address on file with the City or, if none, as listed with the Arizona Corporation Commission, is the address of the owner of the shopping cart or retailer, unless the owner or retailer notifies the City in writing of a different address. Notice may be given by any of the following means:
 - (1) Personal service upon the location of the owner of the shopping cart or retailer. Personal service upon an employee of suitable age and discretion at such location is sufficient.
 - (2) Service by first class U.S. Mail or any recognized express delivery service upon the owner of the shopping cart or the retailer.
 - (3) Service by Facsimile to the Fax number of the owner of the shopping cart or the retailer.
 - (4) Service by Electronic Mail to the E-mail address of the owner of the shopping cart or the retailer.
 - (5) Service by posting the notice on the premises of the Owner of the shopping cart or the retailer.
- (b) *Business of Shopping Cart Retrieval*: Searching for, gathering and restoring possession to the owner or the owner's agent, for compensation or in expectation of compensation, of shopping carts located outside the premises or parking area of a retail establishment.
- (c) *Electronic Device*: A device using Radio Frequency Identification Devices (RFID) or similar technology that is designed to prevent the Shopping Carts from being pushed and moved if removed from the premises of the owner or retailer of the Shopping Cart or Retailer.
- (d) *Parking Area*: A parking lot or other property provided by a retailer for use by a customer for parking any automobile or other vehicle.
- (e) *Possession*: Being in actual physical control of the shopping cart at the time of issuance of a citation or to permit the shopping cart to be located on property that the individual is the lawful owner, lessee or possessor of.
- (f) *Premises*: The designated premises of a retailer as set forth on the approved site plan on file with the city, together with parking areas as defined in this chapter.
- (g) *Restrictive Device*: Some form of Electronic Device, locking mechanism, mechanical device or other device that interferes with operation and/or removal of the shopping cart from the designated premises of the retailer.
- (h) *Shopping Cart*: A basket that is mounted on wheels or a similar device that is generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

Sec.5.25.020 - Shopping carts; restrictive devices required; violations; penalties.

- (a) On or after June 1, 2022, any person, partnership, corporation or other legal entity commencing operation of a retail establishment on any premises within the City shall have all Shopping Carts, owned, leased or which they are in lawful possession of, continuously equipped with a Restrictive

Device that prevents their removal from the Premises. The Economic and Community Development Services Director or his designee shall not issue a Certificate of Occupancy for the Premises without a certification from the owner that all Shopping Carts owned, leased or which they are in lawful possession of are so equipped. The City shall charge a fee for the certification as provided in this code.

- (b) On or after January 1, 2022, any person, partnership, corporation or other legal entity operating a retail establishment on any Premises within the City shall have all Shopping Carts, owned, leased or which they are in lawful possession of, continuously equipped with a Restrictive Device that prevents their removal from the Premises. Each person, partnership, corporation or other legal entity operating a retail establishment on January 1, 2022 shall file a certification with the Economic and Community Development Services Director or his designee that all Shopping Carts owned, leased or which they are in lawful possession of are so equipped.
- (c) As an alternative to subsection (b), any person, partnership, corporation or other legal entity operating a retail establishment within the City on or after June 1, 2022, shall enter into a contract with a Business of Shopping Cart Retrieval that complies with the provisions of Section 5.25.020(c) to recover Shopping Carts unlawfully removed from the Premises of the retail establishment. If a Business of Shopping Cart Retrieval service cannot be secured, a Cart Retrieval Plan of Action must be presented to and approved by the City. In order to comply with this alternative, the contract and plan of action shall meet all of the following;
 - (1) They must be in writing. A copy of the Contract and Cart Retrieval Plan of Action shall be filed annually with the City. If the retail establishment terminates an existing contract and enters into a new contract, the new contract must be filed with the City within thirty (30) days following entry into the Contract.
 - (2) The contract with the Business of Shopping Cart Retrieval and Cart Retrieval Plan of Action must remain continuously in place. If the retail establishment does not have a contract that meets the requirements of this subsection for more than thirty (30) consecutive days, it shall immediately comply with the provisions of subsection (b)
 - (3) The retail establishment shall pay an annual fee which shall be used to cover the City's costs in administrating this provision and removing any carts under the control of the retail establishment from any place within the City. For any retail establishment under 30,000 square feet the annual fee shall be \$250.00 and for any retail establishment over 30,000 square feet the annual fee shall be \$500.00.
 - (4) The retailer shall continuously meet the requirements of Section 5.25.040 of this code and have the name and phone number of the car retrieval service attached to all Shopping Carts owned, leased or which are in lawful possession.
 - (5) The retail establishment shall be required to file the annual certificate of compliance required by subsection (b) and shall attach all required documents to indicate compliance with this subsection.
 - (6) In the event that 25 shopping carts under the control of a retail establishment using this section were logged as being collected, deposited and impounded with the City within any twelve (12) month period, the Economic & Community Development Services Director may order the retail establishment to comply with the provisions of subsection (b) and prohibit use of this alternative. For purposes of this subsection, impounded means that the Shopping Cart has been placed in a City controlled storage yard and the requisite notice provided to the owner.
- (d) Failure to equip a Shopping Cart with a Restrictive Device as provided in this section shall be a civil infraction. The Court shall impose a civil sanction for each Shopping Cart that is not equipped with a Restrictive Device. Each failure to equip a Shopping Cart with a Restrictive Device shall be deemed a separate violation of this Section. It shall be presumed that all persons, partnerships, corporation of legal entities having control of Shopping Carts are subject to the provisions of this

section. The burden of rebutting this presumption by compliance with the alternative contained in subsection (c) shall be on the legal entity having control of Shopping Carts.

- (e) Failure to file a certification with the City as required by this Section shall be declared a Civil offense.

Sec. 5.25.030 - Shopping carts; activities; prohibitions; notices; applicability; consent; presumption; violations.

- (a) A person shall not do any of the following with the intent to temporarily or permanently deprive the owner or retailer of possession of a Shopping Cart:
 - (1) Remove a Shopping Cart from the Premises or Parking Area of a retail establishment.
 - (2) Be in possession of any Shopping Cart that has been removed from the Premises or Parking Area of a retail establishment.
 - (3) Be in possession of any Shopping Cart with the serial numbers removed, obliterated or altered.
 - (4) Leave or abandon a Shopping Cart at a location other than the Premises or Parking Area of the retail establishment.
 - (5) Alter, convert or tamper with a Shopping Cart, remove any part or portion of a Shopping Cart or remove, obliterate or alter serial numbers, the name of the owner, or any Restrictive Device on a Shopping Cart.
 - (6) Be in possession of any Shopping Cart while that Shopping Cart is not located on the Premises or Parking Area of a retail establishment.
- (b) Each owner of a Shopping Cart or retailer shall post a notice in English and Spanish in the following format in a location on their Premises reasonably accessible to the public as follows:

NOTICE: REMOVAL OF SHOPPING CARTS FROM THE PREMISES AND PARKING AREA OF THIS ESTABLISHMENT IS ILLEGAL AND A VIOLATION OF THE STATE OF ARIZONA LAW AND MAY BE ENFORCED BY A CIVIL OR CRIMINAL PENALTY PURSUANT TO A.R.S. §44-1799.32 AND A.R.S. §44-1799.36.
- (c) Each owner of a Shopping Cart or retailer shall place on each Shopping Cart in their control the name of the owner of the Shopping Cart or retailer, notification to the public of the procedure to be used for authorized removal of the Shopping Cart from the Premises, notification to the public that the unauthorized removal of the Shopping Cart from the Premises or Parking Area of the retail establishment or the unauthorized possession of the Shopping Cart is a violation of law and list a valid address and telephone number for returning the Shopping Cart removed from the Premises or Parking Area to the owner or retailer.
- (d) An owner of a Shopping Cart or retailer shall only give consent in writing to the removal of a Shopping Cart from the Premises or Parking Area of their establishment. It shall be presumed as a matter of law that any person not having written consent other than the owner of the Shopping Cart or the retailer, in possession of a Shopping Cart located outside the Premises of the owner or retailer has temporarily or permanently deprived the owner or retailer of possession of the Shopping Cart.
- (e) This section does not apply to the owner of a Shopping Cart or to a retailer or a retailer's agents, or employees, to a customer of a retail establishment who has written consent from the owner of a Shopping Cart or a retailer to be in possession of the Shopping Cart or to remove the Shopping Cart from the Premises or the Parking Area of the retail establishment, or to any employee of the City or a Business of Shopping Cart Retrieval designated to retrieve shopping carts.
- (f) Violation of subsection (a) of this Section is a class 3 misdemeanor pursuant to A.R.S. §44-1799.36. Violation of subsection (b) or (c) of this Section shall be enforced by a civil penalty.

Sec. 5.25.040 - Shopping carts; finding; impoundment of shopping carts by local agencies; conditions; emergencies; costs; fines; disposal of unclaimed carts; applicability.

- (a) A Shopping Cart that does not have any identification affixed to in accordance with A.R.S. § 44-1799.32 or Section 5.25.030 of this Chapter is deemed a public nuisance and may be immediately-abated by the City by impoundment of the Shopping Cart.
- (b) A Shopping Cart that has a sign affixed to it in accordance with A.R.S. § 44-1799.32 or Section 5.25.030 of this Chapter may be impounded by the City provided all of the following conditions are met:
 - (1) The Shopping Cart is located outside the Premises or Parking Area of a retail establishment. The Parking Area of a retail establishment located in a multi-store complex or shopping center includes the Parking Area used by the complex or center.
 - (2) The Shopping Cart is not retrieved within three (3) business days after the date the owner of the Shopping Cart, or the owner's agent, receives *Actual Notice* from the City of the Shopping Cart's discovery and location.
- (c) If the location of the Shopping Cart will impede emergency services, obstruct vehicle traffic or create a safety hazard to the public on a public right-of-way, the City may immediately retrieve the Shopping Cart from public or private property. It shall be presumed that a Shopping Cart blocking a sidewalk or bicycle path is a safety hazard to the public.
- (d) The City shall recover its costs for impounding a shopping cart pursuant to subsection (b) in the amount of \$25.00 per Shopping Cart.
- (e) The City shall post on its website, the address and telephone number of the location where a Shopping Carts may be claimed and the hours that the location is open for business in accordance with A.R.S. § 44.1799.33.
- (f) The owner of a Shopping Cart or retailer shall retrieve a Shopping Cart impounded pursuant to subsection (b) within one (1) business day after receiving notice.

The owner of a Shopping Cart or retailer who has had more than three (3) occurrences, within a six (6) month period, of Shopping Carts being impounded and failing to retrieve the shopping carts within one (1) business day after receiving notice, shall be charged a civil penalty of Fifty dollars (\$50.00) in addition to any applicable impound fees. An occurrence includes all Shopping Carts impounded in accordance with this section in a one-day period.
- (g) A Shopping Cart that is not reclaimed from the City within thirty (30) days after receipt of a notice of the impound by the owner of the Shopping Cart may be sold or otherwise disposed of by the City in the City's sole and absolute discretion.
- (h) Notwithstanding subsection (b), paragraph 2 of this Section, the City may impound a Shopping Cart that otherwise meets the criteria prescribed in subsection (b), paragraph 1 of this Section without complying with the three (3) day advance notice requirement if all of the following apply:
 - (1) The owner of the Shopping Cart or the owner's agent is provided with *Actual Notice* within twenty-four (24) hours after the impound and that notice informs the owner or the owner's agent of the location where the Shopping Cart may be claimed.
 - (2) The Shopping Cart is impounded at a location in compliance with subsection (e) of this Section.
 - (3) The Shopping Cart is reclaimed by the owner or the owner's agent within three (3) business days after the date of *Actual Notice* as provided in paragraph 1 of this subsection and is released and surrendered to the owner or agent at no charge, including the waiver of any impound and storage fees or fines that would otherwise apply pursuant to subsection (d) or (f) of this Section. Any Shopping Cart reclaimed within the three (3) business day period is not deemed an occurrence for purposes of subsection (f) of this section.

- (i) Any Shopping Cart not reclaimed by the owner or the owner's agent after three (3) business days after the date of Actual Notice as provided in subsection (h), paragraph 1 of this Section is subject to any applicable fee or fine imposed pursuant to subsection (d) or (f) of this Section commencing on the fourth business day after the date of the Actual Notice.
- (j) Any Shopping Cart not reclaimed by the owner or the owner's agent within thirty (30) days after the date of Actual Notice as provided by subsection (h), paragraph 1 of this Section may be sold or disposed of in accordance with subsection (g) of this section.

Sec. 5.25.050 Shopping carts; retrieval; records; sign.

- (a) A person, other than the City who engages in the Business of Shopping Cart Retrieval shall retain records showing written authorization from the Shopping Cart's owner, or an agent of the owner, to retrieve the Shopping Cart and to be in possession of the Shopping Carts retrieved. Any owner of a Shopping Cart or retailer located in the City is deemed upon having applied for a sales tax license to have granted consent to the City to retrieve and be in possession of the Shopping Carts in accordance with the provisions of this Chapter.
- (b) A copy of the record showing written authorization shall be maintained in each vehicle used by a Business of Shopping Cart Retrieval.
- (c) Each vehicle, other than those in the possession of the City, used for the retrieval of Shopping Carts shall display a sign that clearly identifies the retrieval service.

Sec. 5.25.060 Shopping carts; violation; classification; applicability.

- (a) Unless otherwise specified, a person who violates any provision of Sections 5.25.010 through 5.25.050 is guilty of a class 3 misdemeanor.
- (b) Sections 5.25.010 through 5.25.050 are not intended to preclude the application of any other laws relating to prosecution for a criminal offense.