

ORDINANCE NO. 2016-0620

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING CHAPTER 15 OF THE AVONDALE CITY CODE BY ENACTING A NEW ARTICLE V PERTAINING TO SHOPPING CARTS; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. Chapter 15 of the Avondale City Code, Licenses, Taxation and Miscellaneous Business Regulations, is amended by enacting a new Article V pertaining to Shopping Carts which shall read as follows:

ARTICLE V – SHOPPING CARTS

15-34 –Purpose.

To the extent not preempted by State statutes, the purpose of this Article is to complement or supplement State law by adopting local regulations to ensure that measures are taken by cart owners and businesses to prevent the removal of Shopping Carts from store premises, and deter potential public safety hazards by facilitating the removal of lost, abandoned or stolen Shopping Carts from public and private property.

15-35 –Applicability.

This Article applies to:

- (a) Each business owner in the City if the business provides Shopping Carts for customer use at any business location; and
- (b) Any person in possession of an off-site Shopping Cart.

15-36 – Definitions.

In this Article, 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 their business license on file with the City 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.
- (6) It shall be presumed that the address on the sales tax or business licenses on file with the City 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.

(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 of a retail establishment.

(c) *Occurrence:* Failure by an owner to retrieve its abandoned cart(s) within three (3) business days after receiving notice from the City, which includes all Shopping Carts impounded in accordance with this Article in a one-day period.

(d) *Parking area:* A parking lot or other property provided by a retailer for use by a customer for parking any motor vehicle.

(e) *Possession:* Being in 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.

15-37 – Restrictive devices required; violations; penalties.

(a) New retail establishments. On or after July 31, 2020, 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 City shall not issue a business license, nor will the Development and Engineering Services Director or their designee shall 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) Existing retail establishments. On or after July 31, 2020, 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 July 31, 2022, shall file a certification with the Development and Engineering Services Director or their designee 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.

(c) Failure to equip a Shopping Cart with a Restrictive Device or file the associated certification with the City 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 (d) of this section shall be on the legal entity having control of Shopping Carts.

(d) As an alternative to subsections (b) and (c) of this section, any person, partnership, corporation or other legal entity operating a retail establishment within the City on or before July 31, 2020, or any entity that begins operating in an existing building or suite shall enter into a contract with a Shopping Cart retrieval service that complies with the provisions of Section 15-41 to recover Shopping Carts unlawfully removed from the premises of the retail establishment. In order to comply with this alternative, the contract shall meet all of the following:

- (1) The contract must be in writing. A copy of the Contract 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 Shopping Cart retrieval service 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 (a) of this section if it is an existing retail establishment as of July 31, 2022; or it shall immediately comply

with subsection (b) if it is a newly commencing retail establishment on or after July 31, 2020. Failure to maintain a contract with a shopping cart retrieval service for more than thirty (30) consecutive days after July 31, 2020 shall require the retail establishment to install restrictive devices upon all shopping carts

- (3) The retail establishment shall pay an annual fee as established by a City Council resolution, 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.
- (4) The retailer shall continuously meet the requirements of section 15-38 of this code and have the name and phone number of the cart retrieval service attached to all the carts.
- (5) The retail establishment shall be required to file the annual certificate of compliance with the Development and Engineering Services Director or their designee and shall attach all required documents to indicate compliance with this subsection.
- (6) In the event that one-hundred fifty (150) Shopping Carts, under the control of a retail establishment contracted with a cart retrieval service pursuant to this subsection (d), were logged as being collected, deposited, and impounded with the City within one (1) calendar year within a two (2) consecutive year running period, the Development and Engineering Services Department or designee may prohibit use of this alternative and order the retail establishment to comply with the provisions of the applicable subsections (a) or (b) of this section.

15-38 – Public notice and identifying information requirements; violations.

- (a) 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 LOT OF THIS ESTABLISHMENT IS ILLEGAL AND VIOLATIONS MAY BE CHARGED AS CRIMINAL OFFENSE.

- (b) Each owner of a Shopping Cart or retailer shall place on each Shopping Cart in their control identifying information that contains the following:
 - (1) Name of their business, address and telephone number;
 - (2) Notice to the public that the unauthorized removal of the cart from the premises of the business establishment, or the unauthorized possession of the Shopping Cart, is a violation of state laws and a

violation of City ordinance.

- (c) On or after July 31, 2020, an owner of a Shopping Cart or retailer who certifies to the City that all of their Shopping Carts are equipped with a Restrictive Device to make the carts immobile if removed from the premises shall be exempt from subsections (a) and (b).
- (d) Violation of this subsection (a) of this section shall be enforced by a civil penalty.

15-39 – Prohibitions; activities; applicability; consent; presumption; violations.

- (a) It is unlawful for any person to do any of the following, if a Shopping Cart has permanently affixed identifying information pursuant to Section 15-38(b):
 - (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 on a Shopping Cart, or obliterate or alter the name of the owner or remove, obliterate or alter any Restrictive Device that the Shopping Cart is equipped with;
 - (6) Be in possession of any shopping cart while that cart is not located on the premises or parking lot of a retail establishment.
- (b) 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 lot 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 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.
- (c) This section does not apply to:

- (1) The owner of a shopping cart or to a retailer or a retailer's agents, or employees.
 - (2) 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.
 - (3) An employee of the City designated to retrieve shopping carts.
- (d) Violation of subsection (a) of this section is a class three (3) misdemeanor.

15-40 – Impoundment of Shopping Carts by the City; conditions; emergencies; costs; fines; disposal of unclaimed Shopping 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 15-38 of this code is deemed a public nuisance and may be immediately and summarily abated by impoundment by the City. The City shall publish a notice one (1) time describing such carts in a newspaper of general circulation in the City. A shopping cart that is not reclaimed from the City within fifteen days (15) following publication of the notice of impound may be sold or otherwise disposed of by the City in the City's sole discretion.
- (b) A shopping cart that has a sign affixed to it in accordance with A.R.S. § 44-1799.32 or Section 15-38 of this code 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 post on its website, the address and telephone number of the location where shopping carts will be impounded by the City and the hours that the location is open for business.

- (e) The owner of a shopping cart or retailer shall retrieve the impounded shopping cart within one (1) business day after receiving notice. The owner of a shopping cart or retailer who has had more than three (3) occurrences of shopping carts being impounded and failing to retrieve the shopping cart within one (1) business day after receiving notice, within a six (6)-month period shall be charged a civil penalty as set forth in the City Code, in addition to the impound fees. An occurrence includes all shopping carts impounded in accordance with this section in a one (1)-day period.
- (f) The City shall recover its costs for impounding a shopping cart in an amount established by a City Council resolution.
- (g) A shopping cart, with affixed identification in accordance with A.R.S. § 44-1799.32 or Section 15-38 of this code, 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 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 (d) 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 (e) or (f) of this section. Any cart reclaimed within the three (3) business day period is not deemed an occurrence for purposes of subsection (e) 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 subsections (b) and (h) of this section is subject to any applicable fee or fine imposed pursuant to subsection (e) or (f) of this section commencing on the fourth (4th) business day after the date of the 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.

- (k) On or after July 31, 2020, any owner of a shopping cart or retailer who has certified to the City that all of their shopping carts are equipped with a restrictive device to prevent removal from the premises of the owner or retailer shall be exempt from being charged any collection or impound fees for any carts collected by the City.

15-41 – Retrieval by the City; Shopping Cart Retrieval Service; records; identification sign.

- (a) Any owner of a shopping cart or retailer located in the City of Avondale, Arizona, is deemed upon having applied for a sales tax or business license with the City 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 person, other than the City who engages in the business of shopping cart retrieval shall retain records showing written authorization from the cart's owner, or an agent of the owner, to retrieve the cart and to be in possession of the carts retrieved.
- (c) A copy of the record showing written authorization shall be maintained in each vehicle used for shopping cart retrieval.
- (d) 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.

15-42 – Violation; classification; applicability.

- (a) Unless otherwise specified, a person who violates any provision of Sections 15-34 through 15-41 is guilty of a class 3 misdemeanor.
- (b) Sections 15-34 through 15-41 are not intended to preclude the application of any other laws relating to prosecution for a criminal offense.

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. This Ordinance shall become effective in the manner provided by law.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney

are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
June 1, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Michael Wawro, City Attorney