

ORDINANCE NO. 2022-11

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH AMENDING CHAPTER IX OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, TO CREATE A NEW SECTION ENTITLED “SHOPPING CART REGULATIONS” TO ESTABLISH GUIDELINES FOR THE RECOVERY OF STOLEN OR ABANDONED SHOPPING CARTS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the failure to regulate shopping carts often results in carts being abandoned in City rights-of-way and on roadways; and

WHEREAS, on numerous occasions shopping carts have been removed on the premises of businesses and left abandoned on public or private property throughout the city and such conduct constitutes a public nuisance and a potential hazard to the health, safety, and welfare of the public; and

WHEREAS, the abandonment of shopping carts within neighborhoods and along major traffic corridors constitutes a nuisance to the health, safety, and welfare of residents of the city; and

WHEREAS, section 506.5131, Florida Statutes, prohibits charging owners of carts unless the shopping cart was found on public property and was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner’s behalf, and the fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services; and

WHEREAS, by Resolution No. R2006-20, adopted on May 16, 2006, the City Commission of the City North Miami Beach asked the Florida Legislature to amend the aforementioned state law to permit local governments to impose fines or costs on shopping cart owners, but the Legislature has not amended the state law; and

WHEREAS, the City Commission of the City of North Miami Beach finds that it is in the best interests of its residents to adopt this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Commission of the City of North Miami Beach, Florida:

Section 1. That the recitals and finding contained in the forgoing “whereas” clauses are adopted by reference and incorporated as if fully set forth in this section.

Section 2. That Chapter IX of the Code of Ordinances is amended to create a new section as follows (*deletions and additions are identified using a strike-through and underline format, respectively*):

Sec. 9-38- Shopping Cart Regulations.

- (A) Purpose. It is the primary purpose of this article to have the owners and operators of businesses to develop a recovery plan to deter, prevent, or mitigate the removal of shopping carts from their business premises. It is further the purpose of this article to prevent the illegal removal of shopping carts from the business premises.

Section 9-38-1. Declaration of Public Nuisance.

Shopping carts that have been removed from the premises of businesses and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health, safety, and welfare of the public.

Section 9-38.2. Definition.

For the purposes of this article, the term “shopping cart” as defined in Section 506.502, Florida Statutes, means a basket mounted on wheels or a similar device which is generally used in a retail establishment by a customer for the purpose of transportation of goods of any kind.

Section 9-38.3. Shopping Cart Retrieval Plan.

Each retail establishment furnishing shopping carts to patrons to transport items purchased from the establishment, is hereby required to develop and implement a specific plan to retrieve its shopping carts that are found throughout the City. The plan must be submitted to the city upon submission of the Local Business Tax License application for new business, and with the yearly renewal of Local Business Tax License for established businesses. The plan must include an effective and specific method of retrieving the retail establishment’s shopping carts found throughout the city.

Section 9-38.4. Criteria for Retrieval Plan.

The city shall determine whether a retail establishment’s plan for retrieving its shopping carts submitted pursuant to this article is reasonably calculated to result in the prompt removal of the retail establishment’s shopping carts found throughout the city on property other than that of the retail establishment furnishing the shopping carts.

The shopping cart retrieval plan shall identify the number of employees who will be assigned to cart retrieval duties, the number of total hours per week that the assigned employee will perform such retrievals upon request. If the retail establishment hired a cart retrieval company, the plan shall include a copy of each contract with a cart retrieval service or indicate that the cart retrieval will be performed in-house. The shopping cart retrieval plan shall identify the streets and bus stops which will be patrolled as required by this article as well as the manner, frequency, and times of such patrols.

Upon receipt of the retrieval plan, the city shall approve, reject, or modify a plan, within 45 days of receipt. If the plan is approved, the proposed measures shall be implemented no later than 45 days after approval. If the plan is rejected, the retail establishment shall modify the plan and re-submit it to the city no later than 30 days after the date of its rejection. Notwithstanding the foregoing, the retail establishment may amend its plan subject to review and approval by the city under the criteria set forth herein.

Section 9-38-5. Approval or Denial of Retrieval Plan

Any retail establishment that fails to submit a plan in substantial compliance with this article, or implement a plan approved by the city shall be in violation of this article. A retail establishment is permitted a thirty (30) day period to cure any violation under this article upon issuance of the notice of violation.

Section 9-38.6. Penalties for violation.

Any violation of this article by persons other than the owner of the retail establishments and its employees shall be prosecuted pursuant to Section 162.22, Florida Statutes. Each conviction for violation of this article shall be punished with a fine not to exceed \$500.00 or by imprisonment in the jail not to exceed 60 days or by both such fine and imprisonment.

Section 3. All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Ordinance is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Ordinance.

Section 5. It is the intention of the City Commission of the City of North Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word “Ordinance” may be changed to “Section,” “Article,” or other word as the codified may deem appropriate.

Section 6. Effective Date. This Ordinance shall become effective ten (10) days after adoption on second reading.

APPROVED on the first reading this **18th day of October, 2022.**

APPROVED AND ADOPTED on second reading this **20th day of December, 2022.**

ATTEST:

ANDRISE BERNARD, MMC
CITY CLERK

(CITY SEAL)

ANTHONY F. DEFILLIPO
MAYOR

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION

HANS OTTINOT
CITY ATTORNEY

Sponsored By: Commissioner Fortuna Smukler