

ORDINANCE NO. 2023-XX

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 from 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 create conditions that reduce property values and promote blight and deterioration within the City’s neighborhoods; 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*):

Section 9-39- Shopping Cart Regulations

- (A) Purpose. The purpose of this section is to ensure that measures are taken by cart owners to prevent the removal of shopping carts from store premises and parking lots and to facilitate the retrieval of abandoned carts as permitted by State law.

Section 9-39-1. Declaration of Public Nuisance

The spread of shopping carts deserted on public and private property causes blighted conditions in many areas of the City and results in the obstruction of public and private sidewalks, streets, parking lots, park spaces, and other areas, thereby creating hazards to the health and safety of the public. The City of North Miami Beach City Commission declares abandoned shopping carts to be a public nuisance.

Section 9-38.2. Definition

An abandoned shopping cart means any cart removed from a business establishment's premises without the written permission of the owner and located on either public or private property. This does not apply to carts that are removed for purposes of repair or maintenance.

Agent means the person or persons designated by the owner of the shopping cart authorized to perform or provide retrieval services on behalf of the business owner.

Cart means the same as shopping cart.

City means the City of North Miami Beach or its designated representatives.

Identified Shopping Cart means a shopping cart that has a permanently affixed sign that identifies, in accordance with Section 9-39.3, the owner of the cart or the retailer, or both.

Owner means a person or establishment providing shopping carts for customers' use.

Premises means the entire area owned or under the control of a business owner, including the parking area or other off-street area.

Shopping cart means a basket which is mounted on wheels, or a similar device generally used in a retail establishment by a customer for transporting goods, as found in F.S. § 506.502, as may be amended from time to time.

Shopping cart plan means a document submitted by the owner of the cart pursuant to Section 9-39.6.

Unidentified Shopping Cart means a shopping cart that is not an identified cart, as defined above.

Section 9-39.3. - Shopping Cart Identification Requirements

Every business providing shopping carts shall have a sign permanently affixed to each cart that includes all of the following information:

- (a) The identity of the owner or business, or both;
- (b) A valid address, store identity number, telephone number, or some other form of markings that clearly identifies the cart owner;
- (c) Notice to the public that the unauthorized removal of the shopping 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.

Section 9-39.4. - Unauthorized Removal Possession of a Shopping Cart

Any person who removes a shopping cart from the premises of the owner, or is in the possession of any shopping cart, shall be presumed to be in possession of stolen property and is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to one (1) year as provided by F.S. §§ 506.509 and 506.513. Failure to abide by the provisions above shall constitute a violation and result in a civil penalty in the amount of twenty-five dollars (\$25.00) per cart.

Section 9-39.5. - Exception.

A violation of this section shall not apply to carts that are removed for the purposes of repair or maintenance with written consent of the business owner.

Section 9-39.6. - Mandatory Shopping Cart Plan

Every owner of a business that maintains more than five (5) shopping carts shall implement a shopping cart plan in accordance with this section and shall submit to the City within sixty (60) days of adoption of this section and any time the plan is proposed to be amended. Such plan shall include all the following elements:

- (a) Identifying Information. Name, address and telephone number of the business, and the name and telephone number of the on-site manager or designated agent;
- (b) Shopping Cart Information. The number of on-site shopping carts held by the business, and a signed affidavit stating all carts will be in compliance with the shopping cart identification requirements listed in Section 9-39.3.
- (c) Employee Training. A description of employee-training program to educate existing and new employees about the shopping cart plan;
- (d) Notice to Customers: A description of the notification method(s) used to communicate to the public that unauthorized removal of a cart from the business premise is a violation of state law and City of North Miami Beach City Code. The method(s) used may include, but are not limited to, prominently displayed signage posted at each customer exit, printed on store shopping bags, printed on sales receipt, or other method approved by the City.
- (e) Loss Prevention Measures. A description of the measures that the owner will implement to prevent the removal of shopping carts from the premises. These measures may include, but are not limited to, devices on shopping carts that automatically disable them if they are removed from the premises, designation of certain employees tasked to prevent the removal of shopping carts from the premises by assisting patrons with transporting groceries or merchandise to patrons' vehicles and then returning shopping carts to the location where the retail establishment keeps the shopping carts, installation of obstacles to prevent the removal of shopping carts, prohibiting carts outside the building of the business unless accompanied by an employee, bollards and chains around the premises to prevent cart removal, collection of security deposits for use of all carts, or the rental or sale of utility carts that can be temporarily or permanently used to transport purchases.

Any business and/or entity providing shopping carts for the use of their patrons or employees shall:

- (1) Construct barriers to prevent the removal of shopping carts from the business premise;
or

- (2) Attach alarm mechanisms to shopping carts to prevent their removal; or
- (3) Implement a policy of not allowing the customer to exit the store with shopping carts; and/or
- (4) Provide an employee to carry or wheel the customers' merchandise to the customers' vehicle; or
- (5) Implement some other plan, approved by the city, which will prevent removal of carts from the business premise; and
- (6) Implement a twice-weekly program of collection of their carts that are illegally removed. An affidavit from the affected business owner detailing the specific days of collection shall be submitted to the city.
- (f) Failure to abide by the provisions of subsection (e) above shall constitute a violation and result in a civil penalty in the amount of two hundred fifty dollars (\$250.00) per violation.
- (g) Retrieval Measures. Specific measures for the retrieval of abandoned carts by its employees, or proof that the owner has entered into a contract for cart retrieval services.
- (h) Collaboration allowed: Two or more businesses may collaborate and submit a single plan.

Section 9-39.7. – Shopping Cart Plan Timeline and Approval Process

A proposed plan for preventing shopping cart removal shall be submitted to the City's Department of Public Works within sixty (60) days following the adoption of this ordinance. Any establishments that open after the adoption of the ordinance codified in this section will have thirty (30) days from the filing date on their City business license application to submit a shopping cart removal prevention plan to the City for approval.

If a plan is rejected as incomplete or inadequate, or if additional information is needed, the City shall notify the owner within thirty (30) days from the date of the plan submission. The owner has thirty (30) days to submit the additional information or a complete or adequate plan. The City may reject or deny a plan on any of the following grounds:

- (a) The plan fails to include the information required under this section or fails to adequately address the required elements.
- (b) The plan fails to address any special or unique conditions due to the geographical location of the premises as they relate to cart retention and prevention efforts.
- (c) Implementation of the plan violates this section, or State or Federal law.
- (d) The owner knowingly makes a false statement or omits relevant facts in the plan, or in any amendment, attachment, or report.

Upon notice to the owner that the City has approved the prevention plan, the owner has thirty (30) days to implement the prevention plan at their establishment.

Any owner who fails to implement approved plan measures or fails to comply with the approved plan measures will be subject to enforcement of these requirements through any lawful means available to the City.

Section 9-39.8. - Plan Modification

The owner shall submit a plan modification of any previously approved shopping cart plan to address changed circumstances. The City may require a business to submit a plan modification due to repeat impoundments or to modify ineffective provisions. The City shall review and consider the modification in the same manner set forth in Section 9-39.6 and 9-39.7.

Section 9-39.9. - Revocation of Plan

The City may revoke an approved plan on any of the following grounds:

- (a) A shopping cart has been found off-premises on three or more occasions within the past six-month period where the City has had to notify business owners to pick up impounded cart(s).
- (b) The plan fails to address any changed circumstances related to cart retention and prevention efforts.
- (c) The owner has failed to comply with a provision of this section.
- (d) The owner has knowingly made a false statement or fails to disclose relevant information in an application, an amendment or in a report to the City.

Business owners whose plans have been revoked are subject to penalties as provided in Section 9-39.10.

Section 9-39.10. - Penalties for Failing to Submit or Implement a Prevention Plan

In addition to the penalties set forth in this chapter, any owner who fails to submit a prevention plan, implement the prevention plan or implement any required modifications to the plan as required by the City, within the time frames as specified in this section, shall be required to place disabling devices on all shopping carts owned, leased or used by the business establishment to prevent removal of shopping carts within sixty days of the date of service of the notice of violation from the City. Failure to install disabling devices as required is subject to an administrative citation for each day the disabling devices remain uninstalled.

Section 9.39.11. - Authority to Immediately Impound Abandoned Cart

The City shall have the authority to remove and impound any off-premises cart on public or private property under the following conditions:

- (a) The cart owner is notified within twenty-four (24) hours following the impoundment. Notification to the cart owner may be provided in person, by phone or by mail and the City shall document the notification used for each impounded cart.
- (b) The notification shall inform the cart owner as to the location where the cart may be claimed.
- (c) Impounded carts shall be held at a location designated by the City which is reasonably convenient to the cart owner and open for business at least six (6) hours a day during normal City business working days.
- (d) Any cart reclaimed by the cart owner within seventy-two (72) hours following the date of actual notification as provided pursuant to this section, shall be released, and surrendered to the owner at no charge whatsoever, including the waiver of any redemption fees that would

otherwise be applicable pursuant to Section 9-39.13.

- (e) Any cart not reclaimed by the cart owner within seventy-two (72) hours following the date of actual notice as provided pursuant to this section, shall be subject to the collection of administrative costs under Section 9-39.13 commencing of the fourth day following the date of notice. Any cart reclaimed by the owner within seventy-two (72) hours following the date of actual notice as provided pursuant to this section, shall not be deemed an "occurrence" under Section 9-39.12.

Section 9.39.12. - Repeat Impoundments

Should the City impound more than ten (10) carts of any owner within a thirty-day (30) period, the City reserves the right to require the business to do one or more of the following:

- (a) Require the owner to equip each shopping cart with wheel locking or stopping mechanism that is used in conjunction with an electronic or magnetic barrier along the premises of the retail establishment. The wheel locking or stopping mechanism must activate when the shopping cart crosses the electronic or magnetic barrier.
- (b) Prohibit the owner from possessing shopping carts on its premises.

It shall be unlawful for an owner to fail to comply with either requirement when so ordered by the City in writing. Any such order is subject to an appeal to the City Manager within 21 days of service of the order.

Section 9-39.13. - Administrative Costs

Any owner that fails to retrieve its abandoned cart(s) within seventy-two (72) hours after receiving notice from the City shall pay the City's actual costs for retrieving the cart(s). The administrative costs shall be a fee of twenty-five dollars (\$25.00) per cart plus any additional costs of retrieval incurred by the City,

Any owner who fails to retrieve abandoned carts in accordance with this section in excess of three (3) times during a specified six-month period shall be subject to an additional fifty (\$50.00) dollar fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the City in a one-day period.

The "specified six-month period" shall be the six-month periods ending on June 30th and December 31st of each calendar year.

Section 9-39.14. - Disposal of Abandoned Shopping Carts

Any marked cart not reclaimed from the City within ten (10) business days after notification to the owner shall be sold or otherwise disposed of in accordance with state law.

If the cart owner is unknown and not clearly identified on the cart, the cart shall be designated as "unidentified" and shall be considered abandoned and shall be disposed of in accordance with F.S. chapter 705, as amended from time to time.

Sec. 9-39.15. - Shopping carts on private property

- (a) No shopping cart shall be placed on any property where it can be readily seen from the right of way unless the shopping cart is located on a nonresidential zoned property and is owned by the business legally operating on the same property.

- (b) Upon a finding of a violation of this section, the City may impose a fine as provided for in this Code.
- (c) In addition to any other remedies, the special magistrate may, upon finding a violation, authorize the City to remove the shopping cart.
- (d) Upon removal of the shopping cart, it shall be disposed of in accordance with the provisions set forth in Section 9-39.14. for shopping carts found on public property.
- (e) The fees and costs for removal may be imposed upon the owner of the property. In addition, fees and costs may be imposed on the owner of the cart pursuant to and with the limitations set forth in Section 9-39.13. A fee of twenty-five dollars (\$25.00) per cart plus any additional costs of retrieval incurred by the City, shall be imposed on the owner of the cart.

Section 9-39.16. - Emergency Services

Any City officer, employee, or agent may immediately retrieve any shopping cart from public or private property if its location impedes emergency services.

Section 9-39.17. - Enforcement

Any person who violates the provisions of this section is subject to any enforcement procedures permitted by law, including but not limited to prosecution of a misdemeanor or an infraction, civil action for injunction, administrative enforcement procedures, including administrative citation, and revocation of a use permit if applicable.

Section 9-39.18. - Records Required for Retrieval Services

Any person who engages in the business of shopping cart retrieval shall retain records showing written authorization from the owners to retrieve abandoned shopping carts and to be in possession of the shopping carts retrieved. A copy of the records showing written authorization shall be maintained in each vehicle used for abandoned shopping cart retrieval.

Section 9-39.19. – Business License Required for Retrieval Services

Any person intending to operate a shopping cart retrieval service for the purposes described in this chapter shall first obtain a business license from the City.

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 ____ **day of May 2023.**

APPROVED AND ADOPTED on second reading this ____ **day of _____ 2023.**

ATTEST:

ANDRISE BERNARD, MMC
CITY CLERK

(CITY SEAL)

ANTHONY F. DEFILLIPO
MAYOR

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION

JOHN HERIN
CITY ATTORNEY

Sponsored By: Commissioner Fortuna Smukler