

CITY OF ABSECON

ORDINANCE 08-2021

**AN ORDINANCE CREATING CHAPTER 313 SHOPPING CARTS IN
THE CODE OF THE CITY OF ABSECON**

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Absecon, County of Atlantic and State of New Jersey as follows:

Absecon City Code Chapter 313 Shopping Carts shall be created as follows:

§ 313-1. Scope and Purpose:

A. Policy Statement

Due to the proliferation of abandoned shopping carts within public rights-of-way, and the failure of shopping cart owners to take remedial action to prevent the removal of carts or the implementation of an effective procedure to retrieve carts which have been removed from their premises, resulting in the presence within the City of unwarranted safety hazards, imposition of an undue burden upon the City Department of Public Works, and an unnecessary utilization of resources and expenditures of taxpayer funds to address the problem; and

B. City Council has attempted to encourage cart owners to implement programs designed to alleviate the problems caused by abandonment of carts but with no satisfactory results; and

C. City Council finds and determines that shopping carts left within streets, on municipal property, and in other public rights-of-way impede the flow of pedestrian and vehicular traffic, and present an added impediment to people with disabilities; and

D. The United States Occupational and Health Administration recognizes the hazards of unsecured shopping carts and encourages store owners to keep shopping carts and other potential obstacles or projectiles inside of stores and away from entrances during special sales and promotional events in recognition of those safety hazards presented; and

E. City Council finds and determines that shopping carts left in a street (as hereinafter defined):

(1) Create a dangerous attractive nuisance, particularly for minor children who are most prone to injury from shopping cart accidents;

(2) Create a distraction to drivers seeking to avoid contact with the carts or prevent being struck by a moving cart;

(3) Adversely affect the preservation of the City's character due to unsightly clutter and create a potential diminution of property values;

(4) Are detrimental to the public safety, health and welfare;

(5) Constitute a public nuisance; and

(6) By their presence in and on a street require immediate removal necessary to prevent a danger to public safety; and

- F. It is the intent and purpose of this action by City Council to establish and enact regulations governing the abandonment of carts, to establish a fee for redemption of impounded carts, and to provide penalties for violations; and
- G. Council of the City of Absecon wishes to comply with and supplement the provisions of N.J.S.A. 40:48-2.65 regulating shopping carts; and
- H. The clauses in this chapter are incorporated herein as statements of explanation, purpose and intent.

§ 313-2. Definitions:

As used in this chapter, the following terms shall have the meanings indicated:

ESTABLISHMENT

A person owning, making available or having control of a place where shopping carts are utilized; the place of a person owning, making available or where shopping carts are utilized.

PARKING AREA

A parking lot or other property provided by a retailer for the use of a customer for parking an automobile or other vehicle. The parking area of a retail mercantile establishment located in a multi-store complex or shopping center shall include the entire parking area used by the complex or center.

PERSON

Includes a person of either sex or a corporation, partnership, association, joint-stock company, societies and other entities capable of being sued.

REMOVE

To take, transport or otherwise remove for any purpose a shopping cart from the interior (if the building should have no parking area accessible to the public) or parking area of the establishment which makes the shopping cart available to the public. Removal or transport of a shopping cart by the owner or agent of the owner for repair, shipment to another location or for any other legal purpose shall not constitute a violation of this chapter.

SHOPPING CART

A push cart of the type or types which are commonly provided by grocery stores, drugstores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and their parking areas.

STREET

Includes any street, avenue, road, alley, lane, highway, boulevard, concourse, sidewalk or crosswalk, culvert, bike path, and every municipal parking lot within the City of Absecon.

§ 313-3. Affirmative obligation of shoppers, patrons and users

All shoppers, patrons and users of carts who remove a cart for their convenience or any other reason from the establishment or parking lot adjacent to where the cart belongs shall have the affirmative duty and obligation to return the cart forthwith. Any person who does not fulfill that duty and obligation, or who abandons the cart, has violated this chapter.

§ 313-4. Duties of owners and operators of stores supplying carts

All owners and operators of establishments owning and/or supplying carts for the convenience of shoppers, patrons or users shall:

- A. Clearly label them, in a visible manner restrictive of removal of same, with the name, address and phone number of the store or facility owning or responsible for supplying the carts.
- B. Be responsible for retrieval of any of their carts as soon as possible and not more than three business days from notification by the City, or any official thereof, of a request to do so by fax, letter, email or verbal notification. Any that do not do so have violated this chapter.
- C. Create procedures.
 - (1) Create internal procedures to comply with this chapter, which procedures shall be written and in place within 30 days after the effective date of this chapter, and which shall be supplied to the City Clerk, who shall provide copies to the Public Works Supervisor, Code Enforcement Officer, and the Police Department. Additional copies shall be supplied, if requested, from time to time by the City.
 - (2) Such procedures shall identify the name of the establishment, the name of and contact information for the store manager and the person, title, address of the store or facility, phone number, fax number, and e-mail address where and to whom the City may send notices; and shall include an affirmative plan of action demonstrating how, and with what frequency the City shall be searched for shopping carts which have been removed from the establishment; and which shall be at least weekly.
- D. At their sole expense, create signage on their premises, to be prominently displayed in a conspicuous place at or near all entrances and exits, giving notice of the provisions of this chapter relating to the prohibition against removal of carts from the premises or the parking lot immediately adjacent to the establishment and not returning them, or abandoning them, and that violators are subject to fines and penalties.
- E. Acknowledge receipt of a copy of this chapter to confirm that any cart found in a street or place will be impounded to prevent a safety hazard and that notification will be sent by the City not less than once per week via e-mail informing the designated establishment representative of the number of carts in possession of the City and where they may be redeemed.

§ 313-5. Municipal impoundment; redemption fee

- A. The City shall not impound a shopping cart that has sign or notice identifying the owner of the cart or the retailer who has written consent from the owner to use the cart, and listing a valid telephone number or address through which the owner or retailer can be contacted, unless the following conditions are met:
 - (1) The shopping cart is located outside the premises or parking area of a retail mercantile establishment, unless it is found located in a street, in which event it will be promptly impounded by the City;
 - (2) The City will notify the owner or retailer via e-mail of the location of the cart and allow three (3) business days from the date of such notification for the owner, retailer, or an authorized agent to retrieve the shopping cart;
 - (3) The City will notify the owner or retailer via e-mail upon impoundment of a shopping cart and include information as to how the cart may be retrieved;

- (4) The City will hold impounded shopping carts at the Department of Public Works yard, 939 Pitney Road, Absecon, NJ, or such other location that may be designated by the Public Works Supervisor. An appointment is required for the pickup of shopping carts;
 - (5) The City will allow the owner or retailer a minimum of five (5) business days following receipt of notice that a shopping cart has been impounded to retrieve the cart before the City may sell or otherwise dispose of the cart;
 - (6) Whenever the Public Works Department or Code Enforcement shall take any cart into their possession bearing identification of ownership or right to possession, not less than once per week a notice shall be sent by e-mail to the designated representative of the establishment advising that such cart(s) is (are) being held and stored and that the cart may be redeemed upon payment to the City of a fee or charge of \$25.00 per cart. Carts may be redeemed by the owner thereof as shown by the identification of ownership or right to possession prior to sale, dismantling, destruction or disposal thereof, and the owner shall be entitled to receive such cart upon payment of the fee or charge of the sum of \$25.00 per cart.
 - (7) Any fine imposed upon the owner or retailer for an impounded shopping cart shall not exceed \$50.00 for each occurrence for failure to retrieve shopping carts. An occurrence includes all shopping carts impounded in accordance with this section during a twenty-four-hour period.
- B. The City may, at its sole discretion, impound a shopping cart that has a sign or notice identifying the owner of the cart, or the retailer who has written consent from the owner to use the cart, and lists a valid telephone number or address through which the owner or retailer can be contacted, without meeting the conditions required by Subsection A(1) through (6) of this section, if the City:
- (1) Notifies the owner or retailer within 24 hours of impounding the shopping cart and includes information on how the cart may be retrieved;
 - (2) Releases the cart to the owner, retailer or authorized agent without any charge or fine whatsoever, if the owner, retailer, or authorized agent attempts to retrieve the cart within five (5) days of notice.
- C. Nothing contained in this section shall preclude or otherwise limit the City from impounding a shopping cart that does not have a sign or notice identifying the owner of the cart, or the retailer who has written consent from the owner to use the cart, and lists a valid telephone number or address through which the owner or retailer can be contacted.

§ 313-6. Violations and penalties

- A. A shopper, patron, or user of a cart convicted in municipal court of a violation of this chapter shall be fined \$100.00 for the first conviction and \$250.00 for each subsequent conviction.
- B. An owner or retailer of an impounded shopping cart convicted in municipal court of a violation of this chapter shall be fined \$100.00 for each occurrence for failure to retrieve shopping carts. An occurrence includes all shopping carts impounded in accordance with this chapter during a twenty-four-hour period. This penalty shall be in addition to any fees for shopping cart redemption.
- C. Any person violating any of the other provisions of this chapter shall, upon conviction, be punished as set forth in Chapter 1, General Provisions, Article II; and each violation shall be

deemed to be a separate and distinct offense. This penalty shall be in addition to any fees for shopping cart redemption.

§ 313-7. Revocation of mercantile license for repeated violations

The mercantile license of an establishment may be subject to revocation for repeated violations if more than fifty (50) carts are retrieved or impounded by the City within any six-month period.

§ 313-8. Right to inspect

The Department of Public Works, Code Enforcement or members of the Police Department shall be authorized to enter upon establishment premises at any reasonable hour of a business day where carts are provided for the purpose of inspecting carts for proper identification and otherwise effecting compliance with the provisions of this chapter.

§ 313-9. Disposition of funds collected upon sale of carts

Upon a redemption or sale of a cart, the proceeds shall be deposited into the general funds of the City or in such a manner as shall be designated by the Mayor and City Council.

§ 313-10. Nonliability of City

Any sale or other disposition of such cart pursuant to this chapter shall be without liability on the part of the City to the owner of such a cart or other person lawfully entitled thereto or having interest therein.

§ 313-11. No obligation of City to search for carts

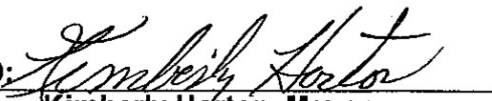
Nothing contained herein is intended to impose upon the City or any department therein to utilize the Public Works, Code Enforcement or Police Department resources to conduct City-wide searches for abandoned carts or to make such searches on any regular schedule or basis.

§ 313-12. Effective Date:

This Ordinance shall be in full force and effect from and after its adoption and any publication as required by law.

Dated: May 6th, 2021

SIGNED:



Kimberly Horton, Mayor

ATTEST:



Carrie A. Crone, RMC Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on April 15th, 2021. Laid over and advertised for public hearing and final adoption on May 6th, 2021. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on May 7th, 2021.