

ORDINANCE NO. 2010-07

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 17 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 17-66 PERTAINING TO SHOPPING CARTS; RESTRICTIVE DEVICES REQUIRED; VIOLATIONS; PENALTIES AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 17 of the Peoria City Code (1992) is amended by amending Section 17-66 pertaining to Shopping carts; retail pertaining to and which shall read as follows:

Sec. 17-66. Shopping carts; restrictive devices required; violations; penalties.

(a) On or after January 1, 2008, 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 Community Development 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, 2013, 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, 2013 shall file a certification with the Community Development Director or his 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) As an alternative to subsection (b), any person, partnership, corporation or other legal entity operating a retail establishment within the City on or before January 1, 2008 shall enter into a contract with a shopping cart retrieval service that complies with the provisions of Section 17-69 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 not less than 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 shopping cart retrieval service that is a party to the Contract must hold a valid business license issued by this City.

(3) 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 (b)

(4) The retail establishment shall pay an annual fee of \$250.00 or such other amount as set in Chapter 2 of this code 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.

(5) The retailer shall continuously meet the requirements of section 17-68(a) of this code and have the name and phone number of the car retrieval service attached to all of the carts.

(6) 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.

(7) In the event that 150 shopping carts under the control of a retail establishment using this section were logged as being collected, deposited and impounded with the City within one calendar year within a two consecutive year running period, the Community Development 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.

(e)(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 of not less than \$25.00 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. For a second or subsequent violation of this subsection within Ninety Days following the First Violation, the Court shall impose a civil sanction of not less than \$50.00 for each Shopping Cart that is not equipped with a Restrictive Device. 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.

(de) Failure to file a certification with the City as required by this section shall be a class three (3) Misdemeanor. The Court shall impose the filing fee, together with a minimum sanction of Two Hundred and Fifty Dollars and order that the certification be filed or the terms of this code complied within ninety days.

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.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 16th day of February, 2010.

Dated: 2/20/10

Bob Barrett
Bob Barrett, Mayor

ATTEST:

Mary Jo Waddell
Mary Jo Waddell, City Clerk



APPROVED AS TO FORM:

Stephen M. Kemp
Stephen M. Kemp, City Attorney

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