

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: IC
Amend No. _____

Date Prepared: January 20, 2010

Council Meeting Date: February 16, 2010

TO: Honorable Mayor and Council
FROM: Steve Kemp, City Attorney
SUBJECT: Amendment to Chapter 17 of the Peoria City Code (1992)

RECOMMENDATION: That the Mayor and Council adopt the ordinance amending Chapter 17, Section 17-66 of the Peoria City Code pertaining to Shopping Carts.

SUMMARY:

In 2000, the Arizona Legislature enacted a statute governing the impoundment of shopping carts. Unfortunately, the statute was not effective in addressing the problem of abandoned shopping carts in the City.

As a result in 2007, this office recommended and the Council adopted a series of amendments to our code based on Peoria's authority as a charter city to enact its own regulations, notwithstanding state law. These regulations sought to address the problem in three respects:

1. All new retail establishments must include induction systems to prevent the removal of shopping carts from their premises.
2. All shopping carts must be labeled and have identification of the owner and all establishments must post notices on their premises regarding the city code provisions on shopping carts.
3. All existing establishments must include induction systems to prevent removal of shopping carts from their premises by January 1, 2013.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date:
- Approved
- Unfinished Business (Date heard previous)
- New Business
- Public Hearing: No Action Taken

ORD# 2010-07 RES#
LCON# LIC#
Action Date:

This third item posed considerable concern to a number of state wide organizations of retailers. First, the cost of such induction systems may exceed \$50,000.00 and in some cases, together with modifications of carts, the total cost could exceed \$100,000.00. In the current economy, this could be a difficult burden for the retail community to bear. Second, some retailers have been successful with cart retrieval services and it appears that they will be held to account for those retailers who have not.

From the City's standpoint, the staff desired to ensure that the progress made from the City's amendments in 2007 is not lost. Second, this issue is a local issue and we preferred it be addressed by our local policy makers, rather than the state.

We have worked with the Arizona Food Retailers to address the mandatory induction system for existing businesses. The proposed ordinance provides for an alternative which allows for use of cart retrieval services by these existing businesses, but with objective standards that the City can evaluate. In order for an existing business to use a cart retrieval service as an alternative to an induction system, the business must comply with the following:

1. Have a written contract with a cart retrieval service. The contract must be filed with the City and if terminated, the new contract must be filed with the city.
2. The cart retrieval service must have a business license or be authorized to do business in the City.
3. The cart retrieval contract must be continuously in place or the business will have to install the induction system.
4. The retailer must pay an annual fee of \$250.00 to cover the City's cost in filing and verifying the contract.
5. The retailer with the other provisions of the City's shopping cart codes.
6. If the City collects and impounds 150 or more shopping carts within one calendar year, within a two year period, the City can terminate this option and compel the business to install an induction system.

This option will allow our existing businesses to address their responsibility to manage their carts, by contracting with a retrieval service and provide us with a means to address problems, while retaining all of the tools granted by the 2007 amendments to address this problem. We have worked with the Arizona Food Retailers and they have

CITY CLERK USE ONLY:

- Consent Agenda**
- Carry Over to Date:**
- Approved**
- Unfinished Business (Date heard previous)**
- New Business**
- Public Hearing: No Action Taken**

ORD# **RES#**
LCON# **LIC#**
Action Date:

agreed with these changes. This ordinance has also been reviewed by our Code compliance staff. Therefore it is my recommendation that the Mayor and Council adopt the proposed ordinance amending Chapter 17 of the Peoria City Code pertaining to shopping carts.

FISCAL NOTE: (If Applicable)

ATTACHMENT:

- 1. Proposed Ordinance**

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date:
- Approved
- Unfinished Business (Date heard previous)
- New Business
- Public Hearing: No Action Taken

ORD#
LCON#
Action Date:

RES#
LIC#

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: _____

Bob Barrett, Mayor

ATTEST:

Mary Jo Waddell, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

Published in Peoria Times

Publication Dates: February 19 and February 26, 2010

Effective Date: _____