

ORDINANCE NO. 2016-2086

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, AMENDING CHAPTER 14, MISCELLANEOUS OFFENSES, CREATING ARTICLE V, SECTION 14-50, NOTICE OF PENALITIES FOR REMOVAL OF SHOPPING CARTS, SECTION 14-51, SHOPPING CARTS, SECTION 14-52 RETRIEVAL; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the New Port Richey Code of Ordinances has been amended from time to time, as necessary, to serve the needs of the citizens of New Port Richey, Florida; and

WHEREAS, it is in the interest of public safety and welfare that New Port Richey, amend Chapter 14, by creating Article V, Section 14-50, Notice of Penalties for removal of shopping carts, Section 14-51, Shopping carts, and Section 14-52, Retrieval.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA, that:

SECTION 1. Amending Chapter 14, Miscellaneous Offenses, creating Article V, Sections 14-50, 14-51, and 14-52, of the Code of the City of New Port Richey, Florida be, and the same is hereby, amended to read as follows:

Sec. 14-50. - Notice of penalties for removal of shopping carts.

- (a) Shopping cart identification sign required for retail establishments. Every retail sales establishment which utilizes shopping carts, as defined by F.S. § 506.502(10), in the operation of its business shall affix an identification sign on the shopping cart providing the name and store number of the owner.
- (b) Every owner of a retail sales establishment which utilizes shopping carts or owner of a shopping center in which one or more of the retail sales establishments utilizes shopping

carts, as defined by Florida Statutes, Section 506.502(10), in the operation of its business shall post signs at the entrance(s) and exit(s) of its building and parking area(s) which shall be clearly legible in the English, and which shall provide, in substantial form, the following:

“WARNING

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 Sections 506.509 and 506.513 of the Florida Statutes.”

Signs shall be not less than 1 ½ feet by three feet and placed in a conspicuous location.

(c) Any establishment desiring an exemption from Section 14-50(a), and (b) shall file a petition for exemption and enclose an appropriate application fee to be determined by the City Manager. A petition for an exemption from the requirements of this section may be granted by the City Manager to any retail establishment which:

- (1) Constructs barriers to prevent the removal of shopping carts, while permitting full wheelchair ingress and egress by disabled persons; or
- (2) Attaches alarm mechanisms or other security devices to shopping carts to prevent their removal from the property of the retail sales establishment or shopping center.

(d) Failure to abide by Section 14-50(a) or (b) shall constitute a violation and result in a civil penalty as Class V violation. Nothing herein shall make illegal the removal of a shopping cart with the consent or permission of the owner of the shopping cart. The defense of permission or consent of owner shall be an affirmative defense.

Sec. 14-51. - Shopping carts.

(a) Procedure for handling identifiable shopping carts found on public property.

- (1) Employees and officers of the City of New Port Richey shall be deemed agents of City of New Port Richey and any identifiable shopping carts found by them on public property during the course of their official duties shall be reported to the City's Code Enforcement division. City staff shall collect the shopping carts and place them in storage.
- (2) The City shall provide reasonable notice to the owner of the shopping cart as designated on the shopping cart's identification sign to retrieve the property.
- (3) The owner of the shopping cart shall have ten (10) days from receipt of the notice to retrieve the property.
- (4) If the shopping cart is not claimed by the owner within the time specified in this section or if the Department cannot contact the owner for failure to provide the identification information required under Section 14-50 (a) of this Code, the title to such property shall vest in the City of New Port Richey and shall be disposed of at the sole discretion of the City.

(b) Procedure for handling unidentifiable shopping carts found on public property. All unidentifiable shopping carts found on public property shall be handled in accordance with F.S. ch. 705, as amended from time to time.

Sec. 14-52. – Retrieval Plan

1. (a) 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 of New Port Richey. Two or more retail establishments may collaborate and submit to the City a single plan.

(b) Plans must be submitted to the City no later than October 1, 2016 and must include an effective and specific method of retrieving the retail establishment's shopping carts found throughout the City of New Port Richey.

2. Plan submission, amendment and review.

(a) 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 of New Port Richey on property other than that of the retail establishment furnishing the shopping carts to patrons.

(b) Based on the above-referenced criteria, the City shall approve, reject or modify a plan, within 60 days of when the plan is submitted.

(c) If a plan is approved, the proposed measures shall be implemented no later than 30 days after approval.

(d) If a plan is rejected, the retail establishment shall modify the plan and resubmit it to the City no later than 30 days after the date of its rejection.

(e) Following the approval of a plan, a retail establishment may file a written request with the City to amend its plan. The proposed amended plan is subject to the same criteria and review process as an original plan.

(f) If a retail establishment's original or amended plan is approved by the City and subsequently, the City Manager determines that the retail establishment's plan for retrieving its shopping carts found throughout the City of New Port Richey is ineffective,

the City Manager may place on the City Council agenda a hearing for the purpose of modifying the retail establishment's plan.

The City Manager shall provide the retail establishment with at least ten days' written notice of such hearing, along with the City Manager's recommendation. After consideration of the matter and after permitting the retail establishment to be heard, the City Council may modify or leave the plan unchanged.

3. Penalty for failure to submit, modify or implement plan.

Any retail establishment that fails to timely submit a plan, implement a plan approved by the City, resubmit a rejected plan or make required modifications to a plan shall be subject to a fine of \$100.00 per day for each day of non-compliance. Non-payment of such a fine within the timeframe established for payment shall constitute a violation of this article.

4. Penalties for violation.

Any violation of this article shall be a Class V violation.

SECTION 2. Conflicts.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION 3. Severability

The provisions of this ordinance are severable, and it is the intention of the City Council of the City of New Port Richey, Florida to confer the whole or any part of the powers

herein provided. If any of the provisions of this ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the City Council that this ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION 4. Inclusion in Code.

It is the intention of the City Council that the provisions of this ordinance shall become and be made a part of New Port Richey Code; and that the sections of this ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

The above and foregoing Ordinance was read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this 19th day of July, 2016 and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this _____ day of _____, 2016.

ATTEST:

By: _____
Judy Meyers
Interim City Clerk

By: _____
Robert Marlowe
Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY
FOR THE SOLE USE AND RELIANCE OF THE
CITY OF NEW PORT RICHEY, FLORIDA:

City Attorney, Joseph A. Poblick