

**ORDINANCE NO. 18-858**

**AN ORDINANCE of the City of Federal Way, Washington, relating to shopping cart regulation; amending FWRC 07.03.020 and 07.03.040, and adding new Chapter 07.25 FWRC. (Amending Ordinance Nos. 09-596; 10-669; and 12-715)**

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WHEREAS, Article XI, Section 11 of the Washington State Constitution authorizes the City Council to make all local police and other regulations as long as they do not conflict with general state laws; and

WHEREAS, RCW 35A.11.020 authorizes the City Council to adopt and enforce ordinances regulating municipal affairs and impose penalties not exceeding five thousand dollars; and

WHEREAS, the City Council has enacted the City's ordinances, some of which are set forth in the Federal Way Revised Code including Chapter 7, which identifies public nuisances; and

WHEREAS, retail businesses provide shopping carts for the convenience of customers shopping on the premises of the businesses; and

WHEREAS, a shopping cart that has been removed from the premises of the business and left abandoned on public or private property throughout the City constitutes a potential hazard to the health and safety of the public; and

WHEREAS, shopping carts abandoned on public or private property contribute to conditions of blight in the community and reduced property values; and

WHEREAS, shopping carts abandoned on public or private property can obstruct free access to sidewalks, streets and other rights-of-way, interfere with pedestrian and vehicular traffic on pathways, driveways, public and private streets, and impede emergency services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The foregoing recitals are adopted as findings of the City Council.

Section 2. Section 7.03.020 of the Federal Way Revised Code is hereby revised to read as follows:

**7.03.020 Definitions.**

The definitions in this section apply throughout this title unless the context clearly requires otherwise. Terms not defined here are defined according to FWRC 1.05.020.

*“Abandoned”* means any property, real or personal, which is unattended and either open or unsecured so that admittance may be gained without damaging any portion of the property, or which evidences indicia that no person is presently in possession, e.g., disconnected utilities, accumulated debris, uncleanness, disrepair and, in the case of chattels, location. Length of time or any particular state of mind of the owner or person entitled to possession are not conclusive in determining that property is abandoned.

*“Abandoned shopping cart”* means any shopping cart made available for customers to use that has been removed from the retail establishment’s premises, without the owner’s written consent, and is located on either public or private property.

*“Attractive nuisance”* means the circumstance or condition which may reasonably be expected to attract young children and which constitutes a danger to such children. Attractive nuisances include but are not limited to unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern,

storage tank, or shaft; and any lumber, trash, debris, or vegetation that may prove a hazard for minors.

*“Building”* in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or other structure used for the lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods. Each unit of a building consisting of two or more units separately secured or occupied is a separate building.

*“Director”* means the director of the Community Development Department or a person designated by the director of the Community Development Department.

*“Hearing officer”* means the mayor, or his or her designated representative.

*“Junk”* means old, used, or scrap metal, rope, rags, batteries, paper, rubber, tires, machinery or appliances or parts of such machinery or appliances, wood, debris, trash, waste, household goods or hardware, medications, medical supplies, or medical devices, or junked, dismantled, wrecked or inoperable motor vehicles or vehicular component parts.

*“Junk vehicle”* means any vehicle substantially meeting at least three of the following conditions:

- (1) Is three years old or older;
- (2) Is extensively damaged, such damage including but not limited to any of the following: a broken window or windshield or missing wheels, tires, motor, or transmission;
- (3) Is apparently inoperable;
- (4) Has an approximate fair market value equal only to the approximate value of the scrap in it.

*“Junkyard”* means a property or place of business which is maintained, operated or used for storing, keeping, buying, selling or salvaging junk.

"Litter" shall include, but is not limited to, debris in the form of cans, bottles, glass, ashes, garbage, wastepaper, packing material, scrap iron, wire, metal articles, discarded furniture and appliances, junk, broken stone or cement, broken crockery, discarded building materials, inoperable bicycles or bicycle parts, rags, boxes, crates, packing cases, mattresses, bedding, tree and vegetation trimmings, and all other trash, including abandoned inflammable materials, which are a fire hazard or a menace to the public health, safety, or welfare.

"Shopping cart" means a basket mounted on wheels or a similar device of the type generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

Section 3. Section 7.03.040 of the Federal Way Revised Code is hereby revised to read as follows:

**7.03.040 Specific public nuisances.**

The following specific acts, omissions, places, conditions, and things, including those that create, maintain, use, cause, allow, or permit to exist or remain on any public or private property any of the following specific acts, omissions, places, conditions, and things, are hereby declared to be public nuisances:

- (1) Excavations or naturally occurring holes, including, but not limited to, privies, vaults, cesspools, sumps, pits, wells, or any other similar conditions, which are not secure and which constitute a concealed danger or other attractive nuisance;
- (2) Making, causing, or permitting to be made discordant and unnecessary noise of any kind which annoys any significant number of persons lawfully in the immediate area, whether by means of any speaker or other sound-amplifying device, horn, or other mechanical device; or by outcry, loud speaking, singing; or by any other means;
- (3) The discharge of sewage, human excrement, or other wastes in any location or manner, except through systems approved for the conveyance of such, to approved public or private disposal systems and which are constructed and maintained in accordance with the provisions of this Code, other applicable law, or in a manner injurious to the public health;

(4) Animal parts, manure, excreta, or wastes including bones, meats, hides, skins, or any part of any dead animal, fish, or fowl, which are improperly handled, contained, or removed from a premises; placed in any watercourse, lake, or street; or allowed to become putrid, offensive, and injurious to the public health;

(5) The erection or use of any building, room, or other place in the city for exercise of any trade, employment, or manufacture which, by emitting noxious exhausts, particulate matter, offensive odors, or other related annoyances, is discomforting, offensive, or detrimental to the health of individuals or of the public;

(6) Any poisonous material or thing on any property, placed so as to be dangerous to any person or domesticated animal;

(7) Storing of flammable junk on any property, including but not limited to old rags, rope, cordage, rubber, boxes, or paper, unless it is in a building of fireproof construction;

(8) Burning or disposal of refuse, sawdust, or other material in such a manner as to cause or permit ashes, sawdust, soot, or cinders to be cast upon the streets of the city, or to cause or permit the smoke, ashes, soot, or gases arising from such burning to become annoying or to injure or endanger the health, comfort, or repose of persons;

(9) To carry on the business of manufacturing gun powder, nitroglycerine, or other highly explosive substance, mixing or grinding such materials, or to establish a powder magazine within 1,000 feet of any building or without all necessary permits;

(10) Filthy, littered, trash-covered, or overgrown premises or abutting street and alley rights-of-way for which a property owner is responsible, including, but not limited to:

(a) Storing outside a completely enclosed building litter, junk, or cut brush or wood including dead or decaying plant material except as contained in a compost pile or orderly stacked firewood if cut in lengths of four feet or less, or items that threaten public health, safety or welfare;

(b) All unused, abandoned or discarded refrigerators, ice boxes or like containers which are left in any place exposed or accessible to children, whether such is outside any building or dwelling or within any unoccupied or abandoned building, dwelling or other structure;

(c) All places used or maintained as dumps, junkyards, or automobile or machinery disassembly yards or buildings not properly permitted and licensed or not in compliance with any law or regulation;

(11) Any unsightly, abandoned, or deteriorated structure constructed with inappropriate materials or improperly fastened together or anchored against the forces of nature; any screening which is in a falling, decayed, dilapidated, or unsafe condition; any structure where construction was commenced and the structure was left unfinished; or any structure that has been constructed or modified without permits or which is otherwise in violation of city ordinance;

(12) Personal property left in the public right-of-way of any road or alley, including but not limited to any personal and household items, furniture, appliances, machinery, equipment, building materials; and the abandonment or allowing the abandonment of property in any public right-of-way;

(13) The parking or storage of vehicles on single-family residential lots in violation of the parking regulations in this Code;

(14) To obstruct, impede, or encroach upon, without legal authority, the use of any river, harbor, lake, waterway, landing place, right-of-way, street, private way, or public area; to unlawfully obstruct or impede the flow of municipal transit vehicles or passenger traffic, access to municipal transit vehicles or stations; to unlawfully obstruct or impede a municipal transit driver, operator, or supervisor in the performance of that individual's duties; or otherwise interfere with the provision or use of public transportation services; or to create or place any device simulating traffic control signs;

(15) To suffer, maintain, or permit to be maintained any place where intoxicating liquors are unlawfully kept for sale or disposal to the public;

(16) Any place where fighting between people or animals or birds is unlawfully conducted or

allowed;

(17) Those acts, omissions, places, conditions, and things declared nuisances elsewhere in this title or elsewhere in the Code, including in FWRC 6.70.010;

(18) All violations of development, land use, public health, safety, and welfare and sanitation rules, regulations, or ordinances of the city or Seattle-King County health department rules, regulations, or ordinances;

(19) Use or operation of any internal combustion engine on Steel Lake and North Lake; provided, that this provision shall not apply to authorized law enforcement or emergency vessels or watercraft, or to authorized vessels or watercraft which are actually engaged in, or being prepared for, duties such as maintenance, scientific study, or protection of lakes or wetlands;

(20) Anything meeting the definition of a public nuisance under this title.

(21) Causing or allowing any shopping cart to be abandoned on either public or private property.

Section 4. A new chapter of the Federal Way Revised Code is hereby created, Chapter 7.25, to read as follows:

**Chapter 7.25**  
**ABANDONED SHOPPING CARTS**

**7.25.010 Purpose and Applicability.**

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(1) A purpose of this chapter is to provide for the prompt retrieval of lost, stolen or abandoned shopping carts in order to promote public safety and improve the image and appearance of the City. It is a further purpose of this chapter to have the owners and operators of businesses providing shopping carts use the means available to them to deter, prevent or mitigate the removal of shopping carts from their business premises, and to retrieve any carts that may be removed despite these efforts. It is a further purpose of this chapter to prevent the illegal removal of shopping carts from the business premises, to prevent the continued possession of illegally removed carts, and to prevent the accumulation of illegally removed carts on public or private properties.

(2) Applicability: This chapter shall apply to all shopping carts in the City of Federal Way.

#### **7.25.020 Definitions.**

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The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Unless defined otherwise here, the definitions of FWRC 1.05.020 shall control.

“*Owner*” means the owner or retailer identified by an identification sign on a shopping cart or, in relation to a shopping cart without an identification sign, the retail establishment that makes available that shopping cart for customers to use.

“*Retail Establishment*” means any business that makes available shopping carts for customers of the business to use regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.

#### **7.25.030 Identification Signs.**

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Each shopping cart offered or provided for customers to use shall have an identification sign affixed to it in accordance with RCW 9A.56.270(2), as now enacted or hereafter amended.

#### **7.25.040 Impoundment and Fees.**

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(1) Impoundment of Shopping Carts: The City may immediately impound an abandoned shopping cart on private land within the city with the consent of the party in possession of the land and may immediately impound an abandoned shopping cart on public land within the city.

(2) Notification: The City shall notify the owner of each impounded shopping cart in writing if the shopping cart has an identification sign as required by FWRC 7.25.030. The Director may establish by rule a process for owners to register a preferred method of notification. If delivered by U.S. mail, the notice shall be deemed to have been received 3 days after mailing.

The notice shall state the amount of the impound fee and that the owner has 14 days from the date of receipt to retrieve the shopping cart. The notice shall also state that if the shopping cart is not retrieved within 14 days, the City may dispose of the shopping cart.



(3) Impound Fee: The City shall charge a shopping cart impound fee to the owner of each abandoned shopping cart impounded by the City, unless the fee is eligible for deferral. Each shopping cart impounded by the City shall constitute a separate violation. The shopping cart impound fee shall be per the fee schedule maintained by the City Clerk.

(4) Fee Deferrals: The City shall defer impound fees for the first three impounded shopping carts within any calendar month owned by any retail establishment that, prior to the impoundment, has implemented security measures as defined in FWRC 7.25.050. The City shall defer no impound fees for a particular retail establishment in a calendar month if four or more shopping carts from that retail establishment are impounded within that calendar month.

#### **7.25.050 Security Measures.**

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(1) Security measures are methods to prevent removal of shopping carts from or to return them to the premises of the retail establishment including, but not limited to:

- (a) Electronically-activated self-braking wheels; or
- (b) Poles mounted to shopping carts or other physical barriers that prevent removing the shopping carts from the interior of the retail establishment; or
- (c) Utilization of a shopping cart patrol and retrieval company who recovers shopping carts on behalf of the retail business within a two mile radius of the contracting retail establishment no fewer than two times per week; or
- (d) Security personnel dedicated to cart control and retention; or
- (e) Other measures deemed appropriate and effective by the Director.

#### **7.25.060 Disposition of Unclaimed Shopping carts.**

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The City may summarily dispose of shopping carts impounded by the City that are either not retrieved within 14 days following the receipt of notification or without an identification sign. If the City disposes of a shopping cart, the City may assess the owner with a disposal fee in addition to the impoundment fee. The shopping cart disposal fee shall be per the fee schedule maintained by the City Clerk.

Section 5. Impound and Disposal Fees. The shopping cart impound fee is set at \$25 until the fee schedule maintained by the City Clerk is updated to include a shopping cart impound fee. The shopping cart disposal fee is set at \$25 until the fee schedule maintained by the City Clerk is updated to include a shopping cart disposal fee.

Section 6. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Federal Way hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 7. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's or clerical errors, references, ordinance numbering, section or subsection numbers, and any references thereto.

Section 8. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 9. Effective Date. This ordinance shall take effect 30 days after its passage and publication, as provided by law.

PASSED by the City Council of the City of Federal Way this 4th day of December, 2018.

CITY OF FEDERAL WAY:



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JIM FERRELL, MAYOR

ATTEST:



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STEPHANIE COURTNEY, OMC, CITY CLERK

APPROVED AS TO FORM:



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J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>11/14/2018</u>
PASSED BY THE CITY COUNCIL:	<u>12/04/2018</u>
PUBLISHED:	<u>12/07/2018</u>
EFFECTIVE DATE:	<u>01/07/2019</u>
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