

ORDINANCE NO. 22-943

AN ORDINANCE of the City of Federal Way, Washington, relating to the regulation of shopping carts within the City; amending FWRC 7.03.020, 7.25.030, 7.25.040, and 7.25.060; adding a new section to Chapter 6.30 including section 6.30.070; and adding a new section to Chapter 7.25 including section 7.25.070. (Amending Ordinance No. 18-858.)

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

WHEREAS, RCW 35A.11.020 authorizes the Council to adopt and enforce ordinances regulating municipal affairs and impose civil penalties not exceeding five thousand dollars and criminal penalties as described by state law; and

WHEREAS, the Council has enacted the City’s ordinances, some of which are set forth in the Federal Way Revised Code (“FWRC”) including Chapter 6, which regulates criminal activity in support of public safety and welfare, and 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, abandoned, lost, and/or stolen shopping carts on public or private property contribute to conditions of blight in the community and reduce property values; and

WHEREAS, such shopping carts 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; and

WHEREAS, on December 4, 2018, the Council passed Ordinance No. 18-858, which regulates abandoned shopping carts in the City as provided in Chapter 7.25 FWRC; and

WHEREAS, shopping cart theft, as defined in RCW 9A.56.270, is a misdemeanor in the State of Washington; and

WHEREAS, the City has adopted RCW 9A.56.270 by reference in Chapter 6.30 FWRC; and

WHEREAS, the Council desires to modify and supplement the City's current regulation of abandoned, lost, and/or stolen shopping carts in the City to benefit the public health, safety, and welfare.

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

Section 1. Findings. The City Council of the City of Federal Way makes the following findings with respect to the proposed amendments.

- (a) The recitals set forth above are hereby adopted and restated as findings of fact.
- (b) These code amendments are in the best interest of the residents of the City and will benefit the City as a whole by protecting public health and safety.

Section 2. Chapter 6.30.010 of the Federal Way Revised Code is hereby amended to read as follows:

6.30.010 Theft, unauthorized issuance of bank checks and possession of stolen property.

The following state statutes are adopted by reference:

RCW

9.26A.110 Fraud in obtaining telecommunications service – Penalty.

- 9.54.130 Restoration of stolen property – Duty of officers.
- 9A.56.010 Definitions.
- 9A.56.020 Theft – Definition, defense.
- 9A.56.050 Theft in the third degree.
- 9A.56.060 Unlawful issuance of checks or drafts.
- 9A.56.096 Theft of rented, leased, or lease-purchased property.
- 9A.56.140 Possessing stolen property – Definition, credit cards, presumption.
- 9A.56.170 Possessing stolen property in the third degree.
- 9A.56.220 Theft of cable television services.
- 9A.56.240 Forfeiture and disposal of device used to commit violation.
- 9A.56.260 Connection of channel converter.
- ~~9A.56.270 Shopping cart theft.~~
- 9A.56.280 Credit, debit cards, checks, etc. – Definitions.

Section 3. Chapter 7.03.020 of the Federal Way Revised Code is hereby amended 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 or lost shopping cart” means any shopping cart left unattended or discarded upon 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 any public property in the city, or private property other than the premises of the retail establishment from which the shopping cart was removed.

“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.

“*Stolen shopping cart*” means a shopping cart that is both:

(1) Marked with an identification sign in compliance with FWRC 7.25.030; and

(2) Removed from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart.

Section 4. Chapter 7.25 of the Federal Way Revised Code is hereby amended to read as follows:

Chapter 7.25

~~ABANDONED SHOPPING CARTS~~

Section 5. Chapter 7.25.040 of the Federal Way Revised Code is hereby amended to read as follows:

7.25.040 Impoundment and fees.

(1) *Impoundment of abandoned or lost shopping carts.* The city may immediately impound an abandoned or lost 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 or lost shopping cart on public land within the city.

(2) Seizure of shopping carts. Any stolen shopping cart may be seized as part of a criminal investigation under FWRC 6.30.010, FWRC 6.30.070, or other applicable criminal law. Any shopping cart operated in violation of FWRC 7.25.070 is also subject to seizure.

(23) Notification. The city shall notify the owner of each impounded or seized 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 three days after mailing.

The notice shall state the amount of the impound or seizure 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.

(34) *Impound or seizure fee.* The city shall charge a shopping cart impound or seizure fee to the owner of each ~~abandoned~~ shopping cart impounded or seized by the city, unless the shopping cart is exempt from such impound fee under FWRC 7.25.040(4)~~fee is eligible for deferral~~. Each shopping cart impounded or seized by the city shall constitute a separate violation. The shopping cart impound fee shall be per the fee schedule maintained by the city clerk.

(45) *Fee ~~exemption~~deferrals.* ~~The city shall defer impound fees for the first three~~ Impounded or seized shopping carts shall be exempt from the impound or seizure fee if the owner of the shopping cart, prior to the impoundment, has implemented security measures as defined in FWRC 7.25.050, and the shopping cart is compliant with the identification sign requirement of FWRC 7.25.030, ~~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.~~

Section 6. Chapter 7.25.050 of the Federal Way Revised Code is hereby amended to read as follows:

7.25.050 Security measures.

(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 and securing all shopping carts within a secured enclosure or building when the retail establishment is closed; or
- (e) Other measures deemed appropriate and effective by the director.

Section 7. Chapter 6.30 of the Federal Way Revised Code is hereby amended to add a new section 6.30.070 to read as follows:

6.30.070 Shopping cart theft.

(1) Adoption. RCW 9A.56.270, Shopping cart theft, as now enacted or hereafter amended, is adopted by reference.

(2) Seizure. Any such stolen shopping cart shall be subject to seizure related fees as provided by FWRC 7.25.040.

(3) Personal property. The city shall develop procedures to ensure appropriate treatment and/or storage of any personal property located in a shopping cart subject to seizure in accordance with applicable law.

Section 8. Chapter 7.25 of the Federal Way Revised Code is hereby amended to add a new section 7.25.070 to read as follows:

7.25.070 Operation of shopping cart on public right-of-way.

It is a Class 3 civil infraction under RCW 7.80 to push, pull, possess or otherwise operate a shopping cart on a public right-of-way.

Section 9. 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 10. 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/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 11. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 12. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage and publication, as provided by law.

PASSED by the City Council of the City of Federal Way this 15th day of November, 2022.

[signatures to follow]

CITY OF FEDERAL WAY:



JIM FERRELL, MAYOR

ATTEST:



STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:



J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>10/26/2022</u>
PASSED BY THE CITY COUNCIL:	<u>11/15/2022</u>
PUBLISHED:	<u>11/18/2022</u>
EFFECTIVE DATE:	<u>12/18/2022</u>
ORDINANCE NO.:	<u>22-943</u>