

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW NUMBER 2021-146

SHOPPING CARTS: A by-law to prevent and control the abandonment of shopping carts on City Property, Highways or any land within the City of Sault Ste. Marie outside of an Owner's Premises and to authorize the disposal by the City of abandoned Shopping Carts.

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act*") provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS Section 9 and 10 of the *Municipal Act* provides that the Corporation of the City of Sault Ste. Marie (the "City") has the capacity, rights, powers and privileges of a natural person, and may pass by-laws for prohibiting or regulating, for purposes considered necessary or desirable including the use and protection of public assets, social and environmental purposes, the delivery of services, and for the health, safety and well-being of persons under the authority of the *Municipal Act*;

AND WHEREAS subsection 127(c) of the *Municipal Act* authorizes municipalities to prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land;

AND WHEREAS section 128 of the *Municipal Act* authorizes municipalities to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS the Council of the City has determined that shopping carts which are deposited, disposed of or abandoned within the City of Sault Ste. Marie, including but not limited to land owned or occupied by the City of Sault Ste. Marie, constitute a public nuisance in that they may be a traffic hazard, impeded sidewalks and street maintenance and may be a risk to public safety or become unsightly;

AND WHEREAS Section 63 of the *Municipal Act* gives the Council of the City authority to prohibit the abandonment or disposal of an object on or near a highway;

AND WHEREAS Section 391 of the *Municipal Act* grants authority to the Council of the City to impose fees or charges on persons for services or activities provided by the municipality;

AND WHEREAS Section 446 of the *Municipal Act* provides that if a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may, in the same or another by-law direct that in default of it being done by the person directed or required to do it, such matter or thing shall be done at the person's expense,

NOW THEREFORE, the Council of The Corporation of the City of Sault Ste. Marie enacts as follows:

PART 1 – SHORT TITLE

1. This By-law shall be known as the “Shopping Cart By-law”.

PART 2 – DEFINITIONS

2. For the purposes of this By-law:
 - (a) “abandon” means to place, leave, park, stand or deposit a Shopping Cart, unattended, on any City Property, Highway, Private Property or other land within the City of Sault Ste. Marie that is outside of a Business Owner’s Premises;
 - (b) “Business Owner” shall mean a Person who owns or operates a business that provides shopping carts in connection with the said business;
 - (c) “Chief Building Official” means the Chief Building Official appointed under Section 3 of the *Building Code Act, 1992, c.23* or his/her designates;
 - (d) “City” shall mean the City of Sault Ste. Marie, Province of Ontario;
 - (e) “City Property” shall mean any lands, buildings or structures owned, leased or occupied by the City;
 - (f) “Director” means the Director of Public Works and Engineering Services or his/her designates;
 - (g) “Highway” means a common and public highway, street, road, avenue, parkway, lane, driveway, boulevard, sidewalk, square, place, bridge, aqueduct, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons and includes the area between the lateral property lines of any highway or road allowance including any curbs, gutters, culverts and retaining walls;
 - (h) “Person” shall include an individual, partnership or corporation;
 - (i) “Premises” means the entire area owned or used by a Business Owner, including the parking area provided in relation to such business;
 - (j) “Private Property” shall mean the land, other than City Property around or appurtenant to the whole or any part of the exterior of a residential or non-residential property and used or capable of being used in connection the property, and includes vacant property;

- (k) “Shopping Cart” shall mean any device made available by a Business Owner to the customers of that business for the conveyance of goods purchased from the business while on the Business Owner’s Premises or the associated parking area; and
- (l) “Shopping Cart Management System” shall mean any physical structure or device, signage, service or other demonstrable measure taken to prevent the unauthorized removal of shopping carts from a Business Owner’s Premises during business hours and ensures that Shopping Carts are secured from public access after close of business daily.

PART 3 – APPLICATION

- 3. This By-law applies to all City Property, Highway, Private Property and any other land within the City.

PART 4 – SHOPPING CART MANAGEMENT SYSTEM

- 4. Every Business Owner shall develop and put into place an approved Shopping Cart Management System for each Business Owner’s Premises that is to the satisfaction of the City’s Director in accordance with Section 5 and 6 of this By-law.
- 5. Every Business Owner shall develop and file with the City’s Director the full particulars of a proposed Shopping Cart Management System for each Business Owner’s Premises, which shall include the following:
 - (a) the Business Owner’s name, street address, telephone number, facsimile number and email address;
 - (b) the name, phone number and email address of a contact person for the Business Owner for the purposes of all matters set out in this By-law;
 - (c) full particulars and details of the Shopping Cart Management System for the Business Owner’s Premises;
 - (d) full particulars including timelines of how the Business Owner shall retrieve and return any abandoned Shopping Carts outside of the Business Owner’s Premises if the Business Owner becomes aware of same or in the event of notice of same by the City;
 - (e) general description of the Business Owner’s Shopping Carts including easily identifiable features (ie. colour, Business Owner’s name); and
 - (f) any other information as may be requested by the Director.
- 6. Upon receipt of the proposed Shopping Cart Management System as set out in Section 5 above, the Director shall review and provide written notice of approval or rejection of the proposed Shopping Cart Management System to the Business Owner.
- 7. If rejected by the Director pursuant to Section 5 herein, the Business Owner shall make any necessary amendments to the proposed Shopping Cart Management System and refile same with the Director for consideration until such time as the

Business Owner develops an approved Shopping Cart Management System that is to the satisfaction of the City's Director.

8. In the event that a Business Owner desires to amend an approved Shopping Cart Management System, the Business Owner shall file a letter setting out full particulars of any proposed amendments to the Director in advance and seek approval of same. The Director shall promptly review and provide written notice of approval or rejection of any such amendments to the Shopping Cart Management System of the Owner.
9. In the event that the Director subsequently determines that an approved Shopping Cart Management System is no longer satisfactory, the Director shall give notice to the Business Owner who shall forthwith submit a new Shopping Cart Management System to the Director in accordance with Section 5 of this By-law for review by the Director.
10. The Director's decision in Section 7, 8 and 9 of this By-law is final.
11. Every Business Owner shall fully adhere to and comply with their approved Shopping Cart Management System.
12. The Business Owner's name shall be affixed, permanently and easily visible on each Shopping Cart.

PART 5 - PROHIBITIONS

13. No Business Owner shall allow or otherwise permit a Shopping Cart owned or used by the Business Owner's business to be removed from the Business Owner's Premises.
14. No Business Owner shall allow or otherwise permit a Shopping Cart owned or used by the business to be abandoned, placed, left, deposited or stopped on any City Property, Highway or any land within the City of Sault Ste. Marie that is outside of the Business Owner's Premises.
15. No Person shall remove a Shopping Cart from the Business Owner's Premises that owns or uses the Shopping Cart.
16. No Person shall place, leave, deposit or stop, or permit to be placed, left, deposited or stopped, a Shopping Cart on or near a Highway, on City Property, on Private Property or on any land within the City of Sault Ste. Marie that is outside of the Business Owner's Premises.
17. Sections 13 to 16 inclusive of this By-law do not apply to a Shopping Cart that is:
 - (a) being transferred back to the Business Owner's Premises by a Business Owner;
 - (b) being disposed of by a Business Owner in a manner that does not infringe on any requirements set out in this By-law; or

- (c) being collected, removed and disposed of by the Director, Chief Building Official or an authorized agent of the City pursuant to the terms and conditions set out in this By-law.

PART 6 – ENFORCEMENT

A. *Shopping Cart on City Property*

18. Upon discovery of a Shopping Cart on City Property or a Highway:
- (a) the Director, Chief Building Official, or an authorized agent of the City may collect, remove and dispose of the Shopping Cart, or
 - (b) the Chief Building Official may provide written notice to the Business Owner of the abandoned Shopping Cart as identified by the name on the Shopping Cart of the breach of a condition of this By-law and require that the Business Owner collect the abandoned Shopping Cart by a date and time specified by the City in the written notice and comply with the By-law.

The reasonable time for compliance shall be determined by the Chief Building Official or the Director.

19. In the event that the Chief Building Official provides written notice to the Business Owner as set out in Section 18(b) of this By-law, and the time set out in the notice has passed, the Chief Building Official may, pursuant to Section 436(1) and (2) of the *Municipal Act, as amended*, inspect the City Property and/or Highway for the purpose of determining if the Business Owner has complied with the written notice set out in Section 18(b) of this By-law.
20. If after an inspection under Section 19 of this By-law, the Chief Building Official determines that the Business Owner has failed to comply with the written notice set out in Section 18(b) of this By-law:
- (a) the Chief Building Official or an authorized agent of the City may collect, remove and dispose of the Shopping Cart at the expense of the Business Owner; and
 - (b) the cost of such work referred to in Section 20(a) herein and any associated administrative fees shall be then due and payable by the Business Owner to the City, added to the tax roll and collected and recovered by the City in the same manner as municipal taxes pursuant to Section 398 of the *Municipal Act, as amended* or any other applicable authority.
21. In the event that the Director, the Chief Building Official, or an authorized agent of the City collects, removes and/or disposes of a Shopping Cart pursuant to Section 18(a) of this Bylaw, the cost of such work and any associated administrative fees shall be then due and payable by the Business Owner to the City, added to the tax roll and collected and recovered by the City in the same manner as municipal taxes pursuant to Section 398 of the *Municipal Act, as amended* or any other applicable authority.

B. Shopping Cart on Private Property or Any Other Land in the City

22. The Chief Building Official or an authorized agent of the City may pursuant to Section 436(1) and (2) of the *Municipal Act, as amended*, enter onto Private Property or any other land within the City, to inspect same for the purpose of determining compliance with this By-law.
23. Upon discovery of a Shopping Cart on Private Property or any other land within the City that is not a Highway or City Property, the Chief Building Official may provide written notice to the Business Owner of the abandoned Shopping Cart as identified by the name on the Shopping Cart of the breach of a condition of this By-law and require that the Business Owner collect the abandoned Shopping Cart by a date and time specified in the written notice and comply with the By-law. The reasonable time for compliance shall be determined by the Chief Building Official.
24. In the event that the Chief Building Official provides written notice to the Business Owner as set out in Section 23 of this By-law, and the time set out in the notice has passed, the Chief Building Official may in accordance with Section 436(1) and (2) of the *Municipal Act, as amended*, enter into the Private Property or any other land within the City to inspect the Private Property or any other land within the City for the purpose of determining if the Business Owner has complied with the written notice set out in Section 23 of this By-law.
25. If after an inspection under Section 24 of this By-law, the Chief Building Official determines that the Business Owner has failed to comply with the written notice set out in Section 23 of this By-law:
 - (a) the Chief Building Official or an authorized agent of the City may collect, remove and dispose of the Shopping Cart at the expense of the Business Owner; and
 - (b) the cost of such work and any associated administrative fees shall be then due and payable by the Business Owner to the City, added to the tax roll and be collected and recovered by the City in the same manner as municipal taxes pursuant to Section 398 of the *Municipal Act, as amended* or any other applicable authority.

C. General Enforcement Provisions

26. In the event that the Chief Building Official or Director cannot determine the Business Owner of the Shopping Cart from a visual inspection of the Shopping Cart or the Business Owner cannot reasonably be located, the Director, Chief Building Official, or an authorized agent of the City may forthwith sell, recycle or otherwise dispose of the abandoned Shopping Cart.
27. For the purposes of Part 6 – Enforcement of this By-law, the written notice required to be sent by the City shall be deemed to have been provided to the Business Owner upon sending such written notice to the contact person of the Business Owner provided as per Section 5(b) of this By-law by facsimile transmission, regular letter

mail or email or by leaving a copy of the written notice at the Business Owner's Premises.

28. Without limiting the enforcement provisions set out in Sections 18-25 inclusive herein and in conjunction with achieving compliance with this By-law, prosecution may proceed against a Business Owner and/or a Person for a breach of the terms of this By-law.

PART 7 – OFFENCES AND PENALTIES

29. This By-law may be enforced by a police officer or a municipal by-law enforcement officer, who shall also have inspection powers as described in Section 436 of the *Municipal Act, 2001, as amended*.
30. Any person who contravenes a provision of this By-law is guilty of an offence and shall upon conviction be liable to a penalty of not more than \$5,000.00 for each offence, exclusive of costs. Each day that such offence is committed, or permitted to continue, shall constitute a separate offence and may be punishable as such. Such fines shall be recoverable under the *Provincial Offences Act, R.S.O. 1990, c.P.33* as amended or any successor thereof.
31. Where a person has been convicted of an offence under this By-law, the Court may, in addition to any other penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted, directed toward the cessation of the continuation or the repetition of the offence.

PART 8 – GENERAL PROVISIONS

32. If a court of competent jurisdiction declares any provision or part of any provision of this By-law to be invalid or to be of no force and effect, it is the intention of the City in enacting this By-law that each and every other provision of this By-law be applied and enforced to the extent possible according to law.
33. All references in this By-law to the singular are to be read as the plural and vice versa, as the context requires.

PART 9 – EFFECTIVE DATE

34. This By-law comes into effect on September 7, 2021.

PASSED in open Council this 12th day of July, 2021.

MAYOR – CHRISTIAN PROVENZANO

CITY CLERK – RACHEL TYCZINSKI