

CITY OF TAWAS CITY
COUNTY OF IOSCO, STATE OF MICHIGAN
ORDINANCE NO. 323

Date Public Hearing: March 1, 2021
Date First Reading: February 1, 2021
Date Adopted: March 1, 2021
Date Published: March 10, 2021
Date Effective: April 10, 2021

R E T A I L F R A U D O R D I N A N C E

An Ordinance securing the public health, safety and general welfare of the residents and property owners of the City of Tawas City, by prohibiting certain acts and conduct constituting retail fraud, prescribing a penalty for the violation thereof, and repealing all ordinances and/or resolutions in conflict therewith.

THE CITY OF TAWAS CITY, COUNTY OF IOSCO *and* STATE OF MICHIGAN **ORDAINS:**

That Section 14-26 is hereby added to Chapter 14 of the City of Tawas City Code which provides the following:

Section 15.1 – Short title. This Ordinance shall be known as and may be cited as the City of Tawas City Retail Fraud Ordinance (hence “Ordinance”)

Section 15.2 – Purpose. The purpose of this Ordinance is to protect the public health, safety and general welfare of the residents and property owners of the City of Tawas City from persons committing retail fraud.

Section 15.3 – Enabling authority. This Ordinance is adopted in accordance with and pursuant to Public Act 7 of 2012.

Section 15.4 – Definitions. For purpose of construction and application of this Ordinance, the following definitions shall apply:

- a. *Conceal* shall mean that, although there may be some notice of its presence, merchandise is not visible through ordinary observation.
- b. *Full retail value* shall mean the merchant’s stated or advertised price of the merchandise.
- c. *Merchandise* shall mean any item of tangible personal property.

- d. *Merchant* shall mean any owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such operator or owner.
- e. *Premises* includes, but is not limited to, the retail store, and common use areas in shopping centers and all parking areas set aside by a merchant, or on behalf of a merchant, for the parking of vehicles for the convenience of the patrons of such retail store.
- f. *Retail store* shall mean any place where merchandise is displayed, held, stored, or offered for sale to the public.
- g. *Shopping cart* shall mean those push carts of the type or types which are commonly provided by retail stores for the use of the public for transporting commodities in stores and markets, and incidentally, from the stores to a place outside the store.
- h. *Under-ring* shall mean to cause a cash register or other sales recording device to reflect less than the full retail value of the merchandise.
- i. *Steal* shall mean the unlawful taking and carrying away of the property of another with the intent to permanently deprive that person of that property.
- j. *Retail fraud* shall mean any of the following acts or conduct:
 - 1. While a retail store is open to the public, alter, transfer, remove and replace, conceal, or otherwise misrepresent the price at which merchandise is offered for sale, with the intent not to pay for the merchandise or to pay less than the full retail value.
 - 2. While a retail store is open to the public, steal merchandise of the store that is offered for sale.
 - 3. With intent to defraud, obtain, or attempt to obtain, money or property from a retail store as a refund or exchange merchandise which was not paid for and belong to the retail store.
 - 4. Remove a shopping cart from the premises of a retail store without the consent of the merchant at the time of such removal with the intention of depriving the merchant permanently of the possession, use, or benefit of such cart.
 - 5. Under-rings with the intention of depriving the merchants of the full retail value of the merchandise.

Section 15.5 – Presumption. If any person conceals upon his or her person or among his or her belongings, unpurchased merchandise displayed, held, stored, or offered for sale in a retail store and removes that merchandise beyond the last known station for receiving payments for

merchandise in that retail store without paying the full retail value of such merchandise, such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it, or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise.

Section 15.6 – Prohibited conduct. It shall be unlawful for any person to commit retail fraud with respect to merchandise offered for sale, at less than two hundred dollars (\$200.00), within the City of Tawas City.

Section 15.7 – Penalty. Any person who violates the provisions of this Ordinance shall, upon conviction thereof, be guilty of a misdemeanor, and be subject to a penalty not to exceed a fine of five hundred dollars (\$500.00) and/or imprisonment for a period not to exceed ninety-three (93) days.

Section 15.8 – Repeal of conflicting provisions. All resolutions, ordinances, and parts thereof conflicting with the provisions of this Ordinance are to the extent of such conflict repealed.

Section 15.9 – Severability. If any section, paragraph, clause or provision of this Ordinance is for any reason held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15.10 – Publication. A true copy of this Ordinance or a summary thereof shall be published in a newspaper of general circulation in the City of Tawas City.

Section 15.11 – Effective date. This Ordinance shall take effect thirty (30) days from and after publication of a true copy or summary thereof, as provided in Section 15.10.

C I T Y O F T A W A S C I T Y

K E N N E T H B . C O O K
City Mayor

M I C H E L L E W E S T C O T T
City Clerk

**CITY OF TAWAS
CITY COUNTY OF
IOSCO STATE OF
MICHIGAN**

CERTIFICATION

I, hereby certify that the foregoing is a true and complete copy of Ordinance No. 323 duly adopted by the City of Tawas City at a regular meeting of the City Council held on the 1st day of March 2021 at which all Council Members were present and that public notice of said meeting was given pursuant to Act No. 267 of the Public Acts of Michigan, 1976, including in the case of a special or rescheduled meeting, notice by publication and posting at least 18 hours prior to the time set for the meeting.

I further certify that the Councilperson Jon Studley moved, and that Councilperson Dave Lesinski supported the adoption of said ordinance.

I further certify that the following Councilpersons voted for adoption of said Ordinance: Ed Nagy, Jon Studley, Dave Lesinski, Jackie Masich, and Ken Cook. Absent: Brian McMurray and Mike Russo. Abstain: None. - - - - -

I further certify that said ordinance has been recorded in the Ordinance Book of the City of Tawas City and that such recording has been authenticated with the signatures of the Mayor and the Clerk and published in the Iosco County News-Herald.

This ordinance may be purchased or inspected at the Tawas City Hall, 550 West Lake Street, Tawas City, Michigan, between 7:30 am and 5:00 pm Monday through Thursday and Friday between 7:30 am and 1:00 pm. Dated this 1st day of March 2021.

City of Tawas City

Michelle Westcott, Its: Clerk