Preemption of Shopping Cart Regulations

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Allan T. Weinthal, Esq.
Town of Davie
8800 SW 36th Street
Davie, Florida 33328

Dear Mr. Weinthal:

I received your letter dated March 27, 2025 requesting a legal opinion on three questions of Florida law.[1] You ask substantially whether section 506.5131, Florida Statutes: (1) preempts a municipality from enacting an ordinance requiring a business owner to submit a shopping cart retention plan to the municipality; (2) allows a municipality to approve or deny such a plan; and (3) allows a municipality to impose a monetary penalty against a business for failing to submit and adhere to a shopping cart retention plan. Additionally, while not explicitly included in your questions, you appear to also ask whether section 506.5131 preempts municipal ordinances that require a business to install a retention system to retain shopping carts within the real property boundaries of a business.

Section 506.5131 expressly preempts municipal ordinances that allow a municipality to: require a business owner to submit a shopping cart retention plan to the municipality; deny a shopping cart retention plan; impose a monetary penalty for failing to submit and adhere to a shopping cart retention plan; or require a business to install a retention system to retain shopping carts within the real property of a business so long as the ordinance was enacted before January 31, 2002, or after June 30, 2002.

Analysis

We understand from your letter that the Town of Davie is considering passing an ordinance that would require retail establishments to have a shopping cart retention system and plan. "In Florida, a municipality is given broad authority to enact ordinances under its municipal home rule powers."[2] "But municipal ordinances must yield to state statutes."[3] "Preemption of local ordinances by state law may … be accomplished by express preemption—that is, by a statutory provision stating that a particular subject is preempted by state law or that local ordinances on a particular subject are precluded."[4] "Preemption by state law, however, 'need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject.'"[5]

Section 506.5131 governs the assessments of fees, fines, and costs against shopping cart owners. Section 506.5131(2) expressly preempts any "fee, fine, or costs" from being "assessed against the owner of a shopping cart."[6] There are two exceptions to this express preemption.

First, a "fee, fine, or costs" may be "assessed against the owner of a shopping cart" if the shopping cart was: (1) "found on public property"; (2) "removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf"; and (3) "the fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services."[7]

Second, the statute's preemption clause ***does not*** "apply to any ordinance adopted after January 31, 2002, and prior to June 30, 2002, that requires a business establishment to install a retention system to retain shopping carts within the real property boundaries of a business location."[8] Consequently, because this exception grandfathers in any ordinance adopted after January 31, 2002, and before June 30, 2002 that requires businesses to install shopping cart retention systems, section 506.5131(2) preempts any such ordinance enacted outside of this timeframe.[9]

This office previously stated that section 506.5131(2) does not per se preempt "an ordinance requiring a plan for the recovery of stolen or abandoned shopping carts ***that does not impose*** fees, fines, or costs on the owner of [shopping] carts."[10] That opinion, however, failed to recognize that an ordinance requiring shopping cart owners to submit a retention plan is assessing a "cost" on owners—namely the cost associated with designing such a plan—and is therefore preempted.[11] Furthermore, section 506.5131(2), contemplates the imposition of a fine or cost on the owner of a shopping cart ***only*** when the cart is found on public property and only under the circumstances described in section 506.5131 and therefore preempts ordinances that "impose a fine or costs under any other circumstances."[12] And because an ordinance that allows a municipality to ***deny*** a shopping cart retention plan would impose a "cost" on the owner of a shopping cart—namely the costs associated with redesigning and resubmitting a retention plan—section 506.5131(2) preempts any such ordinance.

Finally, section 506.5131(2) expressly preempts any ordinance "that requires a business establishment to install a retention system to retain shopping carts within the real property boundaries of a business location" so long as the ordinance was enacted before January 31, 2002, or after June 30, 2002.[13]

Conclusion

Section 506.5131 expressly preempts municipal ordinances that: (1) require a business owner to submit a shopping cart retention plan to a municipality; (2) allow a municipality to deny a shopping cart retention plan; (3) impose a monetary penalty for failing to submit and adhere to a shopping cart retention plan; or (4) require a business to install a retention system to retain shopping carts within the real property of a business, if the ordinance was enacted before January 31, 2002, or after June 30, 2002.[14]

Sincerely,

James Uthmeier
Attorney General

[1] *See* Letter from Allan T. Weinthal, Town of Davie Attorney, to James Uthmeier, Att'y Gen. of Fla., (March 27, 2025) (on file with the Office of the Attorney General).

[2] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (citing Art. VIII, § 2(b), Fla. Const.).

[3] *Masone v. City of Aventura*, 147 So. 3d 492, 496 (Fla. 2014).

[4] *Id.*

[5] *Id.* (quoting *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla.1989)).

[6] § 506.5131(2), Fla. Stat. This office previously stated that "[n]o express language of preemption is evident in section 506.5131." Op. Att'y Gen. Fla. 07-29 (2007). That opinion, however, ignored the plain text of section 506.5131's preemption clause which expressly preempts the assessment of fees, fines, and costs against shopping cart owners by stating that: "[n]otwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart unless" certain conditions are met. *See, e.g*, *Fla. Ass'n of Realtors v. Orange Cnty.*, 415 So. 3d 762, 765 (Fla. 6th DCA 2025) (holding that the statement "[n]o law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained" expressly preempted local government from imposing rent control ordinances).

[7] § 506.5131(2), Fla. Stat.

[8] *Id.*

[9] *See id.*

[10] Op. Att'y Gen. Fla. 07-29 (2007).

[11] *See id.* A "cost" is "the outlay or expenditure (as of effort or sacrifice) made to achieve an object." *Cost*, Merriam-Webster Dictionary, merriam-webster.com/dictionary/cost (last visited Dec. 22, 2025).

[12] Op. Att'y Gen. Fla. 07-29 (2007) (emphasis added).

[13] *See* § 506.5131(2), Fla. Stat. The Fifth District Court of Appeal in 2005 concluded that a municipal ordinance requiring businesses to implement a shopping cart retention program ***did not*** conflict with section 506.5131. *City of Kissimmee v. Fla. Retail Fed'n, Inc.*, 915 So. 2d 205, 209-10 (Fla. 5th DCA 2005). But that decision was issued before section 506.5131 was broadened in 2006 to preempt all fees, fines, or costs against a shopping cart owner and most ordinances that require businesses to implement a shopping cart retention program.

[14] Though not under direct consideration here, the logic and conclusions of this opinion apply with equal force to any local ordinance that requires businesses to submit shopping cart retention plans or install retention systems to retain shopping carts within those businesses' real property boundaries. *See, e.g.*, North Miami Beach, Fla., Code ch. IX § 9-39; Dania Beach, Fla., Code ch. 22 art. V § 22-96; Lake Worth Beach, Fla., Code ch. 19 art. I § 19-13; City of North Miami, Fla., Code ch. 11 art. VII §§ 11-141 *et. seq.*; City of Homestead, Fla., Code ch. 17 § 17-26; City of Gainesville, Fla., Code ch. 14.5 art. VIII §§ 14.5-173 *et. seq.*; Hallandale Beach, Fla., Code ch. 13 art III §§ 13-67 *et. seq.*; City of Hollywood, Fla., Code title XI ch. 129 §§ 129.01 *et. seq.*; City of New Port Richey, Fla., Code ch. 14 art. V. §§ 14-50 *et. seq.*; City of Miami, Fla., Code ch. 31 art. IV §§ 31-81 *et. seq.*; City of Tampa, Fla., Code ch. 6 art. III div. 10 §§ 6-244 *et. seq.*; City of North Lauderdale, Fla., Code ch. 26 art. IV §§ 26-70 *et. seq.*; City of Palmetto, Fla., Code ch. 19 art. I § 19-2; City of Port Orange, Fla., Code ch. 18 art. XIV §§ 18-310 *et. seq.*; City of Tarpon Springs, Fla., Code ch. 8 art. V §§ 8-96 *et. seq.*; City of Wilton Manors, Fla., Code ch. 17 art. IV § 17-12; Deerfield Beach, Fla., Code ch. 46 § 46-27; Miami-Dade Cnty., Fla., Code ch. 8 art. III div. 1 §§ 8A-76, 8A-76.1; Hillsborough Cnty., Fla., Code ch. 10 art. IV §§ 10-101 *et. seq.*