

**Council Meeting: October 21, 2008****SUBJECT: Adoption of Shopping Cart Regulating Ordinance****REPORT IN BRIEF**

This report is a follow-up to the Council Study Issue of abandoned shopping carts considered at the regular council meeting of May 9, 2006 (Report to Council (RTC) 06-142). At the May, 2006 public hearing, Council directed staff to prepare an ordinance that would require all businesses that have shopping carts to submit a containment plan to the City for review, and then implement an approved plan and contain their carts, with penalties for plan violations. This item is being brought back for adoption of an ordinance.

The City receives several calls a day from residents reporting and/or complaining about shopping carts abandoned throughout the City. Public Works staff has limited capabilities to respond to calls about abandoned shopping carts due to budget-related service level reductions, as well as restrictions under State law. The City of Sunnyvale does not have an ordinance, which most neighboring cities have created for themselves, about the control and enforcement of shopping cart containment. There are some models available that other cities have put in place, with varying levels of approval and success.

Possible ways and procedures to deal with abandoned shopping carts were considered in the 2006 report, and others have come forward since that time. Newer techniques of prescribing the control of shopping carts have been shown to be most effective, and are to be required for businesses having too many carts found abandoned off-site. A threshold level, initially to be set at 5 carts per week, is suggested to determine which businesses are in sufficient violation to require a mandatory control plan.

This report describes and presents an ordinance for the City to attempt to improve the issue of shopping carts illegally taken from stores and abandoned in public rights-of-way. Staff recommends approval of the shopping cart regulating ordinance (Attachment A), as well as a companion ordinance (Attachment B) delegating citation authority to the Department of Public Works and the Department of Community Development to allow for enforcement of the provisions of the Shopping Cart Regulating Ordinance.

BACKGROUND

Report to Council 06-142 that was considered at the May 9, 2006, Council meeting, presented the background to date for the need of an ordinance for the control of shopping carts. The Report described the many calls and complaints from residents that the City receives reporting and complaining about carts abandoned in the public right-of-way. Also described were the steps that staff had been taking in order to respond to the calls from the public, including the establishment of a hot-line to receive calls, outreach to stores to identify how they controlled carts, and what retrieval companies were used, if any, to collect abandoned carts.

At least forty (40) Sunnyvale business locations are known to use shopping carts. The number of carts varies from just a few (10 to 15), to dozens (perhaps hundreds). The larger number of carts are generally for the national chain grocery and department stores.

All California cities are limited in their efforts to expeditiously abate the issues of blight, liability, and potential health hazards associated with abandoned shopping carts because of the imposition of the protective California State Shopping Cart Law (California Business and Professions Code (B&P), Section 22435, Attachment C). Consequently, California cities have to either work within the constraints of this law, which requires an extraordinary amount of personnel resource time, or as the City of Glendale accomplished, adopt and enact an ordinance which restricts shopping carts to the premises of the cart owners.

In 1997, Chapter 19 of the B&P was amended such that, with non-emergency or non-hazardous circumstances, there are restrictions on local governments for enacting legislation which would expedite the removal of abandoned shopping carts from the public right-of-way. This law is known as the California State Shopping Cart and Laundry Cart Law. Consequently, because of the preemptions of this law local governments are limited in how to legislatively address issues associated with abandoned shopping carts. Provisions of the California Shopping Cart Law allow abandoned shopping carts, which are not impeding emergency services, to remain at the abandoned location for three working days (72-hours) prior to abatement efforts by a city.

State law allows cities to stipulate the removal of a cart from a business premises to be considered a theft. However, rarely will a cart owner, if ever, press charges against their clients for the removal of carts from their premises. Consequently, it is not feasible to think that utilizing policing authority to cite persons with carts off premises would be a viable solution. In addition, if police resources were directed to do this, it would require a re-prioritizing of police duties.

Additional requirements of state law mandate that for the removal of a shopping cart from premises to be considered illegal, the cart must be equipped with a proper sign. This sign must be permanently affixed to the cart and will:

- Identify the owner of the cart
- Notify the public of the procedure to be utilized for authorized removal of the cart from the premises (authorization must be in writing)
- Notify the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law
- List a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer

At the public hearing of May 9, 2006, staff suggested several options, and recommended that Council authorize staff to prepare an ordinance that would require all businesses that have shopping carts to submit a containment plan to the City for review, and then implement an approved plan and contain their carts, with penalties for plan violations. This was the direction that a number of cities in California were taking at that time.

Some California cities have been successful by focusing more on the stores that are the greatest violators. For instance, Glendale, Burbank and Long Beach have developed ordinances that are more prescriptive in nature, putting the responsibility specifically on the stores that have carts and are unable to control them beyond a certain (threshold) level. This approach was found to be more successful, and they continue to use this method of enforcement to require businesses to keep control of their carts, and both limit the number that leave the premises and reduce the length of time that an abandoned cart is left in a City right-of-way before it is collected. In Sunnyvale, staff has continued to report cart location information to those companies authorized to retrieve the identified carts, but has not totally relied upon them being picked up. Staff picked up carts that were not retrieved within the allowable time frame and kept track of the numbers of carts picked up.

Setting a threshold of cart removal excess, in order to encourage businesses to avoid the hassle of a plan if they can keep control of their carts, and requiring a plan that includes at least one definite, physical form of containment, has become the more common approach by California cities trying to control the blight of shopping carts on their streets.

EXISTING POLICY

Goal B of the Housing and Community Revitalization Sub-element: Ensure a high quality living and working environment.

Policy B.1: Continue to encourage property owners to maintain existing developments in a manner which enhances the City.

Action Statement B.2.a.: The City should review existing codes, ordinances and use permit conditions with the possibility of increasing enforcement or developing new codes where neighborhood and community preservation issues are involved.

DISCUSSION

The proposed ordinance, (Attachment A) requires that businesses label their carts and that they find a way to keep them on the premises. In Sunnyvale, most carts have been labeled with at least some of the state required identification information for several years. The proposed ordinance is consistent with the state requirements. In addition, the ordinance requires signage near the interior exits from businesses with carts to further emphasize that the law requires that carts shall not be removed from the store grounds. Beyond that, stores may use whatever techniques they find suitable, as long as they are effective. Finally, the ordinance provides for review of a containment plan, with a fee to cover costs, and establishes administrative fines to reimburse the City for retrieval of the carts.

If a store has more than a threshold number of carts leaving the premises, demonstrating an inability to control their cart inventory, then the requirement for an approved plan that would include at least one physical device to control the carts, must be identified and supplied. The threshold number is set by Council, and is initially set at five (5) carts per week in the ordinance, with one written warning allowed per calendar year. This initial threshold number was selected by reviewing abandoned cart records for the past two years, including average numbers and peak occurrences during that time. It is estimated that this limitation level will result in a significant decrease in the number of carts that are taken from stores, and will not overly burden the smaller stores that have few violations as part of normal operations.

Public Works and Community Development have worked together on this issue, due to overlapping aspects. The proposed solution includes Neighborhood Preservation staff inspecting the carts of businesses on an annual basis, and verifying that the required minimum signage is in place. Identifying and dealing with carts that leave the premises and are not collected by the store will be handled by the Public Works Department staff. Estimated costs for these services are presented under "Fiscal Impact."

It is recommended that businesses be given six (6) months to implement the mandatory signage requirements of the ordinance, and to get their cart containment in place before requiring a containment plan for the companies

that exceed the threshold number of off-site carts. This has been used in other cities as a good implementation time due to the possible costs to install the required controls, time allowance for education of the businesses and the public, and preparing to deal with new citing of violations that will be involved. During this implementation period, staff will outreach to businesses regarding the expectations of the ordinance, and suggestions of how to work to meet the stated requirements. The implementation of charges to be collected for picking up any carts, and the fine for when more than three (3) carts are picked up by the City in a six month period (after the store has been given three (3) days to get them) would be implemented immediately upon the ordinance becoming effective. This requirement does not require any new expenditures by the stores, and has been in place under state law for several years.

The signage requirements should not take long, especially since most carts are already marked to some extent. However, installation of containment systems or devices may take some time and will have varying expense levels, depending upon what technique is used. Stores may use any number of voluntary control measures. If stores choose to use, or are required due to poor performance to use a physical method to prevent carts from leaving their site, there are a number of options available to them. For example, electronic wheel-lock systems are common in many locations, and can cost \$10,000 to \$40,000 depending upon the number of carts and the size of the property involved. Other techniques can vary widely in cost.

An important point is that even with the cost of the more expensive containment systems, in most cases such a system should reduce the losses that a store will have from carts that are stolen, whether they wind up in garages or back yards, or are hauled away for recycling. By eliminating retrieval costs and cutting down on the number of carts taken and lost, which must be replaced, the system may actually save money for business owners.

FISCAL IMPACT

The ordinance is intended to reduce the need for Public Works to take calls on the Abandoned Shopping Cart and Graffiti Hot Line (408-730-7680), and reduce the response effort currently required to respond to carts that are reported but not picked up by the store or retrieval company involved. In addition, Public Works will charge a fee for any carts we pick up, under the ordinance, including, possibly, a fine if more than 3 carts from a business are picked up within six (6) months. This has been calculated at an average of \$99.37, round to \$100, for actual expenses, and a \$50.00 fine after the first three carts. Therefore, the Public Works costs and expenses should be cost neutral within the current budget.

Inspection of cart and store signage at stores by Neighborhood Preservation would be a new service and require funding in the amount of approximately

\$10,000 annually beginning in FY 2009/2010. The General Fund Long-Term Financial Plan is fully balanced to the twentieth year, so any increase in costs will require a corresponding revenue increase or service-level decrease in another area. Therefore, in order to implement this ordinance, Council will need to select one of the following options:

- 1) Establish a priority ranking for the new service and use the Priority Ranking Tool to select a service to cut to maintain a balanced long-term financial plan. Agendize a public hearing on the recommended change and implement inspection once the service-level reduction is determined.
- 2) Establish a priority ranking for the new service and direct staff to establish a fee to recover the cost of the policy decision as part of the City's Fee Schedule. Since staff is recommending a six month implementation timeframe, a fee will not be necessary until next fiscal year.
- 3) Establish a priority ranking for the new service. Direct the City Manager to incorporate the new service and a corresponding service-level reduction into the FY 2009/2010 Recommended Budget.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk. Meetings were held with interested neighborhood groups and businesses in 2005. Copies of this report will be sent to all stores that have shopping carts, the Chamber of Commerce, and individuals and neighborhood groups that have expressed an interest in the issue.

ALTERNATIVES

1. Adopt proposed Shopping Cart Containment Ordinance and proposed citation authority Ordinance, and establish a priority ranking for the Neighborhood Preservation service and use the Priority Ranking Tool to select a service to cut to maintain a balanced budget. Agendize a public hearing on the recommended change and implement inspection once the service-level reduction is determined.
2. Adopt proposed Shopping Cart Containment Ordinance and proposed citation authority Ordinance. Establish a priority ranking for the new service and direct staff to establish a fee to recover the cost of the Neighborhood Preservation inspection activities in the FY 2009/2010 Fee Schedule.

3. Adopt proposed Shopping Cart Containment Ordinance and proposed citation authority Ordinance, and establish a priority ranking for the Neighborhood Preservation service. Direct the City Manager to incorporate the new service and a corresponding service-level reduction into the FY 2009/2010 Recommended Budget.
4. Direct staff to revise the attached draft ordinance and bring it back to Council for further consideration.
5. Do not pass the ordinance and do not request any additional work on a shopping cart ordinance.

RECOMMENDATION

Staff recommends Alternative 2: Adopt proposed Shopping Cart Containment Ordinance and proposed citation authority Ordinance. Establish a priority ranking for the new service and direct staff to establish a fee to recover the cost of the Neighborhood Preservation inspection activities in the FY 2009/2010 Fee Schedule.

The adoption of a shopping cart control ordinance is the follow-up to the original consideration by Council of the study issue on abandoned shopping carts in May 2006. Public Works, Community Development and City Attorney staff have cooperated on preparing an ordinance consistent with state law, and responsive to the needs of the community. The recommendation is similar to that which has been found to be most effective in other communities. Further, staff believes that with the new fees and fines established as a result of these ordinances, the increased costs for new service levels will be offset by increased revenues. For these reasons, staff makes the stated recommendation.

Reviewed by:

Marvin A. Rose, Director, Department of Public Works

Prepared by: James G. Craig, P.E., Superintendent of Field Services

Reviewed by:

Hanson Hom

Director, Department of Community Development Department

Approved by:

Amy Chan

City Manager

Attachments

- A. Proposed Ordinance Adding Chapter 9.30 Regulating Shopping Carts
- B. Proposed Ordinance Modifying Section 1.040.050 Delegating Citation Authority
- C. California Business and Professions Code Section 22345-22435.8

ORDINANCE NO. _____**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 9.30 REGULATING SHOPPING CARTS**

WHEREAS, the Council finds that the accumulation of wrecked, dismantled and abandoned shopping carts, or parts thereof, on public or private property, create conditions that impede emergency services, reduce property values, promote blight and deterioration, comprise an attractive nuisance, create potential hazards to the health and safety of the community, and interfere with pedestrian and vehicular traffic within the City; and

WHEREAS, the Council further finds that wrecked, dismantled and abandoned carts are injurious to the health, safety and general welfare of the public and are aesthetically detrimental to the community and are therefore a public nuisance; and

WHEREAS, businesses have the option of whether or not to provide shopping carts to their shopping customers, and by providing such an option to their patrons, should accept the responsibility for the availability, control, condition and disposition of the carts; and

WHEREAS, California Business & Professions Code Section 22435.7(a) provides that shopping cart retrieval has been declared by the Legislature to be a matter of statewide concern and the comments, complaints and actions of Sunnyvale residents have demonstrated their concern with the regular appearance of shopping carts off-premises of local stores and abandoned in public rights-of-way to the detriment of public health, safety and quality of life; and

WHEREAS, Section 22435.8 further provides that “[t]his article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article”; and

WHEREAS, under Section 22435.8 cities have been given authority to adopt ordinances which require businesses to maintain a mandatory containment system whereby one or more physical measures will be taken by the business to prevent the removal of carts from their premises; and

WHEREAS, the provisions set forth below will relieve the City from the detrimental effect of this public nuisance and are not in conflict with California Business & Professions Code Section 22435 et. seq.

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.30 ADDED. Chapter 9.30 is added to Title 9 of the Sunnyvale Municipal Code as follows:

Chapter 9.30
SHOPPING CART CONTAINMENT

- 9.30.010. Definitions.**
- 9.30.020. Findings and purpose.**
- 9.30.030. Applicability.**
- 9.30.040. Unauthorized removal prohibited.**
- 9.30.050. Cart identification and warning signs.**
- 9.30.060. Measures to prevent the removal of carts from business premises.**
- 9.30.070. Mandatory cart containment plan.**
- 9.30.080. Fees.**
- 9.30.090. Plan approval or denial and penalties.**
- 9.30.100. Plan modification.**
- 9.30.110. Enforcement.**
- 9.30.120. Retrieval notification.**
- 9.30.130. Administrative costs and fines.**

9.30.010. Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(1) “Abandoned cart” means any cart that has been removed, without written consent of the owner, from the owner's business premises and is located on either public or private property.

(2) “Agent” means the person or persons designated in the cart containment plan who the owner of the cart authorizes as the person(s) to perform or provide retrieval services on behalf of the owner.

(3) “Business establishment” means any business located in the city, regardless of whether the business is advertised or operated as a retail or wholesale business, and regardless of whether the business is open to the general public, a private club or a membership store.

(4) “Cart” or “shopping cart” means a basket which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind. The term “cart” or “shopping cart” includes a laundry cart.

(5) “Cart containment plan” means a document submitted by the owner of the cart pursuant to Section 9.30.070 of this chapter.

(6) "City" means the City of Sunnyvale.

(7) “Director” means the director of public works or community development for the City of Sunnyvale, or the director’s designee.

(8) “Officer” means any person designated by the director to enforce the provisions of this chapter.

(9) “Owner” means any business establishment that owns, leases, possesses, or makes a cart available to customers or the public. For purposes of this chapter, owner shall also include the owner's agent.

(10) “Premises” means the entire area owned, occupied, and/or utilized by an owner which provides carts for use by customers or other persons, including any parking lot or other property provided by or on behalf of the owner for customer parking or use.

9.30.020. Findings and purpose.

(a) Abandoned carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic. The accumulation of abandoned carts on public and private property tends to create conditions that reduce property values, and promote blight and deterioration.

(b) The intent of this chapter is to ensure that measures are taken by owners to prevent the removal of carts from business premises and to facilitate the retrieval of lost, stolen or abandoned carts in a manner that complements and supplements provisions of state law.

9.30.030. Applicability.

This chapter shall apply to all owners within the city of Sunnyvale that provide carts for customer use or the public.

9.30.040. Unauthorized removal prohibited.

It shall be unlawful for any person, either temporarily or permanently, to remove a cart from a business premises or be in possession of a cart that has been removed from a premises without the express written consent of the owner. The provisions of this section are not intended to preclude the application of any other state laws relating to the prosecution of abandoned shopping carts.

9.30.050. Cart identification and warning signs.

(a) Every cart owned or provided by any owner must have a sign permanently affixed to the cart that contains all of the following information:

- (1) Name of cart owner.
- (2) The address or valid telephone number of the cart owner.
- (3) Notice to the public that the removal of the cart from the premises is a violation of state law.
- (4) Notice that carts may not be removed from the premises without the express written consent of the owner.

(b) Every owner must post and maintain cart removal warning signs at all customer interior exits which meet all of the following minimum specification:

- (1) Contains a statement in one or more languages that unauthorized removal of a shopping cart from the business premises is a violation of state law.
- (2) Be conspicuously and prominently displayed on the interior walls of the building within two feet of all customer exits.

9.30.060. Measures to prevent the removal of carts from business premises.

(a) Within one hundred eighty (180) days of the effective date of this chapter, owners shall implement measures to prevent the removal of carts from the business premises. Examples of these measures may include but are not limited to:

(1) Increased signs directing customers not to remove the carts from the premises.

(2) Employee assistance to carry purchases for the customer.

(3) Providing personal carts for customers for rental or purchase.

(4) Physical barriers located at doors, near loading areas or other defined perimeters that will prevent the passage of carts beyond the premises barriers. The physical barriers may also be placed on the carts themselves so that the carts cannot pass through door openings or other defined perimeters.

(5) Electronic disabling devices on all carts, which are activated when they cross a barrier at the perimeter of the premises.

(6) Any other reasonable containment measure that has been proven to be successful.

(b) An owner must implement an effective combination of the measures described in subsection (a) in order to prevent the removal of carts from business premises.

9.30.070. Mandatory cart containment plan.

If after one hundred eighty (180) days of the effective date of this chapter, five (5) or more carts in one seven (7) day period are discovered off-premises, the owner shall be issued a warning notice that the provisions of this chapter must be observed. Only one warning notice per calendar year shall be issued to an owner.

After the warning notice is issued any subsequent occurrence in which five (5) or more carts in one seven (7) day period are discovered, the owner shall be required to submit a mandatory cart containment plan to the designated public works officer for review and approval. The mandatory cart containment plan shall include the following elements:

(a) Name of Owner. The name of the owner, the physical address where the business is conducted, name, address and phone number(s) of the on-site and off-site owner if different.

(b) Inventory of Carts. A complete list of all carts maintained on or in the premises.

(c) Community Outreach. A description of a community outreach process under which the owner shall cause notice to be provided to customers that the removal of carts from the premises is prohibited and is a violation of state and local law. This notice may include, but is not limited to, flyers distributed at the premises, warnings on shopping bags, signs posted in prominent places near door and parking lot exits, direct mail, announcements using intercom systems at the premises, web site or other means demonstrated to be effective to the reasonable

satisfaction of the director. Any and all posting of signs shall comply with the provisions of the Sunnyvale Municipal Code and shall be posted in multiple languages as necessary.

(d) **Cart Identification.** Signs and cart identification requirements which conform to local and state law.

(e) **Loss Prevention Measures.** A description of the specific measures that the owner shall implement to prevent cart removal from the premises. These measures may include, but are not limited to, electronic or other disabling devices on the carts so they can not be removed from the premises, effective management practices, use of courtesy clerks to accompany customers and return the carts to the store, use of security personnel to prevent removal, security deposit for use of cart, or other demonstrable measures acceptable to the director that are likely to prevent cart removal from the premises. The plan must contain at least one physical containment measure.

(f) **Employee Training.** A description of an ongoing employee training program that shall be implemented by the owner and that shall be designed to educate new and existing employees on the abandoned cart prevention plan and conditions contained therein no less frequently than annually.

(g) **Mandatory Cart Retrieval.** A plan for retrieval of abandoned carts by the owner within twenty-four (24) hours.

9.30.080. Fees.

Every owner who is required to submit a mandatory cart containment plan or an application for a modified cart containment plan pursuant to this chapter shall submit with the plan or plan modification, a fee for review of the plan or plan modification in the amount set forth in the schedule of fees established by resolution of the City Council.

9.30.090. Plan approval or denial and penalties.

(a) The officer may approve or deny the proposed plan and notify the owner of such decision within thirty (30) days of receipt. If approved, the cart containment plan shall be implemented by the owner no later than thirty days from the date of approval.

(b) A plan may be denied based upon one or more of the following grounds:

(1) Implementation of the plan violates any provision of the building, zoning, health, safety, fire, police or other provision of this code or any county, state or federal law which substantially affects public health, welfare, or safety.

(2) The plan fails to include all of the information required by this chapter.

(3) The plan is insufficient or inadequate to prevent removal of carts from the premises.

(4) The plan fails to address any special or unique conditions due to the geographical location of the premises as they relate to cart retention and prevention efforts.

(5) Implementation of the plan violates a term or condition of a plan or other requirement of this title.

(6) The owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the plan, or in any amendment or report or other information required to be made.

(c) If the plan is rejected as incomplete or inadequate, the officer shall indicate areas of incompleteness or inadequacy, and the owner shall have an additional thirty days in which to resubmit a complete and adequate plan.

(d) An owner who fails to submit a complete plan to the satisfaction of the officer, or fails to implement approved plan measures or fails to comply with the approved plan measures will be subject to enforcement of these requirements through any lawful means available to the city, including without limitation institution of the administrative remedies process pursuant to this chapter.

(e) The officer's decision to deny a plan may be appealed to the director.

(f) The decision of the director to approve or deny a plan is final.

9.30.100. Plan modification.

At any time after the officer's approval of any abandoned cart plan, the owner may submit to the officer, along with the appropriate fee, a modification of the previously approved plan to address a change in circumstances, address an unanticipated physical or economic impact of the plan or modify an inadequate or ineffective plan.

9.40.110. Enforcement.

This chapter shall be enforced by the departments of public works and community development for the City of Sunnyvale, or such other department designated by the city manager to administer this chapter.

9.40.120. Retrieval notification.

The city shall notify the owner of an abandoned cart as identified on the signage information permanently affixed to the cart. The city notification shall be documented and provided either by telephone or by written notice. The notification shall require that the identified cart(s) be retrieved pursuant to the conditions for retrieval under state and local law.

9.40.130. Administrative costs and fines.

Pursuant to Business and Professions Code section 22435.7, any owner that fails to retrieve its abandoned cart(s) after receiving the three-day notice by the city, shall pay the city's administrative costs for retrieving the cart(s) and providing the notification to the owner. Consistent with state law, any owner who fails to retrieve abandoned carts in accordance with this chapter in excess of three times during a specified six-month period shall be subject to an additional \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner found off-site in a one-day period.

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 3. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held _____, 2008, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation:
SEAL

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE AMENDING SECTION 1.04.050
(CITATION AUTHORITY DELEGATED) OF CHAPTER 1
(GENERAL PENALTY) OF TITLE 1 (GENERAL
PROVISIONS) OF THE SUNNYVALE MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 1.04.050 AMENDED. Section 1.04.050 of the Sunnyvale Municipal Code is amended to read as follows:

1.04.050. Citation authority delegated.

(a) The following designated officers and employees are delegated the authority to issue citations without a warrant to any person whenever the officer or employee has reasonable cause to believe that the person to be cited has committed an act in his or her presence which is a violation of the provisions of this code:

(1) Director of community development and housing officer: Chapters 6.30, 8.16, 8.20, 9.26, 9.28, 9.30, 9.60, 16.20, 16.44 and Title 19.

(2) Director of community development and building inspection superintendent: Chapters 16.12 through 16.41, 16.46, 16.58.

(3) Director of parks and recreation and department employees designated by director: Chapter 9.62.

(4) Director of public safety and public safety officers: Chapters 5.16, 5.24, 5.28, 5.32, Title 9 except for Chapters 9.72, 9.74 and 9.76, Title 10, Chapters 16.52 through 16.54, Title 20 and Title 21.

(5) Director of public works and department employees designated by director: Chapter 8.16, Chapter 9.30, Title 12, Chapter 13.08 and Chapter 13.16.

(6) Health department of Santa Clara County: Title 6, Title 8, Chapter 16.56.

(7) The city manager shall have the power to designate by written order that particular officers and employees, in addition to those specified in this section, shall have the power to issue citations for violations of specified chapters of this code.

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 3. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held _____, 2008, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

Date of Attestation:

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 22435-22435.8

22435. As used in this article:

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

(b) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

22435.1. The provisions of Section **22435.2** shall apply when a shopping cart or a laundry cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

22435.2. It is unlawful to do any of the following acts, if a shopping cart or laundry cart has a permanently affixed sign as provided in Section **22435.1**:

(a) To remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(c) To be in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart or laundry cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(f) To be in possession of any shopping cart or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive

the owner or retailer of possession of the cart.

22435.3. Any person who violates any of the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

22435.4. This article shall not apply to the owner of a shopping cart or laundry cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section **22435.2**.

22435.5. (a) In any civil proceeding, any shopping cart or laundry cart which has a sign affixed to it pursuant to Section **22435.1** shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(b) In any criminal proceeding, it may be inferred that any shopping cart or laundry cart which has a sign affixed to it pursuant to Section **22435.1** is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

22435.7. (a) The Legislature hereby finds that the retrieval by local government agencies of shopping carts specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) A shopping cart that has a sign affixed to it in accordance with Section **22435.1** may be impounded by a city, county, or city and county, provided both of the following conditions have been satisfied:

(1) The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center.

(2) Except as provided in subdivision (i), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city, county, or city and county of the shopping cart's discovery and location.

(c) In instances where the location of a shopping cart will impede emergency services, a city, county, or city and county is authorized to immediately retrieve the shopping cart from public or private property.

(d) Any city, county, or city and county that impounds a shopping cart under the authority provided in subdivisions (b) and (c) is authorized to recover its actual costs for providing this service.

(e) Any shopping cart that is impounded by a city, county, or city

and county pursuant to subdivisions (b) and (c) shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart.

(2) Open for business at least six hours of each business day.

(f) A city, county, or city and county may fine the owner of a shopping cart in an amount not to exceed fifty dollars (\$50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

(g) Any shopping cart not reclaimed from the city, county, or city and county within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart.

(h) This section shall not invalidate any contract entered into prior to June 30, 1996, between a city, county, or city and county and a person or business entity for the purpose of retrieving or impounding shopping carts.

(i) Notwithstanding paragraph (2) of subdivision (b), a city, county, or city and county may impound a shopping cart that otherwise meets the criteria set forth in paragraph (1) of subdivision (b) without complying with the three-day advance notice requirement provided that:

(1) The owner of the shopping cart, or his or her agent, is provided actual notice within 24 hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with subdivision (e).

(3) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (d) or (f). Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of subdivision (f).

(4) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be subject to any applicable fee or fine imposed pursuant to subdivision (d) or (f) commencing on the fourth business day following the date of the notice.

(5) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to paragraph (1), may be sold or disposed of in accordance with subdivision (g).

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.