

**ORDINANCE NO. 2882-08**

**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.

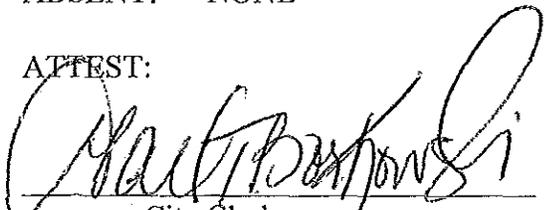
SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

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 October 21, 2008, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on October 28, 2008, by the following vote:

AYES: SPITALERI, HAMILTON, HOWE, LEE, SWEGLES, MOYLAN, WHITTUM  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: NONE

ATTEST:

  
\_\_\_\_\_  
City Clerk  
Date of Attestation: *October 31, 2008*  
SEAL

APPROVED:

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
David E. Kahn, City Attorney