

Introduced by Councilmember Holden

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING A NEW
CHAPTER 9.62 TO THE PASADENA MUNICIPAL CODE
CONCERNING THE PREVENTION AND ABATEMENT OF
ABANDONED SHOPPING CARTS

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the City Charter. The approved summary of this ordinance reads as follows:

“SUMMARY

The subject ordinance, Ordinance No. _____, adds a new chapter to Title 9 (“Public Peace, Morals and Welfare”) of the Pasadena Municipal Code, to prevent or abate the public nuisance of abandoned shopping carts on public and private property. This ordinance prohibits the unauthorized removal of carts from business locations. To achieve that goal, the ordinance requires business owners to place their names on carts used inside their business locations and to participate in a mandatory abandoned cart prevention plan. Business owners would be required to inventory their carts; place identifying information on each cart; undertake community outreach regarding the illegality of removing carts from the premises; initiate loss prevention measures; and undertake an ongoing cart retrieval program. Business owners would be required to pay a fee to cover the city’s administrative cost for monitoring the prevention plan. The ordinance also includes the possibility of exemption from the plan for business owners under some circumstances.

Ordinance No. _____ shall take effect thirty (30) days after its publication.”

SECTION 2. The Pasadena Municipal Code is amended to add a new Chapter 9.62 to read:

“Chapter 9.62

Sections:

- 9.62.010 Short title.**
- 9.62.020 Findings and purpose.**
- 9.62.030 Definitions.**
- 9.62.040 Applicability.**
- 9.62.050 Abandonment prohibited.**
- 9.62.060 Cart identification required.**
- 9.62.070 Unauthorized removal prohibited.**
- 9.62.080 Mandatory abandoned cart prevention plan.**
- 9.62.090 Fees.**
- 9.62.100 Plan approval or denial and penalties**
- 9.62.110 Plan modification.**
- 9.62.120 Exemption from mandatory plan.**
- 9.62.130 Renewal of exemption.**
- 9.62.140 Denial or revocation of a renewal of an exemption.**
- 9.62.150 Hearing and appeal procedure for renewal of exemption.**
- 9.62.160 Enforcement.**
- 9.62.170 Retrieval notification.**

9.62.010 Short title.

This chapter shall be known as the “abandoned shopping carts” ordinance.

9.62.020 Findings and purpose.

A. The city council finds that abandoned shopping carts are increasingly pervasive in the community, litter the parkways and curbs of the city, create potential safety hazards to the public, and interfere with pedestrian and vehicular traffic. The accumulation of wrecked and dismantled abandoned shopping carts on public and private property tends to diminish property values and promote blight in the overall community.

B. The purpose of this ordinance is to ensure that business owners take measures to prevent the removal of shopping carts from the business site, to make unauthorized removal of such shopping carts a violation of the municipal code, and to facilitate retrieval of abandoned shopping carts in a manner consistent with state law.

9.62.030 Definitions.

As used in this chapter, the following terms have the meanings set forth below:

A. “Abandoned shopping cart” shall mean any cart taken from the business site without the written consent of the owner to either public or private property.

B. “Abandoned cart prevention plan” shall mean a document submitted by the responsible business owner pursuant to Section 9.62.080 of this chapter.

C. “Agent” shall mean the person or persons designated in owner’s Abandoned Cart Prevention Plan” authorized to perform or provide retrieval services on behalf of the owner of the business. The agent may be the owner if so designated in the approved Abandoned Cart Prevention Plan.

D. “Cart” shall mean a basket mounted on wheels or a similar device intended for

the use of customers in a retail or commercial business establishment for the purpose of transporting goods of any kind within the confines of the business establishment, including the parking lot.

E. "Director" shall mean the director of planning and development for the city of Pasadena, or such other city official designated by the city manager to administer this chapter.

F. "Owner" shall mean any person or entity, who in connection with the conduct of a business, possesses, leases or makes carts available to customers or the public for the purpose of transporting merchandise on the business premises. For purposes of this chapter, "owner" shall also include the owner's designated agent.

G. "Premises" shall mean the entire area owned, occupied, and/or utilized by the owner, who 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.

9.62.040 Applicability.

This chapter shall apply to all owners of business establishments or other commercial services within city limits who provide shopping carts for customer use or the public.

9.62.050 Abandonment prohibited.

A. It shall be unlawful for any person to cause or permit any cart to be abandoned on or upon any sidewalk, street or other public area, or upon private property, other than the premises of the owner of such cart.

B. It shall be unlawful for a business knowingly to have on its premises for the use of its customers, shopping carts identified on the carts as belonging to a different business owner.

9.62.060 Cart identification required.

A. Every cart owned or provided by any business owner shall have a sign permanently affixed to the cart that contains the following information:

1. Identity of owner, business establishment, or both.
2. Notification to the public that the removal of the cart from the premises is a violation of state and municipal law.
3. The address or phone number of the owner of the business establishment for cart return.

B. Any cart found abandoned on public or private property that does not have the identification and information required by this section shall be removed from the property and disposed of by the city in accordance with state law.

9.62.070 Unauthorized removal prohibited.

It shall be unlawful for any person, either temporarily or permanently, to remove a cart from business premises, or be in possession of a cart that has been removed from a business premises which is properly identified in conformity with this chapter, without the written consent of the owner. This section shall not apply to carts removed as authorized by the owner for the purpose of repair, maintenance or disposal.

9.62.080 Mandatory abandoned cart prevention plan.

Every business owner who provides carts, or allows or intends to allow the use of carts, shall develop, implement and comply the terms and conditions of a city approved

abandoned cart prevention plan to prevent the unauthorized removal by any person of any carts from the owner's premises and, if removed, to retrieve the cart within twenty-four (24) hours of the removal, or notice of removal. The owner's abandoned cart prevention plan shall include the following elements:

A. Name of business/owner:

The name of the owner and the business name; 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 the 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 a violation of state and municipal law. This notice shall include, but is not limited to, flyers distributed on the premises, warnings on shopping bags, signs posted in prominent places near door and parking lot exits, direct mail, announcements using intercom systems on the premises, web site or other means demonstrated to be effective. Any posting of signs shall comply with applicable provisions in Title 17 of the municipal code.

D. Cart identification:

Signs and cart identification requirements which conform to 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 cannot be removed from the premises, effective management practices, use of courtesy clerks to accompany customers and return carts to the store, use of security personnel to prevent removal, security deposit for use of cart, other demonstrably effective measures acceptable to the city's director, likely to prevent cart removal from the premises.

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, at least annually.

G. Mandatory cart retrieval:

A plan for retrieval of abandoned carts by the owner within a twenty-four (24) hour time period of removal, or evidence of a contract with a Pasadena licensed retrieval service..

9.62.090 Fees.

Every owner who is required to submit an abandoned cart prevention plan or an application for a modification of such plan pursuant to this chapter, shall submit, with the plan or plan modification, a fee established by the city council, in the amount set forth in the City's General Fee Schedule.

9.62.100 Plan approval or denial and penalties.

A. Each business owner shall submit an abandoned cart prevention plan in compliance with this chapter beginning on the effective date of this ordinance. In implementing this chapter for the period beginning in 2002 and ending December 31, 2002, the director shall provide not less than sixty (60) days written notice to each owner of the date that the owner's initial abandoned cart prevention plan is due. The director may approve or deny the proposed plan and notify the owner of such decision within thirty (30) days of receipt of the plan. If approved, the abandoned cart prevention plan shall be implemented by the owner no later than thirty (30) days from the date of approval. After December 31, 2002, the owner shall comply with the provisions of this chapter regardless of receipt of written notice from the director.

B. The director may deny a plan based upon any of the following grounds:

1. Implementation of the plan would violate provisions of the building, zoning, health, safety, fire, police or other municipal codes, or any county, state, or federal law which substantially affects public health, welfare or safety;
2. The plan fails to include all the information required by this chapter;
3. The plan is insufficient or inadequate to prevent removal of carts from the owner's 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 would violate a term or condition of another city policy or requirement of the municipal code;

6. The owner has knowingly made a false statement of fact, or omits a fact required to be revealed in an application for a plan, or in any addendum or report or other information required to be provided regarding the plan.

C. If the plan is rejected as incomplete or inadequate, the director shall indicate the areas of incompleteness or inadequacy, and the owner shall have an additional thirty (30) days in which to resubmit a corrected plan.

D. An owner who fails to submit a complete plan, or fails to implement approved plan measures, or fails to comply with the approved plan measures, shall be subject to enforcement of these requirements through any lawful means available to the city, including without limitation, institution of the administrative remedies provided for in Title 1.

E. The director's denial of a plan shall be the final administrative decision.

9.62.110 Plan modification.

Any time subsequent to the director's approval of an abandoned cart prevention plan, the owner may request a modification of a previously approved plan to address a change in circumstances, an unanticipated physical or economic impact of the plan, or a need to modify an ineffective plan.

9.62.120 Exemption from mandatory plan.

A. Any owner may request an exemption on an annual basis from the requirements of this chapter if the owner provides written documentation and demonstrates to the satisfaction of the city that the owner has:

1. A contract with a Pasadena licensed cart retrieval service, or a physical device or mechanism in place or a management practice currently implemented that prevents the unauthorized removal of carts from the owner's premises; and,

2. None of the owner's carts have been found abandoned on 3 or more occasions during the period of six (6) continuous months immediately preceding the date the application for an exemption is submitted to the director.

B. A written application for the exemption shall include all of the following:

1. The name of the owner and the name of the business; the physical address where the business is conducted; and the name, address and phone number of the on-site and off-site owner;

2. The method, management practice, or physical device that will ensure that the carts will not leave the premises.

C. Any exemption granted to an owner shall be void upon the sale or transfer of ownership of the business.

9.62.130 Renewal of exemption.

Any owner granted an exemption from the abandoned cart prevention plan shall file with the director a written application for a one (1) year renewal of the exemption annually in accordance with the provisions of Section 9.62.120. The written application for a renewal of the exemption shall include the information required to be submitted in the initial application for the

exemption in accordance with the provisions of Section 9.62.120.

9.62.140 Denial or revocation of a renewal of an exemption.

An application for a renewal of an exemption may be denied or revoked by the director upon any of the following grounds:

A. Any of the owner's carts is or has been abandoned on public or private property, or in a right-of-way for longer than three (3) business days after notification by the city on three (3) occasions in any six (6) month period.

B. The owner has failed to comply with any of the provisions of this chapter.

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

9.62.150 Hearing and appeal procedure for renewal of exemption.

A. Notice of intended decision:

1. Upon determining the existence of any of the grounds for denial or revocation of a renewal of an exemption in accordance with Section 9.62.140, the director may issue to the owner a notice of intended decision to deny or revoke the exemption.

2. The notice of intended decision shall state all the grounds upon which the denial or revocation of the renewal application for an exemption is based.

3. The notice of intended decision shall advise the owner that the denial or

revocation shall become final unless the owner files a written request for hearing before the director within ten (10) calendar days of the date of service of the notice of intended decision to deny or revoke the renewal of the exemption.

4. The notice of intended decision shall specify the effective date of the denial or revocation of such exemption.

B. Procedure for hearing before the director:

1. The written request for a hearing before the director must be received by the director within ten (10) calendar days of the date of the notice of intended decision to deny or revoke the renewal of the exemption.

2. Upon timely receipt of a written request for a hearing, the director shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of a timely request for hearing.

3. The director shall serve a notice of hearing on the owner at least ten (10) calendar days prior to the scheduled date of the hearing.

4. At the hearing before the director, the owner shall be given the opportunity to present witnesses and relevant documentary evidence.

5. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the director deems reliable, relevant and not unduly repetitious may be considered.

C. Decision of the director:

1. Within twenty (20) calendar days after the hearing, the director shall serve on the owner a written decision sustaining, reversing or modifying the director's intended decision.

2. The decision by the director after hearing shall become final unless the owner files an appeal before the code enforcement commission within the time period specified in subsection D of Section 9.62.150.

D. Appeals to the code enforcement commission:

1. If an owner is dissatisfied with the written decision of the director, the owner may file an appeal to the code enforcement commission.

2. The appeal must be in writing on a form provided by the code enforcement commission and must be received by the secretary of the commission within fifteen (15) calendar days of the date of the director's decision.

3. The code enforcement commission shall be conducted in accordance with the rules and regulations of the commission.

9.62.160 Enforcement.

A. Every owner shall comply with the provisions of this chapter and every provision of the owner's approved abandoned cart prevention plan.

B. Any owner who violates any provision of this chapter or any provision of the owner's approved abandoned cart prevention plan shall be subject to enforcement procedures for each violation through any lawful means available to the city, including without limitation, those set forth in California Business and Professions Code Section 22435.7, as well as institution of administrative remedies in accordance with Chapters 1.25 and 1.26 of Title 1 of this code.

9.62.170 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 as set forth in the owner's abandoned cart retrieval plan.”

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SECTION 3. The city clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by number, title and summary, and the city clerk's certification.

Signed and approved this _____ day of _____ 2002.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting of _____, 2002, by the following vote:

AYES:

NOES:

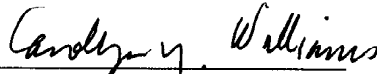
ABSENT:

ABSTAIN:

Published:

Jane Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:



Carolyn Y. Williams
Asst. City Attorney