



12.1

NEIGHBORHOOD SERVICES DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

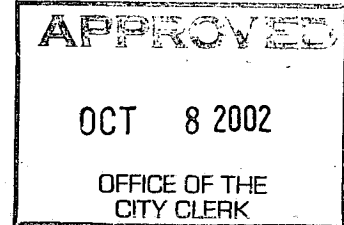
1231 I Street, Suite 400
SACRAMENTO, CA
95814-2977

Max B. Fernandez
Area 1 Director

PH 916-264-7940
FAX 916-264-8937

September 10, 2002

City Council
Sacramento, California



Honorable Members in Session:

**SUBJECT: Ordinance Enacting Chapter 5.82 of the Sacramento City Code,
Relating to Shopping Carts**

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION:

It is recommended that the City Council (1) adopt the attached ordinance (Exhibit B) enacting Chapter 5.82 of the Sacramento City Code, relating to shopping carts and (2) approve, by resolution (Exhibit A), the fees and fines included in the ordinance.

CONTACT PERSONS: Max B. Fernandez, Director Area 1, 264-7940
Robert L. Rose, Chief of Code Enforcement, 264-5947

FOR COUNCIL MEETING OF: October 8, 2002

SUMMARY:

Staff was requested by Councilmember Dave Jones to draft a shopping cart ordinance that will help control the growing problem of abandoned shopping carts on public and private properties. The attached shopping cart ordinance was approved by the Law and Legislation Committee on July 18, 2002. Several cities have been surveyed on their courses of action addressing this issue. The California Grocers' Association has also been contacted in a combined effort to find a solution for this growing problem. However, the problem with abandoned shopping carts has continued. The proposed ordinance offers remediation for the City of Sacramento as well as the shopping cart owners, including the establishment of new fees and fines.

COMMITTEE/COMMISSION ACTION:

The Code Enforcement Ad Hoc Committee has reviewed and approved the proposed ordinance regulating shopping carts. Currently the State of California Business and Professions Code § 22435 is the only governing law for carts within the City of Sacramento. The attached proposed ordinance is a follow-up to the Committee's request for a comprehensive City ordinance including definitions and preventative measures.

BACKGROUND:

Code Enforcement has received complaints from the public and inquiries from Council regarding the many carts that are abandoned on the public right-of-way and on private properties. Several meetings have been held over the last two years with the California Grocers' Association, Councilmember Dave Jones, and other City staff to discuss these problems and possible solutions. However, the problem of abandoned shopping carts has persisted in the City of Sacramento. Surveys of other cities' abandoned cart recovery plans were conducted which revealed a wide range of approaches to the issue of abandoned shopping carts some of which included: hiring staff specifically for this job; hiring outside contractors; using juvenile detainees from the probation department to collect and deliver carts for storage in a city corporation yard; and other methods of removal and storage.

The attached drafted City ordinance reflects some flexibility for the grocery and retail industries to select a recovery plan that would control their particular shopping cart situation and prevent the removal of carts from their premises. The ordinance includes the following items:

- A. Definitions of Abandoned Cart, Abandoned Cart Prevention Plan; Cart; Owner; and Premises. (Section 5.82.010)
- B. Carts are required to have a permanent identification sign with the specified information. The Code Enforcement Manager or designee may consider self-adhesive, durable and waterproof stickers/decals that contain the required identification information as meeting the requirements of this section. (Section 5.82.020)
- C. Declaration of unlawfulness for cart abandonment. (Section 5.82.040)
- D. Prohibition of cart removal with certain exceptions. (Section 5.82.050)
- E. The owner shall post a notice according to the prescribed form which states that the removal of shopping carts is prohibited by law and subjects the violator to a minimum fine. (Section 5.82.060)

- F. The owner shall implement and comply with an abandoned cart prevention plan. The provisions under this ordinance allows flexibility for the shopping cart owner to select and implement a plan that best prevents shopping cart abandonment according to the owner's business needs. Also, as requested by the Law and Legislation Committee, a process has been included in the ordinance whereby the decision to deny a proposed abandoned cart prevention plan shall be appealable by the cart owner to the City Manager. (Section 5.82.070)
- G. The process for approval of an Abandoned Cart Prevention Plan and further requirements of the plan as well as consequences of not having such plan. It is recommended by staff that the first proposed plan be submitted by each owner within 90 days of the effective date of this ordinance and by July 1st of each year thereafter. (Section 5.82.080)
- H. Notification for retrieval of abandoned carts. (Section 5.82.090A)
- I. Administrative costs and fines. (Section 5.82.090B)
- J. Alternative Provisions Regarding Retrieval of Abandoned Carts. (Section 5.82.090C)
- K. Disposition of Carts After Thirty Days. (Section 5.82.090D)
- L. Violation of any provision of this chapter shall constitute an infraction. (Section 5.82.100)

FINANCIAL CONSIDERATIONS:

Under this ordinance, the City will charge a \$50.00 fine to any owner who fails to retrieve an abandoned cart within three (3) days in excess of three (3) times during a specified six (6) month period (Section 5.82.090). In addition, an administrative fee will be charged to recover staff time and costs associated with cases of non-compliance. Also, a violator who illegally removes a shopping cart (or other cart, if applicable) will be subject to a minimum fine of \$100. Under this ordinance, prevention plan appeals will require a \$100 fee. The fines and fees will contribute to the cost recovery of this project. Administration and enforcement of this ordinance will be incorporated into the existing code enforcement operation and budget.

City Council

RE: Ordinance Enacting Chapter 5.82 of the City Code, Relating to Shopping Carts

ENVIRONMENTAL CONSIDERATIONS:

This report is not considered a project and therefore has no potential for an effect on the environment as stated by the provisions of the California Environmental Quality Act (Section 15061 (b) (3)).

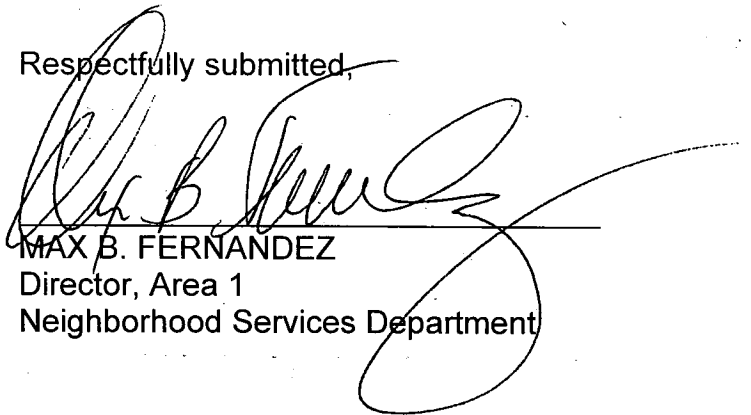
POLICY CONSIDERATIONS:

Striving to rid the City of its abandoned shopping cart problem and preventing such carts from leaving private property is consistent with the City of Sacramento's goal to enhance and preserve the neighborhoods as well as the City's mission to protect, preserve and enhance the quality of life for present and future generations.

E/SBD CONSIDERATIONS:

Not applicable.

Respectfully submitted,



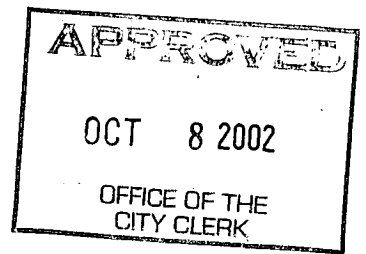
MAX B. FERNANDEZ
Director, Area 1
Neighborhood Services Department

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

Attachments



RESOLUTION NO. 2002-681

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION ESTABLISHING FEES AND FINES ACCORDING TO CHAPTER 5.82 OF THE SACRAMENTO CITY CODE RELATING TO SHOPPING CARTS

WHEREAS:

- A. Sacramento City Code Chapter 5.82 is enacted relating to shopping carts; and
- B. The process for appeal of the denial of a proposed Abandoned Cart Prevention Plan and the associated appeal fee of \$100 is also established; and
- C. Any owner who fails to retrieve an abandoned cart according to Section 5.82.080 will be fined \$50 and any applicable administrative fees necessary to recover staff time and costs associated with non-compliance; and
- D. The minimum fine shall be \$100 to a violator of Section 5.82.050 for the illegal removal of a shopping cart; and

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

- 1. Violation of this chapter shall constitute an infraction.
- 2. The City Council finds these fines and fees to be reasonable.

ATTEST:

MAYOR

CITY CLERK

FOR CITY CLERK USE ONLY

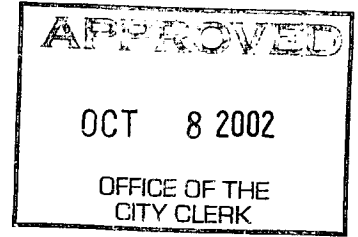
RESOLUTION NO.: _____

DATE ADOPTED: _____

ORDINANCE NO. 2002-039

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____



AN ORDINANCE ENACTING CHAPTER 5.82 OF THE SACRAMENTO CITY CODE, RELATING TO SHOPPING CARTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 5.82 of the Sacramento City Code is hereby added as follows:

Section 5.82.010. Definitions.

“Abandoned Cart” means any cart that has been removed from the owner’s premises without written consent of the owner and is located on either public or private property.

“Abandoned Cart Prevention Plan” or “Plan” means a plan that meets the requirements of Section 5.82.060 and has been approved by the Code Enforcement Manager as required by Section 5.82.070.

“Cart” means a basket that is mounted on wheels or a similar device that is provided by an owner to a customer for the purpose of transporting goods of any kind.

“Owner” means a person or entity who, in connection with the conduct of a business, makes fifty (50) or more carts available to the public.

“Premises” means the entire area owned, occupied or utilized by an owner, including any parking lot or other property provided by or on behalf of an owner for customer parking or use.

Section 5.82.020. Cart Identification Required. Every cart provided by any owner must have a sign permanently affixed to the cart that contains all of the following information:

- A. The identity of the owner.
- B. The address and phone number of the owner for cart return.
- C. A statement that the removal of the cart from the premises is a violation of state law and Sacramento City Code Chapter 5.82.
- D. The procedure for authorized removal of the cart from the premises.

Section 5.82.030. Abandonment Prohibited. 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 any private property, other than the premises of the owner of such cart.

Section 5.82.040. Removal Prohibited. It shall be unlawful for any person, either temporarily or permanently, to remove a cart from the premises of the owner of such cart, or to be in possession of a cart that has been removed from the premises of the owner of such cart, which is properly marked in conformity with this Chapter, without the written consent of the owner. This section shall not apply to carts removed from the premises, with the consent of the owner, for the purposes of repair, maintenance or disposal.

Section 5.82.050. Posted Notice. There shall be posted by the owner, prominently and conspicuously, at all public entrances and exits to the business, a notice in substantially the following form: REMOVAL OF SHOPPING CARTS (or Laundry Carts, or other types of carts, if applicable) IS PROHIBITED BY LAW AND SHALL SUBJECT THE VIOLATOR TO A MINIMUM FINE OF \$ 100.00.

Section 5.82.060. Abandoned Cart Prevention Plan. Every owner who allows or intends to allow the use of carts outside a building or enclosed area of a business shall develop, implement and comply with an abandoned cart prevention plan.

- A. The plan must include, at a minimum, the following information:
 - 1. The name of the business, address and phone number of the premises where the business is conducted, and the address and phone number of the cart owner, if different.
 - 2. A procedure for providing notification to customers that removal of carts from the premises is prohibited and a violation of state and local law in

7

addition to the notice required under Section 5.82.020 and 5.82.050. This notice may be provided in the form of flyers, warnings on shopping bags, or any form of written notification that will effectively notify customers of the prohibition.

3. A description of the physical measures that will be implemented to prevent the removal of carts from the premises. Physical measures may include, but are not limited to: devices on carts that prevent their removal from the premises; posting of a security guard to deter and stop customers from removing carts from the premises; prohibiting carts outside the building of the business unless accompanied by an employee; bollards and chains around the premises to prevent cart removal; security deposits required for use of carts; or the rental or sale of carts that can be temporarily or permanently used for transport of purchases off of the premises.

4. A procedure for the retrieval of abandoned carts by its employees, or proof that the owner has entered into a contract for cart retrieval services that has been approved by the Code Enforcement Manager.

B. Two or more businesses may collaborate and submit a single plan.

Section 5.82.070. Abandoned Cart Prevention Plan Approval.

A. Each owner shall submit a proposed abandoned cart prevention plan to the Code Enforcement Manager or designee within ninety (90) days of the effective date of these provisions, and by July 1st of each year thereafter. Proposed businesses shall have an approved abandoned cart prevention plan prior to commencing business. After initial submission and approval of an abandoned cart prevention plan, an owner submitting the same plan to comply with the requirement of submitting a plan by July 1 of each subsequent year, may do so by submitting a letter of intent stating that the owner is submitting the plan currently in operation.

B. The Code Enforcement Manager or designee shall approve or reject the proposed abandoned cart prevention plan within ninety (90) days of the plans submission. The Code Enforcement Manager or designee may deny a plan based upon any 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

 / / 02 **FOR CITY CLERK USE ONLY**

ORDINANCE NO. _____

DATE ADOPTED: _____

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 chapter;

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 Code Enforcement Manager or designee shall indicate areas that are incomplete or inadequate, and the owner shall have an additional thirty (30) days within which to resubmit a complete and adequate plan. The Code Enforcement Manager or designee shall approve or reject the resubmitted plan within thirty (30) days of the date of resubmission of the plan.

D. Once approved, the measures included in the plan shall be implemented no later than thirty (30) days of the plan's approval. If an owner is proposing new measures, the measures from the approved plan in the previous year shall be continued until the new measures are implemented.

E. Any owner that fails to submit a plan, implement the plan measures, or implement any required modifications to the plan within the time frames specified in this chapter shall be required to keep all carts inside the building or enclosed areas of the business.

F. Any owner that fails to keep all carts inside the building or enclosed area of the premises, if applicable, may be subject to administrative penalties imposed pursuant to Chapter 1.28 of the Sacramento City Code.

G. The Code Enforcement Manager or designee's decision to deny a plan shall be appealable to the City Manager. A written notice of appeal must be submitted to the Code Enforcement Manager within 10 days of the denial of the plan and accompanied by a copy of the plan and the appropriate fee as set by resolution of the City Council. The City Manager shall review the plan under the grounds for denial set forth in section 5.82.070 B and provide a decision approving or denying the plan within 30 days of receipt of the notice of appeal.

H. After an approved plan is in operation for three months, the plan shall be reevaluated to determine if it is effective. If the plan is ineffective, the owner must submit an amended plan to the Code Enforcement Manager or designee. Any amended plan must be submitted within one month after notice of the plan's ineffectiveness. The Code Enforcement Manager or designee shall approve or reject the amended plan within ninety (90) days of its submission.

I. Even though approved, a plan may be reevaluated at any time by the Code Enforcement Manager if operation of the plan demonstrates the plan's insufficiency or inadequacy in preventing removal of carts from the premises.

Section 5.82.080. Abandoned Carts.

A. Notification for Retrieval of Abandoned Carts.

1. The City shall notify the owner of any abandoned carts located within the City.
2. The notice shall contain:
 - a. The street address or other description of the location of the abandoned carts;
 - b. The number of carts at that location;
 - c. The date and approximate time that the abandoned carts were found.
3. The notice may be served by personal service on the owner or by fax transmission.

4. The City may include multiple locations of abandoned carts on one notice.

5. The owner shall have three (3) days from the date the notification is given to retrieve the carts from the specified locations.

B. Administrative Costs and Fines.

1. Any owner that fails to retrieve any abandoned cart after receiving the three (3) day notice by the City, shall pay the City's administrative costs for providing notice to the owner and for retrieving the cart.

2. Any owner that fails to retrieve an abandoned cart within three (3) days in accordance with this chapter in excess of three (3) times during a specified six (6) month period, shall be subject to a Fifty Dollar (\$50.00) fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the City in a one (1) day period. This fine shall be in addition to any other fees or costs that are due.

C. Alternative Provisions Regarding Retrieval of Abandoned Carts. Notwithstanding subsection A, above, the City may impound an abandoned cart so long as the owner is given notice within twenty-four (24) hours following the impound and the notice informs the owner as to the location where the cart may be claimed. Any cart reclaimed by the owner within three (3) business days following the date of notice shall be released to the owner without charge. Any cart not reclaimed by the owner within three (3) business days following actual notice shall be subject to the fees and penalties set forth in Subsection B, above.

D. Disposition of Carts After Thirty Days. Any cart not reclaimed from the City within thirty (30) days after notification to the owner shall be sold or otherwise disposed of by the City.

Section 5.82.090. Violation. Any person violating any provision of this chapter shall be guilty of an infraction.

DATE PASSED FOR PUBLICATION:
DATE ENACTED:
DATE EFFECTIVE:

MAYOR _____

ATTEST:

CITY CLERK

- 7 -

__/__/02

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

12