

ORDINANCE NO. 2777

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE REPEALING SECTIONS 8.30.130 AND 8.30.150 OF CHAPTER 30 OF TITLE 8 OF THE GARDEN GROVE MUNICIPAL CODE AND ADDING CHAPTER 31 TO TITLE 8 OF THE GARDEN GROVE MUNICIPAL CODE RELATING TO SHOPPING CARTS

City Attorney's Summary

This Ordinance adds Chapter 31 to Title 8 of the Garden Grove Municipal Code to require owners of retail establishments to take measures to prevent the unauthorized removal of shopping carts from the store's premises, including physical measures, signs affixed to carts, notices to customers, and daily cart confinement, among others. This Ordinance also repeals sections of Chapter 30 of Title 8 of the Garden Grove Municipal Code that are inconsistent with the provisions of Chapter 31.

WHEREAS, California Business and Professions Code Section 22435.7(a) provides that the retrieval by local government agencies of shopping carts constitutes a matter of statewide concern;

WHEREAS, California Business and Professions Code Section 22435.8 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";

WHEREAS, cities may adopt ordinances that require businesses to implement shopping cart containment plans;

WHEREAS, the City 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;

WHEREAS, the City 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;

WHEREAS, the City Council finds that the prior City ordinance relating to containment and retrieval of shopping carts has been ineffective in removing this public nuisance from the city streets;

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 and Professions Code Sections 22435 et seq.; and

WHEREAS, this Code Amendment is exempt from further environmental review under the California Environmental Quality Act pursuant to California Code of Regulations Title 14, Section 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect adverse physical change in the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Sections 8.30.130 and 8.30.150 of Chapter 30 of Title 8 of the Garden Grove Municipal Code are hereby repealed in their entirety.

SECTION 2. Chapter 31 is hereby added to Title 8 of the Garden Grove Municipal Code to read as follows:

CHAPTER 31: SHOPPING CART CONTAINMENT

Section 8.31.010: Purpose – Declaration of Nuisance.

Many retail establishments provide shopping carts for the convenience of customers while shopping on the premises of such businesses. However, shopping carts removed from the premises of such businesses and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen, or abandoned shopping carts on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots, and other ways, interferes with pedestrian and vehicular traffic on public and private streets and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are declared to be a public nuisance that shall be subject to abatement in the manner set forth in this Chapter or in any other manner provided by law. The purpose of this Chapter is to set forth regulations to ensure that measures are taken by the owners and operators of businesses that provide ten (10) or more shopping carts for the convenience of customers to prevent the removal of shopping carts from business premises and parking lots, and to provide for the prompt retrieval of lost, stolen or abandoned shopping carts, to complement and supplement provisions of state law and to adopt local regulations to the extent not otherwise preempted by state statute.

Section 8.31.020: Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this Chapter shall have the following meanings:

A. "Abandoned shopping cart," see "Lost, stolen, or abandoned shopping cart."

B. "Cart" or "shopping cart" means a basket that 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. The term "shopping cart" or "cart" includes a laundry cart.

C. "City" means the City of Garden Grove, California or its designated representative.

D. "Enforcement personnel" means any Police Officer or Code Enforcement Officer employed by the City of Garden Grove.

E. "Laundry cart" means a basket that is mounted on wheels and generally used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting clothing, fabrics, and/or the supplies necessary to process them.

F. "Lost, stolen, or abandoned shopping cart" means a shopping cart that is either (1) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which such shopping cart was removed, even if in the possession of any person, unless such person in possession thereof (a) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (b) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, (c) is an Enforcement Officer retrieving, storing or disposing of said cart, or (d) has written permission or consent to be in possession of the shopping cart from the owner entitled to possession of the shopping cart.

G. "Owner" means any owner, manager, or operator of any retail establishment.

H. "Parking area" means a parking lot or other property provided by a retail establishment for the use by customers for parking of customer vehicles for use at such 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 multistore complex or shopping center.

I. "Premises" means any building, property, or other area upon which any retail establishment business is conducted or operated in the city, including the parking area provided for customers.

J. "Public Works Director" means the Public Works Director of the City.

K. "Retail establishment" means any business located in the city, regardless of whether the business is advertised or operated as a retail, service, or wholesale business, and regardless of whether the business is open to the general public, or is a private club or business, or is a membership store.

Section 8.31.030: Mandatory physical measures to prevent the removal of carts.

A. Owners of every retail establishment that utilizes ten (10) or more carts shall implement one or more of the following physical measures to prevent the removal of carts from their premises no later than May 18, 2011:

1. Disabling devices on all carts that prevent the carts from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts; or

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

B. By November 18, 2010, the owner of every retail establishment that utilizes ten (10) or more carts shall present to the Public Works Director a written plan setting forth the physical measures it plans to implement to comply with the requirements of this Chapter.

Section 8.31.040: Additional cart control measures.

In addition to installing physical measures to prevent the removal of carts from the premises, every retail establishment that provides ten (10) or more shopping carts to customers for use on the premises shall also comply with the following requirements:

A. Signs Affixed to Carts. Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer or both; notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of law, and lists a valid telephone number and address for returning the cart removed from the premises to the owner or retailer.

B. Notice to Customers. Written notice shall be provided to customers in English, Spanish, Korean, and Vietnamese that removal of shopping carts from the premises is prohibited by law. Such notice may be provided in the form of flyers distributed on the premises, warnings printed on shopping bags, direct mail, website notices or any other means demonstrated to be effective. In addition, conspicuous signs shall be placed and maintained on the premises near all customer entrances and exits and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by law.

C. Daily Cart Confinement. All shopping carts located on the premises of each retail establishment (other than an establishment open for business twenty-four (24) hours per day) shall be collected at the end of each business day by employees of the retail establishment and shall be collectively confined in a secure manner at the cart confinement area on the premises as designated in the cart containment plan until the commencement of the next business day. All shopping carts located on the premises of any retail establishment open for business twenty-four (24) hours per day, other than carts then currently in use by a customer or patron, shall be collected by employees of the retail establishment and returned to the cart confinement area on the premises as designated in the cart containment plan at least once per calendar day between the hours of nine p.m. and twelve midnight on each day the retail establishment is open for business. The provisions of this subsection shall not apply to any shopping carts located within an enclosed building.

D. Employee Training. The owner of each retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of this Chapter and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment.

E. Collaboration with Other Businesses. Two or more retail establishments located within the same shopping or retail center or sharing a common parking area may collaborate and submit a single cart containment plan.

Section 8.31.050: Plan submission and approval.

A. New or Relocated Retail Establishments. Each new retail establishment, and any existing retail establishment relocating to a different location within the city that utilizes ten (10) or more carts shall present to the Public Works Director a written plan setting forth the physical measures it plans to implement to comply with the requirements of this Chapter, and obtain approval thereof by the City, prior to providing any carts to customers of the retail establishment. For retail establishments implementing the use of disabling devices pursuant to Section 8.31.030(A)(1) above, the written plan shall incorporate a

maintenance plan for ensuring that disabling devices are maintained in working order.

B. Existing Retail Establishments. Each existing retail establishment shall submit a proposed plan complying with the requirements of Section 8.31.030 of this Chapter to the Public Works Director within the timeline set forth therein. For retail establishments implementing the use of disabling devices pursuant to Section 8.31.030(A)(1) above, the written plan shall incorporate a maintenance plan for ensuring that disabling devices are maintained in working order.

C. Plan Review and Approval. Upon the filing of any proposed plan submitted pursuant to this Chapter, the Public Works Director shall review the proposed plan and either approve or deny approval of the proposed plan within thirty (30) calendar days following the receipt thereof by the Public Works Director. If the proposed plan complies with each of the applicable requirements of this Chapter, the Public Works Director shall approve the plan, otherwise the proposed plan shall be denied. The decision of the Public Works Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. The notice of decision of the Public Works Director shall be deemed given to the owner on the date of personal delivery or on the date of the fax transmission to the owner; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the owner on the third day following the date of deposit in the U.S. Mail. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. A decision of the Public Works Director may be appealed by the owner in the time and manner provided in Section 8.31.060.

D. Amendments by Owner. The owner of any retail establishment that has an approved plan conforming to the requirements of this Chapter may, at any time, submit a proposed amendment to the approved plan which amendment shall be processed in accordance with the procedure provided for a proposed plan as set forth in subsection C of this Section.

E. Revocation or Amendment by City.

1. Grounds. An approved plan may be revoked by the City upon any of the following grounds:

a. The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of the approved plan and has failed to correct the violation(s) for a period of at least fifteen (15) calendar days following the date of receipt of written notice of such violation(s) from the City; or

b. The owner of any retail establishment with an approved plan is operating, or is permitting the operation of the retail establishment in violation of one or more of the requirements of this Chapter and has failed to correct the violation(s) for a period of at least fifteen (15) calendar days following the date of receipt of written notice of such violation(s) from the City; or

c. The mandatory cart containment plan, as approved, is inadequate to reasonably prevent the removal of shopping carts from the premises of the retail establishment.

2. Order to Show Cause. If at any time following the approval of a plan, the Public Works Director obtains information or evidence that any of the grounds set forth in subsection (E)(1) of this Section may exist, the Public Works Director may issue a written order to show cause as to why the approved plan should not be revoked and schedule a hearing thereon which hearing shall not be less than fifteen (15) calendar days nor more than thirty (30) calendar days following the date such order to show cause is given to the owner of the retail establishment. The order to show cause shall state the grounds upon which it is proposed to revoke the approved plan and shall include the information and evidence, or a summary thereof, upon which such order was issued.

3. Notice of Hearing. Notice of the hearing on any order to show cause issued pursuant to this Section shall be given in the time and manner provided in subsection C of this Section.

4. Conduct of Hearing. The hearing shall be conducted informally and the formal rules of evidence shall not be applicable. The owner and the City shall each have the opportunity to present relevant evidence and witnesses. The parties may each be represented by legal counsel or other representatives of their choice. The City shall bear the burden of proof to establish, by a preponderance of the evidence, that grounds exist to revoke the plan. The Public Works Director, at his discretion, and as an alternative to revocation, may consider amendment of the plan if the grounds for the order to show cause are solely the inadequacy of the approved plan.

5. Decision of Public Works Director. Within fifteen (15) calendar days following conclusion of the hearing, the Public Works Director shall render his decision in writing either dismissing the proceedings or revoking or amending the plan. If the plan is revoked or amended, the decision shall specify the findings of fact and the reasons for such action. If the plan is amended, the decision shall also specify the amendment(s) to the plan.

6. Notice of Decision. Notice of the decision of the Public Works Director shall be given in the time and manner specified in subsection C of this Section.

7. Appeal of Decision. The decision of the Public Works Director shall be subject to appeal by the owner within the time and manner specified in Section 8.31.060. In the absence of a timely appeal, the decision of the Public Works Director shall be final and conclusive.

8. Use of Shopping Carts Following Revocation Prohibited. No owner of any retail establishment that is subject to the requirements of this Chapter shall provide or make available shopping carts for the use of customers following the date any decision revoking a plan required and approved pursuant to this Chapter becomes final unless and until a new proposed plan is approved by the City for such retail establishment. Notwithstanding any other provision of this Chapter, an owner of a retail establishment shall not be eligible to submit a new proposed plan to the City for processing for a minimum of one hundred twenty (120) days following the date any decision revoking the prior plan for such retail establishment becomes final. Any proposed plan submitted to the City for such retail establishment during the one hundred twenty (120) day period shall be returned to the owner of the retail establishment as untimely.

Section 8.31.060: Appeals.

A. Filing of Appeal. Any owner aggrieved by any adverse decision of the Public Works Director pursuant to this Chapter may appeal such decision to the City Manager of the City within fifteen (15) calendar days following the date of giving of notice of such decision by filing with the City Clerk a written notice of appeal stating each ground for such appeal and all facts and information that supports the appeal. The notice of decision of the Public Works Director shall be deemed given on the date as provided in Section 8.31.050(C) of this Chapter. Such appeal shall be deemed filed on the date the appeal is actually received in the City Clerk's Office accompanied by an appeal processing fee in an amount as set by City Council Resolution. No appeal shall be accepted for filing and processing by the City Clerk unless accompanied by the appeal processing fee as established by the City Council.

B. Notice of Hearing. If the appeal is timely filed, the City Clerk shall notify the City Manager who shall designate a hearing officer. Such hearing officer shall cause the matter to be set for hearing, which hearing date shall be within thirty (30) calendar days following the date of receipt of such notice of appeal. The appellant shall be provided not less than ten (10) calendar days written notice of the date, time and place of the hearing.

C. Conduct of Hearing. The hearing shall be conducted informally and the formal rules of evidence shall not be applicable. The owner and the City shall each have the opportunity to present relevant evidence and witnesses. The parties may each be represented by legal counsel or other representatives of their choice. No

additional evidence or argument shall be received or considered following the conclusion of the hearing except as may be agreed by stipulation of the parties.

D. Decision by Hearing Officer. The hearing officer shall render a decision on the appeal and adopt findings of fact in support of such decision within thirty (30) calendar days following the conclusion of the hearing.

E. Notice of Decision. The notice of decision of the hearing officer shall be deemed given on the date of personal delivery or on the date of the fax transmission to the appellant; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the appellant on the third day following the date of deposit in the U.S. Mail.

F. Decision is Final. The decision of the hearing officer shall be final. The decision shall include notice that any legal challenge to the final decision shall be made pursuant to provisions of Code of Civil Procedure Sections 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision.

Section 8.31.070: Unlawful acts - Penalty for violation - Declaration of public nuisance- Penalties not exclusive.

A. Except as otherwise expressly provided in this Chapter, it shall be unlawful for the owner of any retail establishment that provides ten (10) or more shopping carts to provide or offer, or permit to be provided or offered, any shopping carts to customers of the retail establishment without an approved mandatory cart containment plan as required by this Chapter.

B. It shall be unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, to customers of the retail establishment any shopping cart that does not have a sign permanently affixed thereto containing all of the information specified in Section 22435.1 of the Business and Professions Code of the State of California.

C. It shall be unlawful for the owner of any retail establishment to operate in violation of any provision of an approved mandatory cart containment plan as required by the chapter or in violation of any provision of this Chapter.

D. Penalty for Violation. A violation of any provision of this Chapter committed by any person or entity shall be punishable as provided for in Title 1 of this Code. Each day a violation of any provision of this Chapter exists shall be a new and separate violation.

E. Declaration of Public Nuisance. It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any retail establishment in the City to maintain upon such premises, or to permit, cause or

allow to exist on such premises a violation of any provision of this Chapter. Any violation may be abated by the City through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances. Any person who violates any of the provisions of this Chapter shall be responsible for the City's attorney fees and legal costs associated with the abatement.

F. Penalties Not Exclusive. The penalties set forth herein are cumulative and in addition to all other remedies, violations and penalties set forth in this Chapter, or in any other ordinances, laws, rules or regulations of the City of Garden Grove, County of Orange and the State of California.

Section 8.31.080: Removal of Unattended Shopping Carts.

Nothing in this Chapter shall be construed to limit the City's ability to impound shopping carts and recover the City's costs, as established by City Council Resolution, in accordance with Section 22435.1 of the California Business and Professions Code.

SECTION 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is for any reason held out to be invalid or unconstitutional by the decision of any 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 adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words, or portions be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance Shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on July 13, 2010, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BROADWATER, DO, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE