



CITY OF POMONA COUNCIL REPORT

September 16, 2019

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Rene Guerrero, Public Works Director

Subject: **DISCUSSION OF REGULATIONS PERTAINING TO SHOPPING
CARTS AND CURRENT PRACTICE**

RECOMMENDATION: It is recommended that the City Council review and discuss the City Code Sections regulating shopping carts and current practices, and provide staff direction on any desired changes to the regulations and/or practices.

EXECUTIVE SUMMARY: Abandoned shopping carts become a public nuisance when they are left in the public right-of-way, posing safety threats to motorists and pedestrians, while contributing to blight throughout the City. Staff is providing a summary of the State's existing regulations, along with the City's Code regarding the use of shopping carts in the public right-of-way and the current practices pertaining to the pick-up and retrieval of abandoned shopping carts. Staff is seeking Council direction on potential changes to the ordinance or practices that may alleviate some of the negative impacts associated with abandoned shopping carts.

FISCAL IMPACT: None at this time. Based on potential changes to the ordinance or practices, future fiscal impacts can be determined.

PREVIOUS RELATED ACTION: On February 5, 2001, the City Council adopted Ordinance No. 3922 to regulate the use of shopping carts and to deter the unauthorized removal of carts from area stores. On September 22, 2003, the City Council adopted Ordinance No. 3996 relating to the responsibilities of business owners and the implementation of abandoned cart prevention plans. On April 21, 2008, the City Council adopted an amendment to Sections 18-354 and 18-356 of the Pomona City Code pertaining to the unauthorized removal, possession, alteration, and abandonment of shopping carts and requiring signage to be posted on both cart and premises advising that removal is unlawful under State and local law.

BACKGROUND: In 1997, the California Legislature amended the California Business and Professions Code to regulate shopping and laundry carts. Under Business and Professions Code Section 22435.7, a city may enact ordinances regulating shopping and laundry carts, so long as the ordinances do not conflict with any state laws.

In 2000, the Pomona City Council conducted a Council Study Session to discuss and evaluate solutions to the City's shopping and laundry cart problems. Subsequent to the Study Session, the Council entered into a contract for the retrieval of abandoned shopping and laundry carts within City limits and adopted Ordinance No. 3922, which mirrored State law as to the regulation of shopping carts. Due to budgetary constraints, cart retrieval was brought back in-house in July 2015. The Council also adopted Ordinance No. 3996 to require businesses that provide shopping carts to have an approved shopping cart retrieval plan.

DISCUSSION:

Existing State Regulations

Shopping cart abandonment and impound is regulated by the State Business and Professions Code (BPC, Sections 22435-22435.8). California law allows for a city to impound an abandoned shopping cart provided that the city provides notice to the business owner within 24 hours following the impound of the location where the cart may be claimed. The State also provides that the actual costs of retrieving and storing a shopping cart can be recovered if the following conditions are met:

- 1) The cart is affixed with a sign with the following information:
 - a. identification of the cart owner with address and phone number,
 - b. notification that removal of cart from premises is a violation of State and City law, and
 - c. notification of procedure for authorized removal;
- 2) Notice has been provided to the business owner within 24 hours of impoundment and three business days have elapsed;
- 3) The cart is being held at a reasonably convenient location (9th St. Yard); and
- 4) The location is open for business at least six hours per day every business day.

In addition to the recovery of actual costs, a fine of up to \$50 may be imposed if there are more than three occurrences during a specified six-month period for failure to retrieve shopping carts. An "occurrence" includes all shopping carts impounded within a one-day period. If the cart is retrieved within three business days of actual notice, it is not deemed to be an "occurrence."

It is important to note that the above-mentioned requirements in the Business and Professions Code, which must be followed to allow for cost recovery, are arduous and would have a significant fiscal impact. As outlined above, marked carts picked up within three days of notification are exempt from any penalty or impound/storage fees, regardless of the number of days carts from a particular business are picked up or the number of carts in any day.

Current City Ordinance and Practice

Article VIII of the City Code states that the use of shopping carts on the public right-of-way, and the presence of abandoned shopping carts on public or private property, is declared to constitute a public nuisance. It further requires business owners to take measures to prevent shopping cart removal, makes unauthorized removal of shopping carts a violation of the Code, and facilitates retrieval of abandoned carts in a manner consistent with State law.

Regarding preventative measures, the City Code requires that business owners affix signs to their shopping carts and premises, in both English and Spanish, prohibiting the unauthorized removal and possession of shopping carts. A business owner who fails to post the required signage may be charged with a misdemeanor, punishable by a fine of up to \$1,000. The penalty is the same for unlawfully removing a cart from the premises of a business. There is no record of citations being issued for either offense. Businesses are also required to submit an Abandoned Cart Prevention Plan that outlines loss prevention measures provided by the business, employee training practices, and how the business will retrieve their carts. The City has not proactively pursued this requirement, but has requested such a Plan when shopping carts have become a nuisance from a particular business. One strategy that can be employed is for Public Works to coordinate with Development Services to require a condition of approval requiring the submittal of an Abandoned Cart Prevention Plan and the installation of a wheel locking system as part of any entitlement approval for new shopping/retail centers where carts are proposed to be utilized.

Currently, the pick-up of abandoned carts in the City is performed by one full-time employee in the Public Works Department. On a daily basis, this person responds to submitted service requests and known hot spots. Abandoned shopping carts are stored at the 9th Street Yard. However, with six current part-time worker vacancies in the Department, this employee cannot devote a full day to the operation of shopping cart pick-up or the staffing of the 9th Street Yard, as there are other daily field duties/requests. It should also be noted that only abandoned carts that are empty and operable (i.e. has wheels) are picked up under this program. Inoperable carts are picked up by a separate City crew as illegal dumping. The 9th Street Yard is open for retrieval of carts by business owners on Monday and Thursday of each week, from 10:00 am to 11:00 am.

According to monthly reports maintained by the Public Works Department, in July 2019, a total of 96 shopping carts were identified and impounded by the City, while a total of 124 shopping carts, collected in July and in the prior month, were retrieved by businesses throughout the City. In FY 2018-19, a total of 1,875 shopping carts were picked up. The table below summarizes the number of shopping carts collected by the City per District in FY 2018-19:

| District | Number of Carts |
|-----------------|------------------------|
| 1 | 399 |
| 2 | 371 |
| 3 | 386 |
| 4 | 378 |
| 5 | 105 |
| 6 | 236 |
| Total | 1,875 |

During this same year, 1,989 shopping carts were retrieved by the respective businesses. Carts are typically retrieved by businesses within three business days, as many businesses contract with outside vendors to provide cart retrieval services on their behalf. Carts that are not retrieved are disposed of by the City.

Comparative Ordinances

To explore a larger range of policy and program options, staff reviewed shopping cart ordinances of other cities. There are two basic approaches, requirements for retrieval and requirements for containment. Retrieval requirements allow carts to migrate offsite and then provide standards for retrieval. Containment regulations are designed to prevent carts from migrating offsite. Approaches taken by cities range from taking no action to requiring all businesses with shopping carts to contain their carts. Some programs have a two-step approach starting with minimal requirements then progressing to more stringent standards, such as mandatory containment for problem stores. Some cities have chosen to regulate shopping carts as a land use issue, making containment a zoning standard.

Common standards in all the ordinances include cart and premise signage, making it a crime to remove a cart from the store premises, and informing customers through signage and markings that cart removal is prohibited. These are exactly the standards included in Pomona's Code. Moreover, much like many other cities, Pomona does provide a hotline to report abandoned carts as well as the City website portal, PomonaGo, another method to report abandoned carts from a computer or smartphone.

ALTERNATIVES: As a matter of amending the existing City Code and/or updating current City practice, the City Council may consider and discuss the alternatives below, or recommend other alternatives for staff evaluation, as appropriate:

- 1) Re-evaluate the daily operations of shopping cart pick-up and storage by considering an increase to the frequency of monitoring at hot spot areas Citywide and keep the 9th Street Yard open for six hours every business day:
 - a. This will require additional staffing (at minimum, two part-time workers) at an increased, estimated annual cost of \$31,700.
 - b. To recover the additional staffing costs, consider a new cost of service fee of \$90 per day, applicable after three business days have passed.
 - c. However, even with additional staffing and due to existing State legislation, please note that a cost of service fee cannot be imposed and full cost recovery will not be achieved if the shopping carts picked-up and stored by staff have been retrieved within three business days of notice. Data indicates that a majority of shopping carts are retrieved by businesses or their agent within three business days of notice.
- 2) Consider a requirement for new shopping/retail developments and/or expansions, which must obtain a Conditional Use Permit or other discretionary permit, to provide wheel locking devices for all carts, so that the wheels on the cart automatically lock when the cart leaves the business premises;

- 3) Initiate an outreach campaign to all existing businesses with shopping carts to submit a Mandatory Abandoned Cart Prevention Plan at an estimated administration cost of \$5,000.

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