

ORDINANCE NO. 003-21

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AMENDING CHAPTER 22 TO TITLE 5 OF THE YUBA CITY MUNICIPAL CODE
REGULATING SHOPPING CARTS**

WHEREAS, the City of Yuba City has the authority, under its police power, to enact regulations for public safety, health, and welfare of the city, Cal. Const. Art. XI, section 7; and

WHEREAS, the accumulation of wrecked, dismantled or abandoned shopping carts, or their parts, on the public or private property creates aesthetically detrimental conditions in the community, and can potentially cause health and safety hazards; and

WHEREAS, it has been found that continuous accumulation of shopping carts in undesignated areas of the City can lead to the reduction in property values, promote blight and deterioration, and create an attractive nuisance; and

WHEREAS, responsibility for minimizing or eliminating these impacts rests with individuals who use shopping carts and the businesses which provide shopping carts for their customers; and

WHEREAS, on December 19, 2017, the City enacted Ordinance 012-17, which regulates the use and collection of shopping carts to ensure that the store owners are taking actions to prevent the removal of shopping carts from their store premises and parking lots and to facilitate the retrieval of abandoned carts; and

WHEREAS, the existing Ordinance has been effective in reducing the number of abandoned carts in the City, but it has come to the City's attention that it has placed an increased burden on businesses, especially the small businesses serving our community, while not doing enough to restrain individuals who choose to take the carts offsite; and

WHEREAS, on November 18, 2020, the City staff held a Shopping Cart Workshop with businesses in the community to gather their input on the need to update the existing Shopping Cart Ordinance; and

WHEREAS, the City Council desires to balance the burdens caused by proper regulation of shopping carts in the City, enhance realistic mechanisms for retrieval of carts, and provide reasonable flexibility regarding the methods of complying with the retrieval requirements; and

WHEREAS, the City Council has an interest in maintaining the City of Yuba City in an orderly and esthetically pleasing condition, to keep property values in line with neighboring communities and to improve the quality of life for its residents, businesses, and visitors; and

WHEREAS, the adoption of this ordinances is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have a reasonably potential for resulting in a direct or indirect adverse physical change in the environment, as it merely refines existing ministerial planning and administration of existing regulations; and

WHEREAS, the City Council has determined that the adoption of this ordinance is necessary to achieve a more effective shopping cart regulation program.

NOW THEREFORE, the people of the chartered City of Yuba City do hereby ordain as follows:

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. The City Council find that the adoption of this ordinance is exempt from having to comply with the requirements of CEQA, pursuant to CEQA Guidelines Section 15061(b)(3) which states: "CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Here, the proposed amendment does not have the potential to cause a significant, adverse impact on the environment for the purposes of CEQA, as it merely refines existing ministerial planning and administration of existing regulations.

SECTION 3. Chapter 22, of Title 5, of the Yuba City Municipal Code is amended to read in its entirety as follows:

CHAPTER 22 SHOPPING CARTS

Section 5-22.010: Purpose.

The accumulation of wrecked, dismantled or abandoned shopping carts, or parts thereof, on public or private property is found to create conditions that are aesthetically detrimental to the community, and potentially injurious and/or hazardous to the health, safety and general welfare of the public. Over time these conditions can lead to the reduction in property values, the promotion of blight and deterioration, and the development of an attractive nuisance. Responsibility for minimizing or eliminating these impacts rests with individuals who use shopping carts and the businesses which provide shopping carts for their patrons. The intent of this chapter is to ensure that measures are taken by store owners to prevent the removal of shopping carts from their store premises and parking lots, to make the removal of shopping carts a violation of this chapter, and to facilitate the retrieval of abandoned carts as permitted by the laws of the State of California. The improper storage, maintenance and/or presence of wrecked, dismantled or abandoned shopping carts, or parts thereof, on public and private property, is hereby declared to constitute a public nuisance which may be abated in accordance with the provisions of this chapter, the Yuba City Municipal Code, and Statutes.

Section 5-22.020: Definitions.

For purposes of this chapter, the following definitions shall apply:

"Shopping Cart" shall mean a basket which is mounted on wheels or a similar device provided by a business establishment for use by a customer for the purpose of transporting goods of any kind, including, but not limited to grocery store shopping carts. This definition shall exclude from enforcement under this chapter those devices which do not have a "basket" mounted on wheels in which goods can be placed for transport. This shall not apply to laundry carts typically found at self-service laundromats.

“Owner” shall mean any person or entity, who in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes any shopping cart available to customers or the public. For purposes of this chapter, owner shall also include the owner’s onsite or designated agent that provides the carts for use by its customers.

“Director” shall mean the Development Services Director or their designee.

“Premises” shall mean the entire area owned, leased, or rented and utilized by the business establishment that provides shopping carts for use by customers, including any parking lot or other property provided by the owner for customer parking.

“Abandoned shopping cart” shall mean any shopping cart which has been removed without written permission of the owner(s) or on-duty manager from the premises of the business establishment, regardless of whether it has been left on either private or public property.

“Enforcement personnel” shall mean any police officer, code compliance officer, or other City of Yuba City employee designated by the Development Services Department.

“Shopping cart retrieval service” shall mean a private contract with a commercial service to retrieve and return shopping carts to their respective owner(s) which meets minimum service requirements as established by the Director. A contract with a commercial service to retrieve and return shopping carts to the owner(s) which fails to meet minimum service requirements is not a shopping cart retrieval service within the meaning of this chapter.

Section 5-22.030: Required signs on shopping carts.

Every shopping cart owned, maintained, or provided by any business establishment in the City must have a sign permanently affixed to it which contains the following information:

- (a) Identifies the owner of the shopping cart or the name of the business establishment, or both;
- (b) Notifies the public of the procedure to be utilized for authorized removal of the shopping cart from the business premises;
- (c) Notifies the public that the unauthorized removal of the shopping cart from the premises or parking area of the business establishment is a violation of the Yuba City Municipal Code and State law;
- (d) A telephone number to report the location of an abandoned shopping cart; and
- (e) An address for returning the shopping cart to the owner or business establishment.

Section 5-22.040: Shopping cart removal, abandonment, alteration, possession prohibited.

It is unlawful to do any of the following:

- (a) Remove a shopping cart from the business premises whether temporarily or permanently in deprivation of the owner(s) and/or retailer(s) possession of the shopping cart.
- (b) To be in possession of a shopping cart which has been removed from the business premises, whether temporarily or permanently in deprivation of the owner(s) and/or retailer(s) possession of the shopping cart.
- (c) To be in possession of a shopping cart with the owner(s) and/or retailer(s) identification information removed, obliterated, or altered, whether temporarily or permanently in deprivation of the owner(s) and/or retailer(s) possession of the shopping cart.
- (d) To leave or abandon a shopping cart at a location other than the business premises whether temporarily or permanently in deprivation of the owner(s) and/or retailer(s) possession of the shopping cart.
- (e) To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter owner(s) identification information on a shopping cart, whether temporarily or permanently in deprivation of the owner(s) and/or retailer(s) possession of the shopping cart.

The above subsections (a) through (e) do not apply if an individual has the written permission of the owner(s) or on-duty manager from the store or business establishment. Written permission shall be valid for a period not to exceed seventy-two (72) hours. This provision requiring written permission shall not apply to shopping carts which are removed for purposes of repair or maintenance

Section 5-22.050: Abandoned shopping cart prevention program (ASCPP)

Every store and/or business which owns, leases, or provides ten (10) or more shopping carts shall develop and implement an abandoned shopping cart prevention program (ASCPP) to prevent the removal of shopping carts from the business premises. An existing business and/or store shall submit their ASCPP to the Director prior to January 1, 2022. All new businesses and/or stores shall submit an ASCPP to the Director within ninety (90) business days of their commencement of operations within the city limits.

Section 5-22.060: ASCPP contents.

At a minimum, the ASCPP shall include the following elements and a detailed description of how they will be implemented:

- (a) Notice to customers. Written notification shall be provided to customers that removal of shopping carts from the premises and parking lots are prohibited and a violation of the Yuba City Municipal Code and State law. This notice may be provided in the form of flyers, warnings on shopping bags, or any other form of written notification that will effectively notify customers of the prohibition.

- (b) Signs. Signs shall be placed in conspicuous locations proximate to exits and shopping cart collection areas that warn customers that shopping cart removal is prohibited and constitutes a violation of Yuba City Municipal Code and State law.
- (c) Loss prevention measures. A description of the specific effective measures the owner(s) will implement to prevent shopping cart removal from the premises. These measures may include, but are not limited to, electronic or other disabling devices on the shopping carts so they cannot be removed from the premises, use of courtesy clerks to accompany customers and return carts to the store, use of security personnel to prevent shopping cart removal, security deposit for use of shopping cart, or other demonstrably effective measures acceptable to the Director, likely to prevent shopping cart removal from the premises.
- (d) After hours cart containment. A plan for securing shopping carts whenever the store is not open for business.

Section 5-22.070: Mandatory shopping cart retrieval.

- (a) Every business and/or store which maintains nine (9) or fewer shopping carts shall be responsible for retrieving their shopping carts. All shopping carts shall be retrieved within seventy-two (72) hours of removal.
- (b) Every business and/or store which maintains ten (10) to one hundred and forty-nine (149) shopping carts for use by customers shall retrieve their own shopping carts or they may provide evidence of a contract with a shopping cart retrieval service with terms requiring collection of abandoned shopping carts within seventy-two (72) hours of removal. At the discretion of the Director, should shopping carts not be retrieved within seventy-two (72) hours consistently during a three (3) month period, the owner(s) shall be required to enter into a contract with a shopping cart retrieval service. The retrieval service must be approved by the Director and the owner(s) shall not place limits on daily loads or days per week to retrieve carts within the City.
- (c) Every business and/or store with one hundred and fifty (150) or more shopping carts are required to have a standardized shopping cart containment system with a wheel locking or stopping mechanism. Existing businesses have one (1) year from the date of this ordinance adoption to implement the standardized shopping cart containment system. Businesses in this group shall retrieve their own shopping carts or they may provide evidence of a contract with a shopping cart retrieval service with terms requiring collection of abandoned shopping carts within seventy-two (72) hours of removal. At the discretion of the Director, should shopping carts not be retrieved within seventy-two (72) hours consistently during a three (3) month period, the owner(s) shall be required to enter into a contract with a shopping cart retrieval service. The retrieval service must be approved by the Director and the owner(s) shall not place limits on daily loads or days per week to retrieve carts within the City.

Section 5-22.080: Director review ASCPP.

The Director may approve, conditionally approve, or deny the proposed plan, and notify the owner(s) of such decision in writing, within thirty (30) business days after receipt of the plan.

- (a) If approved, the ASCPP shall be implemented by the owner(s) no later than thirty (30) business days from the date of approval. Upon a showing of good cause and at the sole discretion of the City, a one-time extension of time to implement the ASCPP may be granted.
- (b) If conditionally approved, the owner(s) may accept in writing the conditions stipulated by the Director, after which the owner(s) shall implement the conditionally approved ASCPP within thirty (30) business days of the date of conditional approval.
- (c) If the submitted ASCPP is denied, the reasons for denial shall be set out in writing and the owner(s) shall have fifteen (15) business days to revise and resubmit the plan.
- (d) Even though approved, an ASCPP may be reevaluated at any time by the Director if operation of the plan demonstrates that the plan's insufficiency or inadequacy in preventing removal of shopping carts from the premises.

Section 5-22.090: ASCPP basis for denial.

The Director may deny an ASCPP based upon any of the following grounds:

- (a) Implementation of the ASCPP would violate provisions of the building, zoning, health and safety, fire, penal code or other provisions of the Yuba City Municipal Code, or any local ordinance, State, or federal law which substantially affects public health, welfare or safety;
- (b) The ASCPP fails to include all the information required by this chapter;
- (c) The ASCPP is insufficient or inadequate to prevent removal of shopping carts from the owner's premises;
- (d) The ASCPP fails to address any special or unique conditions due to the geographical location of the premises as they relate to shopping cart retention and prevention efforts;
- (e) Implementation of the ASCPP would violate a term or condition of another City policy or requirement of the Yuba City Municipal Code;
- (f) The owner(s) has knowingly made a false statement of fact, or omits a fact required to be revealed in the application for the ASCPP, or in any addendum or report or other information required to be provided regarding the ASCPP;

- (g) If the ASCPP is rejected as incomplete or inadequate, then the Director shall indicate the areas of incompleteness or inadequacy, and the owner(s) shall have fifteen (15) business days from the date of the notice of incompleteness or inadequacy in which to resubmit a corrected ASCPP; and
- (h) An owner(s) who fails to submit a complete ASCPP, 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 those administrative and criminal penalties as identified within the this chapter and/or the Yuba City Municipal Code.

Section 5-22.100: ASCPP modification.

At any time subsequent to the Director's approval of an ASCPP, the owner(s) may submit to the Director a request of 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. The Director may also modify an approved plan which has been demonstrated to be ineffective or inadequately implemented. Grounds for Director modification include, but are not limited to, a high number of abandoned shopping carts. The Director may require the owner to install and maintain electronic or other geographic disabling devices to prevent carts from being removed from the premises. The Director shall notify the owner(s) of a proposed modification of a previously approved plan and provide the owner(s) with an opportunity to respond within a ten (10) business day period prior to the Director's decision.

Section 5-22.110: Failure to prevent removal of shopping carts.

In the event that owner(s) fail to utilize the shopping cart retrieval service or to follow shopping cart prevention measures which result in shopping carts being abandoned off premise and in City personnel picking up and storing shopping carts, and/or shopping carts are not being collected within seventy-two (72) hours, the owner(s) shall be required to install a standardized shopping cart containment system with a wheel locking or stopping mechanism that is used in conjunction with an electronic or magnetic barrier along the perimeter of the store premises. The wheel locking or stopping mechanism shall activate when the shopping cart crosses the electronic or magnetic barrier.

Section 5-22.120: Maintenance requirements for shopping cart disabling devices.

If an owner(s) has equipped shopping carts with disabling devices, either voluntarily or by order from the City, the owner(s) shall conduct regular maintenance to ensure the disabling devices are working properly. If at any time, the owner(s) determines the disabling device installed on a shopping cart is not working properly, the shopping cart shall be pulled from circulation until it is repaired. The owner(s) shall inspect, test, and repair all abandoned shopping carts returned to the owner(s) prior to making the returned shopping carts available for use.

Section 5-22.130: Penalties.

- (a) Any person who violates any provision of this chapter may be subject to the following penalties:
 - (i) Any person who violates Section 5-22.040 of this chapter shall be guilty of an infraction. Any person who violates Section 5-22.040 of this chapter more than two times within a six-month period shall be guilty of a misdemeanor;
 - (ii) Subject to the administrative penalties and citation process set forth in Title 1, Chapter 6 of this Code; and
 - (iii) Subject to a civil penalty of \$50.00 for every business day of non-compliance in excess of three during a six-month period.
- (b) Any business who violates any provision of this chapter may be subject to the following penalties:
 - (i) The administrative penalties and citation process set forth in Title 1, Chapter 6 of the Yuba City Municipal Code; and
 - (ii) A civil penalty of \$50.00 for every business day of non-compliance.
- (c) The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth within the Yuba City Municipal Code. None of the penalties or remedies authorized by, or set forth within the Yuba City Municipal Code shall prevent the City from using another penalty or remedy under local ordinance and/or State statute which may be available to enforce this chapter or to abate a public nuisance.

Section 5-22.140: Businesses without shopping carts.

Any business that does not own, rent, lease, or otherwise possess its own shopping carts, but whose business receives a benefit by the use of shopping carts owned by other businesses, merchants, grocers, or other similar establishments shall provide a location upon that businesses' premises for the storage of shopping carts and shall immediately contact the shopping cart owner(s) or the owner's shopping cart retrieval service to retrieve any shopping carts that are left on the premises. This section specifically applies to, but is not limited to, recycling centers.

Section 5-22.150: Authority to impound.

Pursuant to California Business and Professions Code Section 22435.7, the City may impound any abandoned shopping cart within the city limits. The requirements for the notice, impoundment and recovery of the shopping cart shall be governed by California Business and Professions Code sections 22435 through 22435.7; unless the City adopts another notice procedure. If the City adopts an alternative notice procedure, said procedure shall be published upon the City's website.

Section 5-22.160: Enforcement of chapter.

The provisions of this chapter shall be enforced by any City enforcement personnel or designated city employee. Any act authorized to be performed by the City pursuant to any provision of this chapter may be performed by any City enforcement personnel or designated city employee.

SECTION 4: SEVERABILITY. If any article, section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance. The Council hereby declares that it would have adopted this chapter and adopted each article, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

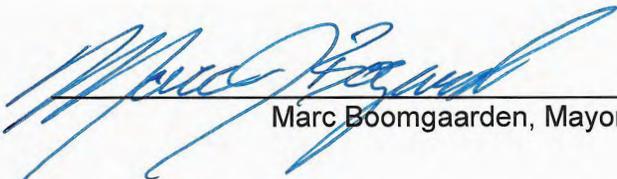
SECTION 5: EFFECTIVE DATE. This ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 18th day of May 2021, and adopted the Ordinance after the second reading at a regular meeting held on the 15th day of June 2021, by the following roll call vote:

AYES: Councilmembers Espindola, Harris, Kirchner, and Shaw

NOES: Mayor Boomgaarden

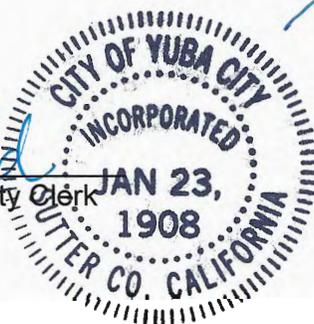
ABSENT: None



Marc Boomgaarden, Mayor

ATTEST:


Ciara Wakefield, Deputy City Clerk



APPROVED AS TO FORM:



Shannon L. Chaffin, City Attorney
Aleshire & Wynder, LLP