

CITY OF YUBA CITY
STAFF REPORT

Date: September 1, 2020
To: Honorable Mayor & Members of the City Council
From: Development Services
Presentation By: Benjamin Moody, Development Services Director

Summary

Subject: Shopping Cart Ordinance Amendment
Recommendation: Initiate an Ordinance update that will amend the Yuba City Municipal Code related to Shopping Carts Title 5, Chapter 22
Fiscal Impact: Staff time to administer and enforce the ordinance as appropriate.

Purpose:

To provide staff direction regarding specific terms of the Shopping Cart Ordinance and initiate the process to update the Municipal Code to reflect the desire of the City Council.

Background:

City Council has provided input that there is potential interest in modifying the Shopping Cart Ordinance to better meet the needs of the City.

On December 17, 2017, City Council adopted an Ordinance that is provided in the Municipal Code under Title 5, Chapter 22 Shopping Carts, which became effective January 2018 (Attachment A).

Yuba City has approximately 35 retail businesses that provide rolling shopping carts for the convenience of customers. The majority of these stores have outdoor corrals to contain carts near their entrances and in the parking lots to collect carts. A few local stores have locking, radio-controlled security devices affixed to wheels to prevent carts from being removed beyond the perimeter of their site.

Regardless of control measures put in place by the businesses, shopping carts are commonly removed from stores and discarded in the community.

With the implementation of the Ordinance the City saw a drop in the number of yc311 complaints regarding abandoned shopping carts.

Year	YC311 - Abandoned Shopping Cart Service Requests
2017	697
2018	303
2019	133
2020	The City is on target to receive approx. 110 reports

The Ordinance reduced the number of abandoned carts in the community and burden to the City's Public Works Department, but it has also placed an increased burden on businesses.

Businesses are required to establish an *Abandoned Shopping Cart Prevention Program (ASCPP)* if they exceed the minimum threshold. An ASCPP requires owners to manage their own carts. And outlines how the business will address:

1. Signage stating unauthorized cart removal is illegal;
2. Methods to prevent cart removal;
3. Retrieval within 24 hours of notification; and
4. Provision of contact phone information for store management for notification of abandoned cart location(s).

<i>Summary of Regulations</i>	
<i># of carts</i>	<i>Item</i>
9 or fewer	Exempt from establishing an ASCPP
10-90	<ol style="list-style-type: none"> a. Must submit an ASCPP. b. May elect to retrieve their own carts rather than enter into a contract with a retrieval company. c. Abandoned shopping carts must be retrieved within 24 hours of notice.
91 or more	<ol style="list-style-type: none"> a. Must submit an ASCPP. b. Shall enter into a contract with a retrieval company. c. Abandoned shopping carts must be retrieved within 24 hours of notice.

Attachment B provides a list of retailers that have established an ASCPP.

Failure to Comply with the ASCPP:

In the event that an owner fails to utilize the shopping cart retrieval service or to follow cart prevention measures an owner *may* be required to install a standardized 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.

New Businesses:

For new business that have a minimum of 10 carts, the store is required to install a standardized 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.

Analysis:

While the shopping cart ordinance has seen some positive outcomes related to the reduction in abandoned cart complaints, it did put a burden on businesses while many of the individuals that take the carts offsite were unaffected.

Costs associated with having a contractual service vary depending on the contractor. What we have heard from business and from a cart retrieval contractor, is that there is typically a monthly fee and per cart charges, with a minimum pickup required due to most of the companies being out of the area. Companies are telling us, that the price ranges from \$150-200 per month for a 1-2 day a week pickup, and \$400-500 per month cost for a 3-5 day a week pickup.

Costs to install a wheel locking system vary depending on the number of carts and maintenance requirements. Winco installed a system in 2019 for 600 carts, at the cost of \$43,000 with maintenance costs of approximately \$800-\$1,200 per quarter due to damage of wheels and other issues that go along with the system. Two years ago, FoodMaxx provided a cost to install the system for 200 carts to be approximately \$30,000 with similar maintenance costs.

Potential ordinance modifications:

- Separate the ordinance into sections that clearly delineates the law and consequences to individuals who remove the carts from store locations.
- Modify the cart threshold numbers to aid small businesses. Modify the requirement for a contract with a retrieval company from 90 to 140 shopping carts.
- Modify the retrieval period from 24 to 48 hours to provide more time for businesses, being more realistic with logistical requirements for both small businesses and contractors serving large businesses.
- Require that a containment system, such as wheel locking or stopping mechanisms be put in place for retailers of a certain size or for retailers that have a high loss rate, with an option for an approved phased in approach. (140 or more carts with an established loss rate over three consecutive months)
- Provide businesses with an option regarding the contracted cart retrieval requirement, if an effective containment system is in place.
- Remove the “new” business requirement related to containment systems, so new businesses would adhere to the same requirements as existing businesses.

Fiscal Impact:

Staff time to administer and enforce the ordinance as appropriate.

Alternatives:

1. Reject the proposed ordinance changes.
2. Provide staff with direction for modifying the proposed ordinance.

Recommendation:

Initiate an Ordinance update that will amend the Yuba City Municipal Code related to Shopping Carts Title 5, Chapter 22

Attachment:

- A. Municipal Code – Title 5 – Chapter 22
- B. ASCPP List

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SM

SLC by email

Attachment A

CHAPTER 22. - SHOPPING CARTS

Sec. 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 hazardous to the health and safety of minors, aesthetically detrimental to the community, and potentially injurious 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 creating a hazard to the overall health and safety. Responsibility for minimizing or eliminating this impact 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 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 State of California law. The presence of wrecked, dismantled or abandoned shopping carts, or parts thereof, on public property, is declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.020. - Required signs on carts.

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

- (a) Identifies the owner of the 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 cart from the business premises;
- (c) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City law;
- (d) Lists a telephone number to contact to report the location of the abandoned cart; and
- (e) Lists an address for returning the cart to the owner or business establishment.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.030. - Cart removal, abandonment, alteration, possession prohibited.

It is unlawful to do any of the following if a cart has a permanently affixed sign as set forth in Section 5-21.030:

- (a) Remove a cart from the business premises with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (b) To be in possession of any cart that has been removed from the business premises, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (c) To be in possession of any cart with owner identification information removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (d) To leave or abandon a cart at a location other than the business premises with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

- (e) To alter, convert, or tamper with a cart, or to remove any part or portion thereof or to remove, obliterate or alter owner identification information on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- (f) To be in possession of any cart while that cart is not located on the business premises of a business establishment, with the intent to temporarily or permanent deprive the owner or retailer of possession of the cart.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.040. - Abandoned shopping cart prevention program (ASCPP).

Every owner shall develop and implement an abandoned shopping cart prevention program (ASCPP) to prevent the removal of carts from the business premises.

- (a) *Existing businesses:* Each person who owned or controlled a business in existence within the City's jurisdiction on the effective date of this ordinance who provided shopping carts for use by customers or the public, shall submit an ASCPP to the Director for review within 30 days of the effective date of this ordinance.
- (b) *New businesses:*
 - (1) For new business established after the effective date of this ordinance that have a minimum of ten carts, the owner shall be required to install a standardized 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.
 - (2) As an alternative to a standardized cart containment system, for new businesses with nine or fewer carts, an ASCPP may be submitted per subsection (a) above.
 - (3) This subsection shall not apply to existing business that relocate, operating under the same name, to another location in the City. Said business shall not be closed for more than 30 days.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.050. - ASCPP contents.

At a minimum, the ASCPP must 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 carts from the premises and parking lots are prohibited and a violation of state and City 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 cart removal is prohibited and constitutes a violation of state and City law.
- (c) *Loss prevention measures.* A description of the specific effective measures the owner 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 cart removal, security deposit for use of cart, or other demonstrably effective measures acceptable to the Director, likely to prevent shopping cart removal from the premises.

- (d) *Mandatory cart retrieval* .
- (1) Nine or fewer carts. Cart retrieval is mandatory, however the owner shall be responsible for retrieving their own carts.
 - (2) Every owner who maintains ten or more carts for use by customers shall provide evidence of a contract with a shopping cart retrieval service with terms requiring collection of abandoned shopping carts within 24 hours of removal. The retrieval service must be approved by the City and the owner shall not place limits on daily loads or days per week to retrieve carts within the City.
 - (3) As an alternative to subsection (2) above, stores with 90 carts or less may elect to retrieve their own carts rather than enter into a contract with a shopping cart retrieval service. Abandoned shopping carts shall be retrieved within 24 hours of removal. At the discretion of the Director, should carts not be retrieved within 24 hours, the owner shall enter into a contract with a shopping cart retrieval service.
- (e) *After hours cart containment*. A plan for securing shopping carts whenever the store is not open for business.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.060. - Director review ASCPP.

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

- (a) If approved, the ASCPP shall be implemented by the owner no later than 30 days from the date of approval.
- (b) If conditionally approved, the owner may accept in writing the conditions stipulated by the Director, after which the owner shall implement the conditionally approved ASCPP within 30 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 shall have 15 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 carts from the premises.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.070. - 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, safety, fire, police or other provisions of the City's Code, or any county, 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 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 municipal code;

- (f) The owner 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 shall have an additional 15 days in which to resubmit a corrected ASCPP; or
- (h) An owner 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 without limitation, institution of the administrative remedies provided for in this chapter.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.080. - ASCPP modification.

At any time subsequent to the Director's approval of an ASCPP, the owner 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 of a proposed modification of a previously approved plan and provide the owner an opportunity to respond within a 10-day period prior to the Director's decision.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.090. - Failure to prevent removal of carts.

In the event that owner(s) fail to utilize the shopping cart retrieval service or to follow cart prevention measures which result in shopping carts being abandoned off premise resulting in City personnel picking up and storing shopping carts, and/or shopping carts are not being collected within 24 hours, the owner shall be required to install a standardized 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.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.100. - Maintenance requirements for cart disabling devices.

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

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.110. - Penalties.

Any person who violates any provision of this chapter is subject to being charged with (i) a misdemeanor or infraction, (ii) subject to the administrative penalty and citation process set forth in Chapter 1.6 of this Code, and (iii) subject to a civil penalty of \$50 for every day of non-compliance in excess of three during a six-month period.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other civil, or administrative remedy or penalty authorized by, or set forth in the Yuba City Municipal Code. None of the penalties or remedies authorized by, or set forth in the City's Municipal Code shall prevent the City from using other penalty or remedy under state statute which may be available to enforce this chapter or to abate a public nuisance.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.120. - Businesses without shopping carts.

Any person who 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, (i) shall provide a location upon that person's premises for the storage of shopping carts and (ii) shall immediately contact the shopping cart owner or the owner's 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.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.130. - Authority to impound.

Pursuant to California Business and Professions Code Section 22435.7, the City may impound any abandoned shopping cart. 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.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.140. - Enforcement of chapter.

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

(Ord. No. [012-17](#), § 1, 12-19-2017)

Sec. 5-22.150. - Definitions.

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

- (a) "Cart" means 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.
- (b) "Owner" means any person or entity, who in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes any 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.

- (c) "Director" means the Development Services Director or their designee.
- (d) "Premises" shall mean the entire area owned, leased, or rented and utilized by the business establishment that provides carts for use by customers, including any parking lot or other property provided by the owner for customer parking.
- (e) "Abandoned shopping cart" means any cart that has been removed without written permission of the owner or on-duty manager from the premises of the business establishment, regardless of whether it has been left on either private or public property. Written permission shall be valid for a period not to exceed 72 hours. This provision shall not apply to carts that are removed for purposes of repair or maintenance.
- (f) "Enforcement personnel" means any police officer, code compliance officer, or other designated City of Yuba employee designated by the Development Services Department.
- (g) "Shopping cart retrieval service" means a contract with a commercial service to retrieve and return shopping carts to their respective owners which meets minimum service requirements as established by the Director. A contract with a commercial service to retrieve and return shopping carts to the owners which fails to meet minimum service requirements established by the Director is not a shopping cart retrieval service within the meaning of this chapter.

(Ord. No. [012-17](#), § 1, 12-19-2017)

Attachment B

Store	Number of Carts	Address
99 Cent Only Stores	60	830 Colusa Avenue
Bed Bath and Beyond	35	1060 Harter Road
Bel Air	150	1286 Stabler Lane
Big Lots	33	1320 Franklin Road
CVS	20	1274 Stabler Lane
Dollar Tree	14	1460 Bridge Street
Factory 2-U	13	860 Gray Avenue
FoodMaxx	150	1231 Colusa Ave.
Goodwill	<10	1242 Colusa Avenue
Grocery Outlet	90	1721 Colusa Highway
Home Depot	185	1100 Tharp Road
Jo-Ann Fabrics & Crafts	<90	704 W. Onstott Road
Kohl's	<90	1480 Sunsweet Blvd
La Superior	45	700 Gray Avenue
Lowes	160	935 Tharp Road
Marshalls	80	1130 Harter Road
Michaels	47	1120 Harter Road
New Earth Market	77	1475 Tharp Road
Pet Smart	35	865 Colusa Avenue
Petco	13	1110 Harter Pkwy
Raley's	162	700 Onstott Road
Rite Aid	20	1590 Butte House Road
Ross	68	1299 Colusa Avenue
Sam's Club	500	900 N. Walton Avenue
Staples	35	671 Colusa Avenue
Target	300	1153 Butte House Road
Grange Co-Op	74	1262 Stabler Lane
Tractor Supply #726	16	990 Tharp Road
Walgreens #1	11	1640 Lincoln Rd.
Walgreens #2	<10	1781 Colusa
Walgreens #3	25	855 Colusa Ave.
Walmart	800	1150 Harter Road
WinCo Foods	450	1350 Franklin Road
Power Mart	<10	530 Bogue Road