

CITY OF YUBA CITY  
STAFF REPORT

**Date:** December 19, 2017

**To:** Honorable Mayor & Members of the City Council

**From:** Development Services Department

**Presentation By:** Arnoldo Rodriguez, AICP, Development Services Director

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**Summary:**

**Subject:** Municipal Code Amendments concerning the management of shopping carts.

**Recommendation:** Adopt an Ordinance pertaining to the management of abandoned shopping carts, and waive the second reading.

**Fiscal Impact:** Staff time for collecting plans from stores and monitoring compliance will be incurred. However, some of this could be offset by the collection of penalties for noncompliance.

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**Purpose:**

Management of abandoned shopping carts to address blight within the City.

**Background:**

Yuba City has approximately 38 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. At least two 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 measures, shopping carts are commonly removed from stores and discarded in the community. The following is a summary of local efforts:

- Most stores have employees periodically collect used carts from parking areas, but generally do not go beyond property perimeters to retrieve carts
- Some stores contract with a cart retrieval service
- City staff routinely collects carts and returns them directly to the store, or stores them at the City's Wastewater Treatment Facility (WWTF)
- City staff regularly contacts and/or mails letters to local stores notifying them of the need to collect their carts at the City's WWTF

Staff previously experimented with contracting with a cart retrieval service, at a rate of \$3.00 per cart, however this proved cost prohibitive.

### **Previous City Council Action and/or Policies:**

At its November 21, 2017 City Council (Council) meeting, the Council concurred with the determination that the text amendment does not constitute a project pursuant to the California Environmental Quality Act (CEQA), and after hearing public testimony and discussion, the Council amended the proposed ordinance as outlined in Table 1 and took action to introduce the amended ordinance and waive the first reading.

**Table 2: Summary of changes per Council direction<sup>1</sup>**

<i>Original Proposal</i>	<i>Amended Language</i>
<u>75</u> carts or less may elect to retrieve their own carts rather than enter into a contract with a shopping cart retrieval service.	<u>90</u> carts or less may elect to retrieve their own carts rather than enter into a contract with a shopping cart retrieval service
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 \$50.00 for every day of non-compliance	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 \$50.00 for every day of non-compliance <u>in excess of three during a six-month period.</u>

<sup>1</sup>. Underline added to identify modified language.

### **Existing City Regulations:**

The City's Municipal Code is silent in regards to shopping carts. Rather, the City has relied on California Business and Professions Code section 22435.7 that permits cities to impound marked carts, provide the business notice it has three days to retrieve the carts from the City without a penalty, then an additional 27 days to retrieve carts for a fee; and after a total of 30 days of impound, the City may then sell or destroy the cart.

### **Public Outreach:**

Staff mailed letters to local businesses outlining the intended ordinance provisions to 37 of the 38 managers of the affected retail businesses and their corporate headquarters. Shortly thereafter, staff contacted the manager of the 38<sup>th</sup> affected business. Staff also held a meeting to solicit feedback on the proposed ordinance on October 12, 2017. To date, staff has been contacted by the manager of WinCo, the Grange Coop, and more recently by Walmart. One suggestion was to allow stores with a nominal number of carts to collect their own carts.

In addition, staff contacted the California Grocers Association and the Chamber of Commerce Government Affairs Committee (CCGAC). The CCGAC supports the ordinance subject to allowing stores with a nominal number of carts the option of retrieving their own carts.

### **Proposed Regulations:**

According to the California Grocers Association, approximately 120 jurisdictions in California have adopted regulations specifically addressing abandoned shopping carts. Staff proposes to adopt new regulations similar to the majority of these existing ordinances.

Staff recommends that the most cost-effective ordinance is one that requires cart owners to submit an Abandoned Shopping Cart Prevention Program (ASCPP) that requires that owners manage their own carts. At a minimum, the ASCPP shall outline how the following will be addressed:

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).

Often a charge is collected by cities with the submittal of the ASCPP, and there can be administrative, civil, and criminal fines imposed when said plans are not submitted, or other provisions of the city's shopping cart regulations are not followed, including a failure to follow the approved plan. Staff is recommending that a \$50.00 civil penalty be assessed for every day of non-compliance, in excess of three non-compliance occurrences during a six-month period.

Given that circumstances vary, staff recommends that the following thresholds be adopted:

<b>Table 1: Summary of regulations</b>	
<b># of carts</b>	<b>Item</b>
9 or fewer	No changes.
10-90	<ol style="list-style-type: none"> <li>a. Must submit an ASCPP.</li> <li>b. May elect to retrieve their own carts rather than enter into a contract with a retrieval company.</li> <li>c. Abandoned shopping carts must be retrieved within 24 hours of notice.</li> </ol>
91 or more	<ol style="list-style-type: none"> <li>a. Must submit an ASCPP.</li> <li>b. Shall enter into a contract with a retrieval company.</li> <li>c. Abandoned shopping carts must be retrieved within 24 hours of notice.</li> </ol>

#### **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 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.

#### **Recommended Action:**

City staff recommends that the City Council take the following actions:

- A. Adopt an Ordinance pertaining to the management of abandoned shopping carts, and waive the second reading

**Alternatives:**

1. Approve with amendments.
2. Deny the proposal. Should the Ordinance not be approved, staff would continue to collect carts and contact shopping cart owners.
3. Provide staff with further direction.

**Attachments:**

1. Shopping Carts Ordinance

Prepared by:

*/s/ Arnoldo Rodriguez*  
Arnoldo Rodriguez  
Development Services Director

Reviewed By:

Finance

City Attorney

Submitted by:

*/s/ Steven C. Kroeger*  
Steven C. Kroeger  
City Manager

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TH by email

**ORDINANCE NO.**

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

**WHEREAS**, the presence of abandoned shopping carts is found to be a public nuisance and contributes to a decline in the quality of life; and

**WHEREAS**, the abundance of abandoned shopping carts on both private and public property encourages crime, tends to reduce property values, and is a blight on the community; and

**WHEREAS**, abandoned shopping carts also obstruct pedestrian access, interfere with pedestrian and vehicular traffic, and emergency services; and

**WHEREAS**, the City Council finds the regulations set forth in this ordinance are necessary to protect the public safety and welfare of the residents of the City.

**NOW, THEREFORE**, the City Council of the City of Yuba City does hereby ordain as follows:

**Section 1. Addition of Chapter 22, Title 5 to the Yuba City Municipal code.**

Chapter 22 is hereby added to Title 5 of the City of Yuba City Municipal Code to read as follows:

**Chapter 22**

**Shopping Carts**

**Sections:**

5-22.010	Purpose
5-22.020	Required Signs on Carts
5-22.030	Cart Removal, Abandonment, Alteration, Possession Prohibited
5-22.040	Abandoned Shopping Cart Prevention Program (ASCPP)
5-22.050	ASCPP Contents
5-22.060	Director Review ASCPP
5-22.070	ASCPP Basis for Denial
5-22-080	ASCPP Modification
5-22.090	Failure to Prevent Removal of Carts
5-22.100	Maintenance Requirements for Cart Disabling Devices
5-22.110	Penalties
5-22.120	Businesses without Shopping Carts
5-22.130	Authority to Impound
5-22.140	Enforcement of Chapter
5-22.150	Definitions

**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 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.

#### **Section 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.

#### **Section 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.

#### **Section 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 10 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.

#### **Section 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 10 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.

**Section 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.

**Section 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.

#### **Section 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.

#### **Section 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.

#### **Section 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.

#### **Section 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 \$50.00 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.

#### **Section 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.

#### **Section 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.

#### **Section 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.

#### **Section 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.

## **Section 2.     Severability.**

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

## **Section 3.     CEQA.**

The City Council hereby determines that this ordinance is exempt from environmental review under the California Environmental Quality Act because it can be seen with certainty it will not have a significant effect on the environment (CEQA Guideline 15061(b)(3)).

## **Section 4.     Effective Date.**

This ordinance shall become effective thirty (30) days after its adoption. A summary of this ordinance shall be published once at least five (5) days prior to the adoption of this ordinance and once within fifteen (15) days after its adoption, in the Appeal Democrat, a newspaper of general circulation in the City of Yuba City.

Introduced and read at a regular meeting of the City Council of the City of Yuba City on the 21<sup>st</sup> day of November, 2017, and passed and adopted at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Patricia Buckland, City Clerk

\_\_\_\_\_  
Preet Didbal, Mayor

Approved as to form:

\_\_\_\_\_  
Tim Hayes, City Attorney