CITY COUNCIL AGENDA REPORT

MEETING DATE: JULY 7, 2009 **ITEM NUMBER: _____**

SUBJECT: **AN ORDINANCE REQUIRING RETAIL STORE OPERATORS TO INSTALL A SHOPPING CART CONTAINMENT SYSTEM**

DATE: **JUNE 25, 2009**

FROM: **DEVELOPMENT SERVICES DEPARTMENT AND CITY ATTORNEY'S OFFICE**

PRESENTATION BY: **KIMBERLY HALL BARLOW, CITY ATTORNEY**
KIMBERLY BRANDT, ACTING DEVELOPMENT SERVICES DIRECTOR

FOR FURTHER INFORMATION CONTACT: **KIMBERLY HALL BARLOW (714) 754-5339**

RECOMMENDATION:

Give first reading to the attached ordinance which requires installation of a shopping cart containment system at retail stores which provide shopping carts for customers.

BACKGROUND:

In June 2003, City Council adopted Ordinance No. 03-6 and Resolution 03-42 which require retailers to retrieve their shopping carts from within the community by complying with one of the following three options:

1. Contract with the City of Costa Mesa for cart retrieval at a cost of $3.00 per cart without any limitation on the number of carts retrieved;
2. Contract with their own retrieval company; the current ordinance allows for 10 carts per week to be retrieved by the City's contractor prior to being in violation and subject to fines; or
3. Retrieve their own carts or provide an effective on-site containment system. This option allows for 5 carts per week to be retrieved by the City's contractor prior to being in violation and subject to fines.

For the past 6 years, the City has contracted with Hernandez Cart Services, Inc. for an annual cost of $48,000. The cart retrieval services include in part:

1. A truck dedicated exclusively for cart retrieval and delivery within the City seven days a week and eight hours a day.
2. A toll-free hotline for stray shopping carts; and
3. Immediate dispatch for pick-up.

Currently 40 retail stores in the City are subject to these regulations, of which 34 stores contract with the City for cart retrieval services; 5 stores contract with their own service, and one retailer does not use a retrieval service.

Provided below is a summary of the City's shopping cart retrieval program for 2008 and the first 5 months of 2009. Over 7,100 shopping carts were removed from the community with approximately 31% of the City's cost reimbursed by the 34 stores that contract for City retrieval services. On a monthly average, over 400 shopping carts are retrieved from the community and returned to the appropriate retailer. See Attachment 2 for a listing of the number of carts retrieved by store in 2008.

YEAR	Total Carts Retrieved	Total Amount Invoiced to Retailers	Total Contract Cost to City	Annual Net Cost to City
2008	5,242	$15,582.00	$48,000.00	$32,418.00
2009 (5 months)	1,897	$5,664.00	$20,000.00	$14,336.00
TOTAL	**7,139**			

At your May 12th study session, Council expressed an interest in adopting a shopping cart containment ordinance that is similar to the City of Westminster's program.

ANALYSIS:

The attached draft ordinance departs from our current shopping cart regulations by requiring installation of on-site containment systems for retailers who provide 10 or more shopping carts for customer use, except for those retailers who can demonstrate that they are entitled to a waiver from this requirement due to their own retrieval/retention program. While the ordinance provides that retailers must continue to contract with the City or use their own contract for retrieval pending installation of a containment system or obtaining a waiver, this is intended to be a temporary means of keeping abandoned or stolen carts off the streets. The ordinance requires that containment plans be submitted within 60 days of the effective date of the ordinance, and containment systems must be installed within 120 days of the effective date of the ordinance. Once containment systems are approved and installed pursuant to the code requirements, and staff has had an opportunity to report on the results of the ordinance, Council will have the option of reducing the City's current cart retrieval program or reverting to use of City staff and City facilities to retrieve and store any carts which may be found in the public rights of way, or simply relying on the containment systems to address cart removal.

As Council was previously advised, staff is expecting to need to work closely with retailers to implement the provisions of the proposed ordinance to ensure that each business understands the requirements and implements them to reduce the number of carts which are removed from retail premises and are ultimately left in the City public rights of way. This may require meetings with businesses, staff time to explain and review proposed containment plans and a significant amount of time to obtain compliance for all affected retailers.

In addition to the substantive requirements for a containment plan and system, the proposed ordinance vests review and decision making power in the Chief of Code Enforcement, with appeals of any actions of the Chief of Code Enforcement to be made to the Planning Commission, whose decision will be final. Thus, appeal processes for various decisions relating to plan review, revocation and modification are included in the ordinance proposed.

ALTERNATIVES CONSIDERED:

Council may consider the following two options:

1. Give first reading to the ordinance as proposed or with modifications, and direct staff to return in 6 months with a status report of the affected retailers' compliance with the new regulations. At such time, Council may consider terminating or modifying the City's existing contract for shopping cart retrieval services.
2. Receive and file the ordinance, and direct staff to identify alternative modifications to the City's current cart retrieval service so that it is a full cost recovery program. This may include reducing the number of days per week the contractor provides service and/or increasing the cart retrieval fee to the participating retailers.

FISCAL REVIEW:

Adoption and effective implementation of this ordinance may result in the eventual elimination of the City's shopping cart retrieval contract which costs $48,000 annually, of which only 31% is recovered by the existing cart retrieval fee of $3.00 per cart.

LEGAL REVIEW:

The City Attorney's Office has prepared the attached ordinance for Council consideration.

CONCLUSION:

Staff recommends that City Council give first reading to the attached ordinance which requires installation of a shopping cart containment system at retail stores which provide ten or more shopping carts for customers.

Kimberly Brandt
KIMBERLY BRANDT, AICP
Acting. Development Svs. Director

Kimberly Hall Barlow/KB
KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager
City Attorney
Acting Development Services Director
Public Services Director
City Clerk (2)
Staff (4)
File (2)

ATTACHMENTS:
1 Draft Ordinance
2 Carts Retrieved by Store - 2008
3 Existing Regulations

File Name: 070709ShoppingCarts	Date: 06/25/09	Time: 8:30 a.m.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 15 (PUBLIC WORKS) CHAPTER 1, ARTICLE I OF THE COSTA MESA MUNICIPAL CODE REGARDING SHOPPING CART CONTAINMENT REQUIREMENTS

WHEREAS, the City Council finds that the intent of Article 1 of Chapter I of Title 15 (Public Works) is to is to set forth regulations to ensure that measures are taken by the owners and operators of businesses which provide 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;

WHEREAS, the City Council finds that Article 1 of Chapter 1 of Title 15 (Public Works) currently is inadequate to effectuate said purposes;

THEREFORE, the City Council of the city of Costa Mesa does hereby ordain as follows:

Section 1. Article 1 of Chapter I of Title 15 (Public Works) is hereby amended to read as follows:

Sec. 15-14. Purpose.

A. Many retail establishments provide shopping carts for the convenience of their customers. Shopping carts are sometimes removed from the premises of the retail establishment and left abandoned on public or private property, creating a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen or abandoned shopping carts 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.

B. The purpose of this article is to set forth regulations to ensure that measures are taken by the owners and operators of retail 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.

Sec. 15-14.1 Definitions:

Cart owner means every person who, in connection with the conduct of a retail establishment owns, rightfully possesses, or makes any cart available to patrons and/or the public. This shall include the owner's agent or authorized representative.

City means the City of Costa Mesa, or its designated representatives.

Chief of Code Enforcement means the Chief of Code Enforcement of the city.

Contractor means an authorized independent contractor approved by the city council for the purpose of effecting the removal of abandoned shopping carts.

Enforcement personnel means any police officer or code enforcement officer employed by the city.

Identified cart means a shopping cart that has a permanently affixed sign that identifies, in accordance with Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart to the owner or retailer. If the cart owner operates more than one (1) store, the sign shall identify the location of the store where the cart is used.

Lost, stolen or abandoned shopping cart means any cart that is located outside the premises or parking lot of a retail establishment which owns the cart, except a cart that is in the physical possession of a person who has the written consent of the cart's owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either: (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 or city to retrieve such carts, (c) is an city enforcement officer retrieving, storing or disposing of said cart pursuant to the provisions of 15-22 through 15-25 of this article, or (d) has written permission to be in possession of the shopping cart from the owner of the shopping cart.

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

Parking area means a parking lot or other property provided by a retail establishment for the use of its customers for parking customer vehicles. In a multi-store complex or shopping center, the term "parking area" shall include the entire parking area used by the multi-store complex or shopping center.

Person means a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

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 of the retail establishment.

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

Shopping cart or *cart* means a basket that is mounted on wheels or a similar device generally used in retail establishments by a customer for the purpose of transporting

goods of any kind. The term "Shopping cart or cart" also includes a laundry cart as defined in Business and Professions Code section 22435(b).

Shopping cart nuisance abatement program means the city's activity to rid neighborhoods of abandoned shopping carts by contracting with a private company that will on a daily basis search for and seize all abandoned carts.

Unidentified cart means a shopping cart that is not an identified cart, as defined above.

Sec. 15-15. Declaration of a public 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 which shall be subject to abatement in the manner set forth in this article or in any other manner provided by law.

Sec. 15-15.1. Enforcement.

The Chief of Code Enforcement shall oversee the implementation, administration and enforcement of this article, subject to oversight by the City Manager or his designee.

Sec. 15-16. Mandatory containment system and plan.

It shall be unlawful for any person owning a retail establishment located in the city where ten (10) or more shopping carts are available for customer use not to install and maintain an effective containment system for shopping carts, as described herein, to contain all shopping carts within the property boundaries of the business or adjacent parking area.

A. Containment Plan.

(1) Existing Businesses. Within sixty (60) days of the effective date of this ordinance, the owner of every retail establishment in the city that utilizes ten (10) or more carts shall submit a written plan to the Chief of Code Enforcement for review and approval, setting forth the physical measures it plans to implement to comply with the requirements of this article.

(2) New Retail Establishments. Every new retail establishment, and any existing retail establishment relocating to a different location in the city that utilizes ten (10) or more shopping carts shall submit a written plan to the Chief of Code Enforcement for review and approval setting forth the physical measures it plans to implement to comply with the requirements of this article.

(3) No business license shall be issued or renewed for any retail establishment, until it has a containment plan which has been approved by the City.

(4) Plans shall be submitted and reviewed for compliance in accordance with section 15-18.

B. Containment System. Owners of every retail establishment in the city that utilizes ten (10) or more shopping carts shall install, implement and maintain one or more of the following physical measures to prevent the removal of shopping carts from their premises no later than December 18, 2009:

(1) Disabling devices on the wheels of every shopping cart owned by the retail establishment, or provided for use by its customers. The Disabling device shall be activated when the shopping cart crosses a barrier at the perimeter of the premises; or

(2) Physical barriers located at doors, around loading areas or other defined perimeters of the retail establishment 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.

C. Waiver. In lieu of installing an effective containment system, the owner of a retail establishment may obtain a waiver from the Chief of Code Enforcement in

satisfaction of this subdivision if the store maintains its own cart retrieval program that has been certified as effective by the Chief of Code Enforcement. The Chief of Code Enforcement will evaluate such programs according to a standard established by city council resolution in order to ensure that cart retrieval programs achieve the goals of this article.

D. Containment/Retrieval pending installation of approved containment plan/system. Pending installation of an effective approved containment system as set forth in Subsection B of this Section or the granting of a waiver under Subsection C of this Section, the owner of a retail establishment with ten (10) or more shopping carts shall participate in the city's shopping cart nuisance abatement program, by executing a cost-sharing agreement with the City and by paying all fees owed under this program. Any owner of a retail establishment with ten (10) or more shopping carts who does not participate in the city's shopping cart nuisance abatement program pending installation of an effective and approved containment system pursuant to this Article shall be subject to having its lost, stolen or abandoned carts impounded in accordance with section 15-22.

Sec. 15-17. Additional 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 for use by its customers 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 be an identified cart as defined in this article, with permanently affixed sign(s) meeting the requirements of Business and Professions Code Section 22435.1.

B. Notice to Customers. Written notice shall be provided to customers, in English and Spanish, that removal of shopping carts from the premises is prohibited by state 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 state law.

C. Daily Cart Confinement. All shopping carts located on the premises of the retail establishment (other than an establishment open for business twenty-four 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 in the cart confinement area, as designated in the approved 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, as designated in approved 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 the 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 article 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.

Sec. 15-18 Plan submission, review and approval.

A. Containment plans shall be submitted to the city's Chief of Code Enforcement. The plan shall explain in detail how the retail establishment intends to comply with the requirements of this article, including in particular sections 15-16 and 15-17.

B. Upon the filing of a proposed containment plan the Chief of Code Enforcement shall review the plan for compliance with each applicable requirement of this article, and shall either approve or deny the plan within thirty (30) calendar days of its receipt. The decision shall be made in writing, and notice thereof shall be transmitted to the owner of the retail establishment within fifteen (15) calendar days pursuant to the provisions of Section 15- 20. If the proposed plan is denied, the

notice of decision shall state the grounds upon which the proposed plan was denied.

C. The decision of the Chief of Code Enforcement shall be subject to appeal by the owner within the time and manner specified in section 15-19. In the absence of a timely appeal, the decision of the Chief of Code Enforcement shall be final and conclusive.

Sec. 15-18.1 Plan amendments.

The owner of any retail establishment which has an approved plan conforming to the requirements of this article, 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 above in section 15-18.

Sec. 15-18.2 Revocations.

A. Grounds. An approved containment plan may be revoked by the city upon any of the following grounds:

(i) 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

(ii) The owner of a 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 article, 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

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

B. Order to Show Cause. If at any time following the approval of a plan the Chief of Code Enforcement obtains information or evidence that any of the grounds for revocation in section 15-18.2A may exist, the Chief of Code Enforcement shall issue a written order to the owner of the retail establishment to show cause as to why the

approved plan should not be revoked. The Chief of Code Enforcement shall 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 provided to the owner of the retail establishment. The order shall identify the date, time and place for the hearing. The order 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.

C. Notice. The order to show cause shall be delivered pursuant to the requirements of section 15-20 of this article.

D. 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 Chief of Code Enforcement, at his or her 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.

E. Decision of Chief of Code Enforcement. Within fifteen (15) calendar days following conclusion of the hearing, the Chief of Code Enforcement shall render his or her decision in writing either dismissing the proceedings, revoking the plan, 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 details of the amendment(s) to the plan.

F. Notice of Decision. Notice of the decision shall be given as provided in section 15-20.

G. Appeal of Decision. The decision of the Chief of Code Enforcement shall be subject to appeal by the owner within the time and manner specified in section 15-19 of this article. In the absence of a timely appeal, the decision of the Chief of Code Enforcement shall be final and conclusive.

Sec. 15-18.3 Use of shopping carts following revocation prohibited.

A. Beginning on the date the decision to revoke the containment plan

becomes final, and continuing thereafter until such time as a new containment plan is approved by the city for the affected retail establishment, the owner of the retail establishment that is the subject of the revocation shall not be permitted to provide or otherwise make available any shopping carts for use by its customers, patrons or employees.

B. Notwithstanding any other provision of this article, 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 eighty (180) days following the date the decision to revoke the prior plan becomes final. Any proposed containment plan submitted to the city for such retail establishment during the one-hundred-eighty-day (180) period shall be returned to the owner of the retail establishment as untimely.

Sec. 15-19 Appeals.

A. Filing of Appeal. Any owner aggrieved by any adverse decision of the Chief of Code Enforcement pursuant to this chapter may appeal such decision to the Costa Mesa Planning Commission within seven (7) calendar days following the date of giving of notice of such decision, by filing with the Chief of Code Enforcement a written notice of appeal briefly stating the grounds for such appeal. The notice of decision shall be deemed given pursuant to section 15-20. Any such appeal shall be deemed filed on the date the appeal is actually received in the office of the Chief of Code Enforcement, accompanied by an appeal processing fee in an amount as set by resolution of the city council. No appeal shall be accepted for filing and processing by the Chief of Code Enforcement unless accompanied by the appeal processing fee as established by the city council.

B. Notice of Hearing. If the appeal is timely filed, city staff shall cause the matter to be set for hearing before the Planning Commission, 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 Planning Commission. The Planning Commission shall render a decision on the appeal, and adopt findings of fact in support of such decision within thirty calendar days following the conclusion of the hearing.

E. Notice of Decision. The notice of decision of the Planning Commission 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 second day following the date of deposit in the U.S. Mail.

F. Decision is Final. The decision of the Planning Commission shall be final, and may not be appealed to the City Council. The decision must 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.

Sec. 15-20 Notices.

Any notice required to be made pursuant the requirements of this article shall be made in compliance with this section unless otherwise indicated. Notice may be transmitted by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. Notice shall be deemed given 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 on the second day following the date of deposit in the U.S. Mail.

Sec. 15-21. Removal of shopping carts from retail establishments prohibited.

It is unlawful for any person other than a cart owner or its authorized representative to remove a cart from the premises of the owner's retail establishment, unless the cart owner expressly authorizes its removal in writing.

Sec. 15-22. Impounding of lost, stolen or abandoned carts.

A. *Identified carts.* The city, or a contractor, may remove and impound any identified cart determined to be lost, stolen or abandoned from any public or private property.

(1) The cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least six (6) hours of each business day.

(2) The owner of an identified cart or his representative shall be given actual notice within twenty-four (24) hours following the impound of the cart of the location where the cart may be claimed.

B. *Unidentified carts.* The city, or a contractor, may remove and impound any unidentified cart determined to be lost, stolen or abandoned from any public or private property.

(1) The unidentified cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least (6) hours of each business day.

(2) If there is any reasonably credible evidence on the cart of the name and address of its owner, the owner shall be given actual notice within five (5) business days following the impound of the cart of the location where the cart may be claimed.

Sec. 15-23. Nuisance abatement administrative fees and fines.

A. *Administrative fees.* Except as provided in section 15-24 below, an administrative fee to cover the city's cost for the removal, tagging, and storage of abandoned shopping carts and associated administrative activities performed by the city may be established by resolution of the city council and imposed upon the owners of abandoned carts. Such fee shall not exceed the city's reasonable estimate of actual cost for such services.

B. *Fines.* In addition to the payment of an administrative fee as set forth in section 15-23A above and except as provided in section 15-24 below, the owner of an impounded cart shall also be subject to a fine in the maximum amount established

by Business and Professions Code Section 22435.7(f), as may be amended from time to time. The fine for identified carts shall be based on each occurrence in excess of three (3) during any six-month period for failure to reclaim identified carts in accordance with section 15-24 below. An occurrence includes all identified carts impounded by the city, or a contractor, in a one-day period. The fine for unidentified carts shall be the same fine amount as for each occurrence set forth in this subdivision for identified carts but imposed on each unidentified cart impounded, beginning with the first unidentified cart impounded.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-24. Recovery by owner.

Claims to recover an impounded shopping cart shall be presented to the director of public services, or his designee, in accordance with the following:

A. A cart owner or his authorized representative, may, by appointment, inspect impounded carts to determine if any of the owner's carts are present.

B. A cart owner may reclaim an impounded cart at any time during normal business hours prior to disposal or destruction by paying all applicable administrative fees and fines, except as provided in subdivision (c) below.

C. The owner of an identified cart may reclaim it within three (3) business days following the date of actual notice of impoundment at no charge whatsoever, including the waiver of any administrative fees and fines that would otherwise be applicable pursuant to section 15-23 above. Any identified cart reclaimed by the owner or his authorized representative within the three (3) business days shall not be deemed an occurrence for purposes of section 15-23B above. Any impounded identified cart that is not reclaimed by the owner within three (3) business days following the date of actual notice of impoundment shall be subject to any applicable administrative fees and fines imposed pursuant to section 15-23 commencing on the fourth (4th) business day following the date of actual notice of impoundment.

D. No cart shall be released to a person seeking to reclaim it, unless such person submits to the city reasonably credible evidence of ownership or right to possession of the impounded cart. There shall be a presumption that an identified cart is owned by the business establishment designated on the cart.

E. Any release of a cart to a person deemed by the city to be entitled thereto, shall be an absolute defense of the city against any other person claiming to be entitled thereto.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-25. Disposal.

Any identified or unidentified cart may be sold or otherwise disposed of by the city if not reclaimed from the city within thirty (30) days of receipt of a notice of impoundment by the owner of the cart, or within thirty (30) days from the date of impoundment if no notice was required by this article. In the event an unclaimed cart remains unclaimed, is disposed of or destroyed, the city retains the right to collect any applicable fees and/or fines from the cart owner.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-26. Appeals of cart impound.

A person who can demonstrate that he or she is the owner of an impounded cart may appeal the imposition of the nuisance abatement administrative fee and/or fine by presenting evidence that the cart removal and storage was not performed substantially in accordance with the provisions of this article. Appeals shall be made in writing to the director of public services or his designee within ten (10) calendar days of the receipt of a request for an appeal. The cart owner or authorized representative shall appear and be heard on the matter. If the director of public services or his designee determines that the shopping cart was not removed and stored in substantial accordance with the provisions of this article, the nuisance abatement administrative fee and/or fine shall be refunded. The decision of the public services director or his designee shall be final.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-27. Penalty for violation.

A. Any violation of the provisions of this article shall be subject to section 1-33 of this Code. Each day on which a violation of any provision of this article exists shall be a new and separate violation.

B. Notwithstanding any other enforcement action allowed under this

Code, the city council may prescribe the civil fine for any person owning a retail establishment who is given a civil citation for not having established an effective containment system pursuant to section 15-16, above.
(Ord. No. 03-6, § 1, 6-16-03)

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the

City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of July, 2009.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. _____ was introduced and considered section by section at a regular meeting of said City Council held on the _____ day of July, 2009, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ___ day of July, 2009, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of July, 2009.

_____
City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

City of Costa Mesa
Inter Office Memorandum

TO: CITY COUNCIL

FROM: KIMBERLY BRANDT, AICP, ACTING DEV. SVS. DIRECTOR

DATE: JUNE 29, 2009

SUBJECT: AN ORDINANCE REQUIRING RETAIL STORE OPERATORS TO INSTALL A SHOPPING CART CONTAINMENT SYSTEM SUPPLEMENTAL INFORMATION

Attached for your information is the "red-lined" version of the proposed shopping cart containment ordinance.

Attachment: Red-lined version of Draft Ordinance

DISTRIBUTION:
City Manager
City Attorney
Acting Development Services Director
Public Services Director
City Clerk (2)
Staff (4)
File (2)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 15 (PUBLIC WORKS) CHAPTER 1, ARTICLE I OF THE COSTA MESA MUNICIPAL CODE REGARDING SHOPPING CART CONTAINMENT REQUIREMENTS

WHEREAS, the City Council finds that the intent of Article 1 of Chapter I of Title 15 (Public Works) is to is to set forth regulations to ensure that measures are taken by the owners and operators of businesses which provide 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;

WHEREAS, the City Council finds that Article 1 of Chapter 1 of Title 15 (Public Works) currently is inadequate to effectuate said purposes;

THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Article 1 of Chapter I of Title 15 (Public Works) is hereby amended to read as follows:

Sec. 15-14. ~~Definitions~~ Purpose.

A. Many retail establishments provide shopping carts for the convenience of their customers. Shopping carts are sometimes removed from the premises of the retail establishment and left abandoned on public or private property, creating a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen or abandoned shopping carts 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.

B. The purpose of this article is to set forth regulations to ensure that measures are taken by the owners and operators of retail 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.

Sec. 15-14.1 Definitions.

~~*Abandoned shopping cart* means any cart that is located outside the premises or parking lot of a retail establishment which owns the cart, except a cart that is in the physical possession of a person who has the written consent of the cart's owner.~~

Cart owner means every person who, in connection with the conduct of a retail establishment owns, rightfully possesses, or makes any cart available to patrons and/or the public. This shall include the owner's agent or authorized representative.

City means the City of Costa Mesa, or its designated representatives.

Chief of Code Enforcement means the Chief of Code Enforcement of the city.

Contractor means an authorized independent contractor approved by the city council for the purpose of effecting the removal of abandoned shopping carts.

Enforcement personnel means any police officer or code enforcement officer employed by the city.

Identified cart means a shopping cart that has a permanently affixed sign that identifies, in accordance with Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart to the owner or retailer. If the cart owner operates more than one (1) store, the sign shall identify the location of the store where the cart is used.

Lost, stolen or abandoned shopping cart means any cart that is located outside the premises or parking lot of a retail establishment which owns the cart, except a cart that is in the physical possession of a person who has the written consent of the cart's owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either: (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 or city to retrieve such carts, (c) is an city enforcement officer retrieving, storing or disposing of said cart pursuant to the provisions of 15-22 through 15-25 of this article, or (d) has written permission to be in possession of the shopping cart from the owner of the shopping cart.

Owner means any owner, manager, or operator of any retail establishment.
Parking area means a parking lot or other property provided by a retail establishment for the use of its customers for parking customer vehicles. In a multi-store complex or shopping center, the term "parking area" shall include the entire parking area used by the multi-store complex or shopping center.

~~*Parking area* means a parking lot or other property provided by a retail establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center, "parking area" includes the entire parking area used by or controlled by the complex or center.~~

Person means a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

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 of the retail establishment.

~~*Retail establishment* means any trade establishment selling articles, commodities, services, or any line of merchandise where shopping carts are made available for and used by its customers.~~

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

Shopping cart or *cart* means a basket that is mounted on wheels or a similar device generally used in retail establishments by a customer for the purpose of transporting goods of any kind. The term "Shopping cart or cart" also includes a ~~laundry~~ cart ~~used in a coin-operated laundry or dry-cleaning retail establishment for purposes of transporting clothes and necessary cleaning materials~~ as defined in Business and Professions Code section 22435(b).

Shopping cart nuisance abatement program means the city's activity to rid neighborhoods of abandoned shopping carts by contracting with a private company that will on a daily basis search for and seize all abandoned carts. ~~And by contracting with retail establishments for sharing the costs of abating nuisance carts. An owner of a retail establishment participates in this program by entering into a cost sharing contract with~~

~~the city. Carts that are seized under this program will be returned to the store from which they were taken, if known.~~

Unidentified cart means a shopping cart that is not an identified cart, as defined above.

Sec. 15-15. Declaration of a public nuisance.

~~Any abandoned shopping carts is declared to constitute a public nuisance that could impede emergency services, interfere with pedestrian and vehicular traffic, reduce property values, promote blight and deterioration, comprise an attractive nuisance and create other hazards to the health, safety and general welfare of the community.~~

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 which shall be subject to abatement in the manner set forth in this article or in any other manner provided by law.

Sec. 15-15.1. Enforcement.

The Chief of Code Enforcement shall oversee the implementation, administration and enforcement of this article, subject to oversight by the City Manager or his designee.

Sec. 15-16. Mandatory containment system and plan.

It shall be unlawful for any person owning a retail establishment located in the city where one (1) or more shopping carts are available for customer use not to install and maintain an effective containment system ~~to contain all~~ for shopping carts as described herein, to contain all shopping carts within the property boundaries of the business or adjacent parking area. ~~The owner shall provide signage in a conspicuous location notifying shopping cart users that removal of shopping carts from the premises or parking area is prohibited without the written consent of the business owner.~~

~~(a) Containment systems may include, but are not limited to, any one or combination of the following:~~
~~1. A physical barrier, such as bollards, restricting shopping carts from being removed from the business premises;~~
~~2. Shopping carts equipped with a protruding arm or similar device prohibiting the cart from being removed from the interior of the business;~~

~~3. Shopping carts equipped with a wheel locking mechanism that is used in conjunction with an electronic barrier along the perimeter of the area shopping carts are allowed. The wheel locking mechanism will activate when the shopping cart crosses the electronic barrier;~~

~~4. A system, which may be mechanical in nature, requiring a deposit to use a shopping cart; deposit should be of a reasonable amount that would not deter the use of the cart, but would encourage the return of the cart.~~

~~(b) In lieu of installing an effective containment system, the owner of a retail establishment may obtain a waiver from the director of development services in satisfaction of this subdivision by either of the following two (2) methods:~~

~~1. The store is participating in the city's shopping cart nuisance abatement program, and has paid all fees owned under this program.~~

~~2. The store maintains its own cart retrieval program that has been certified as effective by the director. The director, or his or her designee, will evaluate such programs according to a standard established by city council resolution in order to ensure that cart retrieval programs achieve the goals of this article.~~

~~No enforcement action for violating this section may be taken against the owner of a retail establishment who has a valid waiver pursuant to this subdivision. The director may revoke any waiver if the store no longer qualifies for it.~~

~~(c) For purposes of this section, "effective containment system" shall mean a system that results in no more than five (5) shopping carts being removed without the owner's consent from the business premises or parking area within any twelve month period. There is a rebuttable presumption that a cart found abandoned somewhere off the premises of the cart's owner was removed from the premises without the owner's consent.~~

~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~Sec. 15-17. Removal of shopping carts from retail establishments prohibited.~~

~~It is unlawful for any person other than a cart owner or its authorized representative to remove a cart from the premises of the owner's retail establishment, unless the cart owner expressly authorizes its removal in writing.~~

~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~Sec. 15-18. Mandatory marking of shopping carts.~~

~~(a) The owner of a retail establishment shall mark all shopping carts used in its business by its customers as required by Business & Professions Code Section 22435.1. The owner shall permanently affix a sign to each cart that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the cart owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; lists a valid telephone number or address for returning the cart to the cart owner.~~

~~(b) Each day during which all of the carts of a retail establishment are not marked as required by this section shall constitute a separate violation.~~

~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~**Sec. 15-19. Impounding of abandoned carts.**~~

~~(a) *Identified carts.* The city, or a contractor, may remove and impound any abandoned identified shopping cart from any public or private property.~~

~~(1) The cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least six (6) hours of each business day.~~

~~(2) The owner of an identified cart or his representative shall be given actual notice within twenty four (24) hours following the impound of the cart of the location where the cart may be claimed;~~

~~(b) *Unidentified carts.* The city, or a contractor, may remove and impound any abandoned unidentified shopping cart from any public or private property.~~

~~(1) The unidentified cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least (6) hours of each business day.~~

~~(2) If there is any reasonably credible evidence on the cart of the name and address of its owner, the owner shall be given actual notice within five (5) business days following the impound of the cart of the location where the cart may be claimed.~~

~~(c) The city, or a contractor, may remove any abandoned identified shopping cart in accordance with the city's shopping cart nuisance abatement program and return the cart to its owner at no charge whatsoever, including recovery and storage costs and fines, without complying with the other provisions of this section.~~

~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~**Sec. 15-20. Nuisance abatement administrative fees and fines.**~~

~~(a) *Administrative fees.* Except as provided in section 15-21 below, an administrative fee to cover the city's cost for the removal, tagging, and storage of abandoned shopping carts and associated administrative activities performed by the city may be established by resolution of the city council and imposed upon the owners of abandoned carts. Such fee shall not exceed the city's reasonable estimate of actual cost for such services.~~

~~(b) *Fines.* In addition to the payment of an administrative fee as set forth in section 15-20(a) above and except as provided in section 15-21 below, the owner of an impounded cart shall also be subject to a fine in the maximum amount established by Business and Professions Code Section 22435.7(f), as may be amended from time to time. The fine for identified carts shall be based on each occurrence in excess of three (3) during any six-month period for failure to reclaim identified carts in accordance with section 15-21 below. An occurrence includes all identified carts impounded by the city, or a contractor, in a one-day period. The fine for unidentified carts shall be the same fine amount as for each occurrence set forth in this subdivision for identified carts but imposed on each unidentified cart impounded, beginning with the first unidentified cart impounded.~~

~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~**Sec. 15-21. Recovery by owner.**~~

~~Claims to recover an impounded shopping cart shall be presented to the director of public services, or his designee, in accordance with the following:~~
~~(a) A cart owner or his authorized representative, may, by appointment, inspect impounded carts to determine if any of the owner's carts are present.~~
~~(b) A cart owner may reclaim an impounded cart at any time during normal business hours prior to disposal or destruction by paying all applicable administrative fees and fines, except as provided in subdivision (c) below.~~
~~(c) The owner of an identified cart may reclaim it within three (3) business days following the date of actual notice of impoundment at no charge whatsoever, including the waiver of any administrative fees and fines that would otherwise be applicable pursuant to section 15-201 above. Any identified cart reclaimed by the owner or his authorized representative within the three (3) business days shall not be deemed an occurrence for purposes of section 15-20(b) above. Any impounded identified cart that is not reclaimed by the owner within three (3) business days following the date of actual notice of impoundment shall be subject to any applicable administrative fees and fines imposed pursuant to section 15-20, commencing on the fourth (4th) business day following the date of actual notice of impoundment.~~
~~(d) No cart shall be released to a person seeking to reclaim it, unless such person submits to the city reasonably credible evidence of ownership or right to possession of the impounded cart. There shall be a presumption that an identified cart is owned by the business establishment designated on the cart.~~
~~(e) Any release of a cart to a person deemed by the city to be entitled thereto, shall be an absolute defense of the city against any other person claiming to be entitled thereto.~~
~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~Sec. 15-22. Disposal.~~

~~Any identified or unidentified cart may be sold or otherwise disposed of by the city if not reclaimed from the city within thirty (30) days of receipt of a notice of impoundment by the owner of the cart, or within thirty (30) days from the date of impoundment if no notice was required by this article. In the event an unclaimed cart remains unclaimed, is disposed of or destroyed, the city retains the right to collect any applicable fees and/or fines from the cart owner.~~
~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~Sec. 15-23. Appeals of cart impound.~~

~~A person who can demonstrate that he or she is the owner of an impounded cart may appeal the imposition of the nuisance abatement administrative fee and/or fine by presenting evidence that the cart removal and storage was not performed substantially in accordance with the provisions of this article. Appeals shall be made in writing to the director of public services or his designee within ten (10) calendar days of the receipt of a request for an appeal. The cart owner or authorized representative shall appear and be heard on the matter. If the director of public services or his designee determines that the shopping cart was not removed and stored in substantial accordance with the provisions of this article, the nuisance abatement administrative fee and/or fine shall be refunded. The decision of the public services director or his designee shall be final.~~
~~(Ord. No. 03-6, § 1, 6-16-03)~~

~~**Sec. 15-24. Penalty for violation.**~~
~~(a) Any violation of the provisions of this article shall be subject to section 1-33 of this Code. Each day on which a violation of any provision of this article exists shall be a new and separate violation.~~
~~(b) Notwithstanding any other enforcement action allowed under this Code, the city council may prescribe the civil fine for any person owning a retail establishment who is given a civil citation for not having established an effective containment system pursuant to section 15-16, above.~~
~~(Ord. No. 03-6, § 1, 6-16-03)~~

A. Containment Plan.

(1) Existing Businesses. Within sixty (60) days of the effective date of this ordinance, the owner of every retail establishment in the city that utilizes ten (10) or more carts shall submit a written plan to the Chief of Code Enforcement for review and approval, setting forth the physical measures it plans to implement to comply with the requirements of this article.

(2) New Retail Establishments. Every new retail establishment, and any existing retail establishment relocating to a different location in the city that utilizes ten (10) or more shopping carts shall submit a written plan to the Chief of Code Enforcement for review and approval setting forth the physical measures it plans to implement to comply with the requirements of this article.

(3) No business license shall be issued or renewed for any retail establishment, until it has a containment plan which has been approved by the City.

(4) Plans shall be submitted and reviewed for compliance in accordance with section 15-18.

B. Containment System. Owners of every retail establishment in the city that utilizes ten (10) or more shopping carts shall install, implement and maintain, one or more of the following physical measures to prevent the removal of shopping carts from their premises no later than December 18, 2009:

(1) Disabling devices on the wheels of every shopping cart owned by the retail establishment, or provided for use by its customers. The Disabling device shall be activated when the shopping cart crosses a barrier at the perimeter of the premises; or

(2) Physical barriers located at doors, around loading areas or other defined perimeters of the retail establishment, 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.

C. Waiver. In lieu of installing an effective containment system, the owner of a retail establishment may obtain a waiver from the Chief of Code Enforcement in satisfaction of this subdivision if the store maintains its own cart retrieval program that has been certified as effective by the Chief of Code Enforcement. The Chief of Code Enforcement will evaluate such programs according to a standard established by city

council resolution in order to ensure that cart retrieval programs achieve the goals of this article.

D. Containment/Retrieval pending installation of approved containment plan/system. Pending installation of an effective approved containment system as set forth in Subsection B of this Section or the granting of a waiver under Subsection C of this Section, the owner of a retail establishment with ten (10) or more shopping carts shall participate in the city's shopping cart nuisance abatement program, by executing a cost-sharing agreement with the City and by paying all fees owed under this program. Any owner of a retail establishment with ten (10) or more shopping carts who does not participate in the city's shopping cart nuisance abatement program pending installation of an effective and approved containment system pursuant to this Article shall be subject to having its lost, stolen or abandoned carts impounded in accordance with section 15-22.

Sec. 15-17. Additional 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 for use by its customers 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 be an identified cart as defined in this article, with permanently affixed sign(s) meeting the requirements of Business and Professions Code Section 22435.1.

B. Notice to Customers. Written notice shall be provided to customers, in English and Spanish, that removal of shopping carts from the premises is prohibited by state 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 state law.

C. Daily Cart Confinement. All shopping carts located on the premises of the retail establishment (other than an establishment open for business twenty-four 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 in the cart confinement area, as designated in the approved 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, as designated in approved 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 the 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 article 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.

Sec. 15-18 Plan submission, review and approval.

A. Containment plans shall be submitted to the city's Chief of Code Enforcement. The plan shall explain in detail how the retail establishment intends to comply with the requirements of this article, including in particular sections 15-16 and 15-17.

B. Upon the filing of a proposed containment plan the Chief of Code Enforcement shall review the plan for compliance with each applicable requirement of this article, and shall either approve or deny the plan within thirty (30) calendar days of its receipt. The decision shall be made in writing, and notice thereof shall be transmitted to the owner of the retail establishment within fifteen (15) calendar days pursuant to the provisions of Section 15-20. If the proposed plan is denied, the notice of decision shall state the grounds upon which the proposed plan was denied.

C. The decision of the Chief of Code Enforcement shall be subject to appeal by the owner within the time and manner specified in section 15-19. In the absence of a timely appeal, the decision of the Chief of Code Enforcement shall be final and conclusive.

Sec. 15-18.1 Plan amendments.

The owner of any retail establishment which has an approved plan conforming to the requirements of this article, 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 above in section 15-18.

Sec. 15-18.2 Revocations.

A. Grounds. An approved containment plan may be revoked by the city upon any of the following grounds:

(i) 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

(ii) The owner of a 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 article, 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

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

B. Order to Show Cause. If at any time following the approval of a plan the Chief of Code Enforcement obtains information or evidence that any of the grounds for revocation in section 15-18.2A may exist, the Chief of Code Enforcement shall issue a written order to the owner of the retail establishment to show cause as to why the approved plan should not be revoked. The Chief of Code Enforcement shall 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 provided to the owner of the retail establishment. The order shall identify the date, time and place for the hearing. The order 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.

C. Notice. The order to show cause shall be delivered pursuant to the requirements of section 15-20 of this article.

D. 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 Chief of Code Enforcement, at his or her 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.

E. Decision of Chief of Code Enforcement. Within fifteen (15) calendar days following conclusion of the hearing, the Chief of Code Enforcement shall render his or her decision in writing either dismissing the proceedings, revoking the plan, 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 details of the amendment(s) to the plan.

F. Notice of Decision. Notice of the decision shall be given as provided in section 15-20.

G. Appeal of Decision. The decision of the Chief of Code Enforcement shall be subject to appeal by the owner within the time and manner specified in section 15-19 of this article. In the absence of a timely appeal, the decision of the Chief of Code Enforcement shall be final and conclusive.

Sec. 15-18.3 Use of shopping carts following revocation prohibited.

A. Beginning on the date the decision to revoke the containment plan becomes final, and continuing thereafter until such time as a new containment plan is approved by the city for the affected retail establishment, the owner of the retail establishment that is the subject of the revocation shall not be permitted to provide or otherwise make available any shopping carts for use by its customers, patrons or employees.

B. Notwithstanding any other provision of this article, 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 eighty (180) days following the date the

decision to revoke the prior plan becomes final. Any proposed containment plan submitted to the city for such retail establishment during the one-hundred-eighty-day (180) period shall be returned to the owner of the retail establishment as untimely.

Sec. 15-19 Appeals.

A. Filing of Appeal. Any owner aggrieved by any adverse decision of the Chief of Code Enforcement pursuant to this chapter may appeal such decision to the Costa Mesa Planning Commission within seven (7) calendar days following the date of giving of notice of such decision, by filing with the Chief of Code Enforcement a written notice of appeal briefly stating the grounds for such appeal. The notice of decision shall be deemed given pursuant to section 15-20. Any such appeal shall be deemed filed on the date the appeal is actually received in the office of the Chief of Code Enforcement, accompanied by an appeal processing fee in an amount as set by resolution of the city council. No appeal shall be accepted for filing and processing by the Chief of Code Enforcement unless accompanied by the appeal processing fee as established by the city council.

B. Notice of Hearing. If the appeal is timely filed, city staff shall cause the matter to be set for hearing before the Planning Commission, 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 Planning Commission. The Planning Commission shall render a decision on the appeal, and adopt findings of fact in support of such decision within thirty calendar days following the conclusion of the hearing.

E. Notice of Decision. The notice of decision of the Planning Commission 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 second day following the date of deposit in the U.S. Mail.

F. Decision is Final. The decision of the Planning Commission shall be final, and may not be appealed to the City Council. The decision must 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.

Sec. 15-20 Notices.

Any notice required to be made pursuant the requirements of this article shall be made in compliance with this section unless otherwise indicated. Notice may be transmitted by the United States Postal Service, first-class mail, postage prepaid, or by personal

delivery or fax transmission. Notice shall be deemed given 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 on the second day following the date of deposit in the U.S. Mail.

Sec. ~~15-17~~ 15-21. Removal of shopping carts from retail establishments prohibited. It is unlawful for any person other than a cart owner or its authorized representative to remove a cart from the premises of the owner's retail establishment, unless the cart owner expressly authorizes its removal in writing.

Sec. ~~15-19~~ 15-22. Impounding of lost, stolen or abandoned carts.

~~(a)~~ A. *Identified carts.* The city, or a contractor, may remove and impound any identified cart determined to be lost, stolen or abandoned from any public or private property.

(1) The cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least six (6) hours of each business day.

(2) The owner of an identified cart or his representative shall be given actual notice within twenty-four (24) hours following the impound of the cart of the location where the cart may be claimed.

~~(b)~~ B. *Unidentified carts.* The city, or a contractor, may remove and impound any ~~abandoned~~ unidentified ~~shopping~~ cart determined to be lost, stolen or abandoned from any public or private property.

(1) The unidentified cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least (6) hours of each business day.

(2) If there is any reasonably credible evidence on the cart of the name and address of its owner, the owner shall be given actual notice within five (5) business days following the impound of the cart of the location where the cart may be claimed.

Sec. ~~15-20~~ 15-23. Nuisance abatement administrative fees and fines.

A. *Administrative fees.* Except as provided in section ~~15-21~~ 15-24 below, an administrative fee to cover the city's cost for the removal, tagging, and storage of abandoned shopping carts and associated administrative activities performed by the city may be established by resolution of the city council and imposed upon the owners of abandoned carts. Such fee shall not exceed the city's reasonable estimate of actual cost for such services.

B. *Fines.* In addition to the payment of an administrative fee as set forth in section ~~1520(a)~~ 15-23A above and except as provided in section ~~15-21~~ 15-24 below, the owner of an impounded cart shall also be subject to a fine in the maximum amount

established by Business and Professions Code Section 22435.7(f), as may be amended from time to time. The fine for identified carts shall be based on each occurrence in excess of three (3) during any six-month period for failure to reclaim identified carts in accordance with section ~~15-21~~ 15-24 below. An occurrence includes all identified carts impounded by the city, or a contractor, in a one-day period. The fine for unidentified carts shall be the same fine amount as for each occurrence set forth in this subdivision for identified carts but imposed on each unidentified cart impounded, beginning with the first unidentified cart impounded.
(Ord. No. 03-6, § 1, 6-16-03)

Sec. ~~15-21~~ 15-24. Recovery by owner.

Claims to recover an impounded shopping cart shall be presented to the director of public services, or his designee, in accordance with the following:

~~(a)~~ A. A cart owner or his authorized representative, may, by appointment, inspect impounded carts to determine if any of the owner's carts are present.

~~(b)~~ B. A cart owner may reclaim an impounded cart at any time during normal business hours prior to disposal or destruction by paying all applicable administrative fees and fines, except as provided in subdivision ~~(c)~~ C below.

~~(c)~~ C. The owner of an identified cart may reclaim it within three (3) business days following the date of actual notice of impoundment at no charge whatsoever, including the waiver of any administrative fees and fines that would otherwise be applicable pursuant to section ~~15-20~~ 15-23 above. Any identified cart reclaimed by the owner or his authorized representative within the three (3) business days shall not be deemed an occurrence for purposes of section ~~15-20(b)~~ 15-23B above. Any impounded identified cart that is not reclaimed by the owner within three (3) business days following the date of actual notice of impoundment shall be subject to any applicable administrative fees and fines imposed pursuant to section ~~15-20~~ 15-23 commencing on the fourth (4th) business day following the date of actual notice of impoundment.

~~(d)~~ D. No cart shall be released to a person seeking to reclaim it, unless such person submits to the city reasonably credible evidence of ownership or right to possession of the impounded cart. There shall be a presumption that an identified cart is owned by the business establishment designated on the cart.

~~(e)~~ E. Any release of a cart to a person deemed by the city to be entitled thereto, shall be an absolute defense of the city against any other person claiming to be entitled thereto.
(Ord. No. 03-6, § 1, 6-16-03)

Sec. ~~15-22~~ 15-25. Disposal.

Any identified or unidentified cart may be sold or otherwise disposed of by the city if not reclaimed from the city within thirty (30) days of receipt of a notice of impoundment by the owner of the cart, or within thirty (30) days from the date of impoundment if no notice was required by this article. In the event an unclaimed cart remains unclaimed, is disposed of or destroyed, the city retains the right to collect any applicable fees and/or fines from the cart owner.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. ~~15-23~~ 15-26. Appeals of cart impound.

A person who can demonstrate that he or she is the owner of an impounded cart may appeal the imposition of the nuisance abatement administrative fee and/or fine by presenting evidence that the cart removal and storage was not performed substantially in accordance with the provisions of this article. Appeals shall be made in writing to the director of public services or his designee within ten (10) calendar days of the receipt of a request for an appeal. The cart owner or authorized representative shall appear and be heard on the matter. If the director of public services or his designee determines that the shopping cart was not removed and stored in substantial accordance with the provisions of this article, the nuisance abatement administrative fee and/or fine shall be refunded. The decision of the public services director or his designee shall be final.
(Ord. No. 03-6, § 1, 6-16-03)

Sec. ~~15-24~~ 15-27. Penalty for violation.

~~(a)~~ A. Any violation of the provisions of this article shall be subject to section 1-33 of this Code. Each day on which a violation of any provision of this article exists shall be a new and separate violation.

~~(b)~~ B. Notwithstanding any other enforcement action allowed under this Code, the city council may prescribe the civil fine for any person owning a retail establishment who is given a civil citation for not having established an effective containment system pursuant to section 15-16, above.
(Ord. No. 03-6, § 1, 6-16-03)

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article,

section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this ____ day of July, 2009.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. _____ was introduced and considered section by section at a regular meeting of said City Council held on the _____ day of July, 2009, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ___ day of July, 2009, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of July, 2009.

_____
City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

ATTACHMENT 2: 2008 -- NUMBER OF SHOPPING CARTS RETRIEVED

CITY PROGRAM

WAIVER PRIVATE PICK UP

NON - PARTICIPANT

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Totals
EL METATE	369	430	434	358	1591
ALBERTSONS	388	384	384	413	1569
VONS # 1736	107	129	129	128	493
STATER BROS # 35	106	161	112	48	427
T J MAXX	77	80	61	65	283
CVS Pharmacy #9508 & 9404	63	54	60	54	231
HENRY'S	32	50	50	54	186
SMART & FINAL	78	1	1	4	84
HOME DEPOT	18	10	12	21	61
MARUKAI	14	12	10	13	49
STATER BROS # 25	5	20	5	9	39
OFFICE DEPOT	4	10	10	8	32
GROWERS DIRECT	3	2	12	11	28
RITE AID # 5734-6213-5733	9	8	9	2	28
UNIDENTIFIED CARTS	7	4	5	5	21
LONG'S DRUGS	8	3	3	5	19
RALPHS	5	3	3	7	18
MICHAEL'S	5	2	1	7	15
TRADER JOES	4	2	3	6	15
PETCO	4	2	2	6	14
JO ANN'S	3	0	3	4	10
VONS # 2149	3	4	2	0	9
K-MART	0	0	4	1	5
PETSMART	2	2	0	1	5
TUESDAY MORNING	0	0	2	2	4
99 CENT STORE	1	0	1	1	3
MOTHER'S MARKET	1	0	0	0	1
PEP BOYS	1	0	0	0	1
TARGET	0	1	0	0	1
BEST BUY	0	0	0	0	0
GANAHL	0	0	0	0	0
LINENS N THINGS	0	0	0	0	0
MAINLY SECONDS	0	0	0	0	0
MARSHALLS	0	0	0	0	0
MY DOLLAR STORE	0	0	0	0	0
IKEA	0	0	0	0	0
ROSS	0	0	0	0	0
SALLY'S BEAUTY SUPPLY	0	0	0	0	0
STAPLES	0	0	0	0	0
CROWN ACE HARDWARE	0	0	0	0	0
TOTAL:	1,317	1,374	1.318	1,233	5,242

ATTACHMENT 3

EXISTING REGULATIONS

ARTICLE 1. SHOPPING CART REGULATION*

***Editor's note:** Ord. No. 03-6, § 1, adopted June 16, 2003, repealed Article 1, §§ 15-14--15-24, in their entirety. Said ordinance further provided for the inclusion of a new Article 1, §§ 15-14--15-24, to read as herein set out. Former Article 1 pertained to similar subject matter as enacted by Ord. No. 94-16, § 1, adopted Dec. 19, 1994; as amended. See the Code Comparative Table.

Sec. 15-14. Definitions.

Abandoned shopping cart means any cart that is located outside the premises or parking lot of a retail establishment which owns the cart, except a cart that is in the physical possession of a person who has the written consent of the cart's owner.

Cart owner means every person who, in connection with the conduct of a retail establishment owns, rightfully possesses, or makes any cart available to patrons and/or the public. This shall include the owner's agent or authorized representative.

City means the City of Costa Mesa or its designated representatives.

Contractor means an authorized independent contractor approved by the city council for the purpose of effecting the removal of abandoned shopping carts.

Identified cart means a shopping cart that has a permanently affixed sign that identifies, in accordance with Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart to the owner or retailer. If the cart owner operates more than one (1) store, the sign shall identify the location of the store where the cart is used.

Parking area means a parking lot or other property provided by a retail establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center,

"parking area" includes the entire parking area used by or controlled by the complex or center.

Person means a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

Retail establishment means any trade establishment selling articles, commodities, services, or any line of merchandise where shopping carts are made available for and used by its customers.

Shopping cart or *cart* means a basket that is mounted on wheels or a similar device generally used in retail establishments by a customer for the purpose of transporting goods of any kind. Shopping cart also includes a cart used in a coin-operated laundry or dry-cleaning retail establishment for purposes of transporting clothes and necessary cleaning materials.

Shopping cart nuisance abatement program means the city's activity to rid neighborhoods of abandoned shopping carts by contracting with a private company that will on a daily basis search for and seize all abandoned carts and by contracting with retail establishments for sharing the costs of abating nuisance carts. An owner of a retail establishment participates in this program by entering into a cost sharing contract with the city. Carts that are seized under this program will be returned to the store from which they were taken, if known.

Unidentified cart means a shopping cart that is not an identified cart, as defined above.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-15. Declaration of a public nuisance.

Any abandoned shopping carts is declared to constitute a public nuisance that could impede emergency services, interfere with pedestrian and vehicular traffic, reduce property values, promote blight and deterioration, comprise an attractive nuisance and create other hazards to the health, safety and general welfare of the community.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-16. Mandatory containment systems for shopping carts.

It shall be unlawful for any person owning a retail establishment located in the city where one (1) or more shopping carts are available for customer use not to install and maintain an effective containment system to contain all shopping carts within the property boundaries of the business or adjacent parking area. The owner shall provide signage in a conspicuous location notifying shopping cart users that removal of shopping carts from the premises or parking area is prohibited without the written consent of the business owner.

(a) Containment systems may include, but are not limited to, any one or combination of the following:

1. A physical barrier, such as bollards, restricting shopping carts from being removed from the business premises;

2. Shopping carts equipped with a protruding arm or similar device prohibiting the cart from being removed from the interior of the business;

3. Shopping carts equipped with a wheel locking mechanism that is used in conjunction with an electronic barrier along the perimeter of the area shopping carts are allowed. The wheel locking mechanism will activate when the shopping cart crosses the electronic barrier;

4. A system, which may be mechanical in nature, requiring a deposit to use a shopping cart; deposit should be of a reasonable amount that would not deter the

use of the cart, but would encourage the return of the cart.

(b) In lieu of installing an effective containment system, the owner of a retail establishment may obtain a waiver from the director of development services in satisfaction of this subdivision by either of the following two (2) methods:

1. The store is participating in the city's shopping cart nuisance abatement program, and has paid all fees owned under this program.

2. The store maintains its own cart retrieval program that has been certified as effective by the director. The director, or his or her designee, will evaluate such programs according to a standard established by city council resolution in order to ensure that cart retrieval programs achieve the goals of this article.

No enforcement action for violating this section may be taken against the owner of a retail establishment who has a valid waiver pursuant to this subdivision. The director may revoke any waiver if the store no longer qualifies for it.

(c) For purposes of this section, "effective containment system" shall mean a system that results in no more than five (5) shopping carts being removed without the owner's consent from the business premises or parking area within any twelve-month period. There is a rebuttable presumption that a cart found abandoned somewhere off the premises of the cart's owner was removed from the premises without the owner's consent.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-17. Removal of shopping carts from retail establishments prohibited.

It is unlawful for any person other than a cart owner or its authorized representative to remove a cart from the premises of the owner's retail establishment, unless the cart owner expressly authorizes its removal in writing.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-18. Mandatory marking of shopping carts.

(a) The owner of a retail establishment shall mark all shopping carts used in its business by its customers as required by Business & Professions Code Section 22435.1. The owner shall permanently affix a sign to each cart that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the cart owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of state law; lists a valid telephone number or address for returning the cart to the cart owner.

(b) Each day during which all of the carts of a retail establishment are not marked as required by this section shall constitute a separate violation.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-19. Impounding of abandoned carts.

(a) *Identified carts.* The city, or a contractor, may remove and impound any abandoned identified shopping cart from any public or private property.

(1) The cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least six (6) hours of each business day.

(2) The owner of an identified cart or his representative shall be given actual notice within twenty-four (24) hours following the impound of the cart of the location where the cart may be claimed;

(b) *Unidentified carts.* The city, or a contractor, may remove and impound any abandoned unidentified shopping cart from any public or private property.

(1) The unidentified cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the city that is reasonably convenient to the cart's owner and is open at least (6) hours of each business day.

(2) If there is any reasonably credible evidence on the cart of the name and address of its owner, the owner shall be given actual notice within five (5) business days following the impound of the cart of the location where the cart may be claimed.

(c) The city, or a contractor, may remove any abandoned identified shopping cart in accordance with the city's shopping cart nuisance abatement program and return the cart to its owner at no charge whatsoever, including recovery and storage costs and fines, without complying with the other provisions of this section.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-20. Nuisance abatement administrative fees and fines.

(a) *Administrative fees.* Except as provided in section 15-21 below, an administrative fee to cover the city's cost for the removal, tagging, and storage of abandoned shopping carts and associated administrative activities performed by the city may be established by resolution of the city council and imposed upon the owners of abandoned carts. Such fee shall not exceed the city's reasonable estimate of actual cost for such services.

(b) *Fines.* In addition to the payment of an administrative fee as set forth in section 15-20(a) above and except as provided in section 15-21 below, the owner of an impounded cart shall also be subject to a fine in the maximum amount established by Business and Professions Code Section 22435.7(f), as may be amended from time to time. The fine for identified carts shall be based on each occurrence in excess of three (3) during any six-month period for failure to reclaim identified carts in accordance with section 15-21 below. An occurrence includes all identified carts impounded by the city, or a contractor, in a one-day period. The fine for unidentified carts shall be the same fine amount as for each occurrence set forth in this subdivision for identified carts but imposed on each unidentified cart impounded, beginning with the first unidentified cart impounded.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-21. Recovery by owner.

Claims to recover an impounded shopping cart shall be presented to the director of public services, or his designee, in accordance with the following:

(a) A cart owner or his authorized representative, may, by appointment, inspect impounded carts to determine if any of the owner's carts are present.

(b) A cart owner may reclaim an impounded cart at any time during normal business hours prior to disposal or destruction by paying all applicable administrative fees and fines, except as provided in subdivision (c) below.

(c) The owner of an identified cart may reclaim it within three (3) business days following the date of actual notice of impoundment at no charge whatsoever, including the waiver of any administrative fees and fines that would otherwise be applicable pursuant to section 15-201 above. Any identified cart reclaimed by the owner or his authorized representative within the three (3) business days shall not be deemed an occurrence for purposes of section 15-20(b) above. Any impounded identified cart that is not reclaimed by the owner within three (3) business days following the date of actual notice of impoundment shall be subject to any applicable administrative fees and fines imposed pursuant to section 15-20, commencing on the fourth (4th) business day following the date of actual notice of impoundment.

(d) No cart shall be released to a person seeking to reclaim it, unless such person submits to the city reasonably credible evidence of ownership or right to possession of the impounded cart. There shall be a presumption that an identified cart is owned by the business establishment designated on the cart.

(e) Any release of a cart to a person deemed by the city to be entitled thereto, shall be an absolute defense of the city against any other person claiming to be entitled thereto.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-22. Disposal.

Any identified or unidentified cart may be sold or otherwise disposed of by the city if not reclaimed from the city within thirty (30) days of receipt of a notice of impoundment by the owner of the cart, or within thirty (30) days from the date of impoundment if no notice was required by this article. In the event an unclaimed cart remains unclaimed, is disposed of or destroyed, the city retains the right to collect any applicable fees and/or fines from the cart owner.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-23. Appeals of cart impound.

A person who can demonstrate that he or she is the owner of an impounded cart may appeal the imposition of the nuisance abatement administrative fee and/or fine by presenting evidence that the cart removal and storage was not performed substantially in accordance with the provisions of this article. Appeals shall be made in writing to the director of public services or his designee within ten (10) calendar days of the receipt of a request for an appeal. The cart owner or authorized representative shall appear and be heard on the matter. If the director of public services or his designee determines that the shopping cart was not removed and stored in substantial accordance with the provisions of this article, the nuisance abatement administrative fee and/or fine shall be refunded. The decision of the public services director or his designee shall be final.

(Ord. No. 03-6, § 1, 6-16-03)

Sec. 15-24. Penalty for violation.

(a) Any violation of the provisions of this article shall be subject to section 1-33 of this Code. Each day on which a violation of any provision of this article exists shall be a new and separate violation.

(b) Notwithstanding any other enforcement action allowed under this Code, the city council may prescribe the civil fine for any person owning a retail establishment who is given a civil citation for not having established an effective containment system pursuant to section 15-16, above.

(Ord. No. 03-6, § 1, 6-16-03)