

ORDINANCE NO. 1695 (2021 SERIES)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING TITLE 8, HEALTH AND SAFETY, OF THE MUNICIPAL CODE TO ADD CHAPTER 8.10 PERTAINING TO THE UNAUTHORIZED REMOVAL OF SHOPPING CARTS FROM RETAIL ESTABLISHMENTS AND TO FACILITATE RETRIEVAL OF ABANDONED SHOPPING CARTS

WHEREAS, The City has a substantial interest in promoting the public health, safety and welfare of its residents, visitors and businesses, and the aesthetic qualities of the City; and

WHEREAS, Abandoned or unattended shopping carts off the premises of retail establishments can interfere with pedestrian and vehicle traffic and the use of public streets, sidewalks, public areas, and public rights-of-way, can constitute a hazard to streams, riparian areas and other natural areas, and contribute substantially to litter, clutter and visual blight; and

WHEREAS, The purpose of this ordinance is to promote the public health, safety and welfare and the aesthetic qualities of the City by regulating and prohibiting the removal of shopping carts from the premises of retail establishments, including designated parking areas, without the authorization or consent of the cart's owner, and to regulate the retrieval and disposition of abandoned or unattended shopping carts that are found off the premises of retail establishments so as to:

1. Provide for pedestrian and vehicle safety;
2. Ensure that the flow of pedestrian or vehicle traffic, including ingress into or egress from any residence, place of business, street, sidewalk, public area, public right-of-way, or any legally parked or stopped vehicle, is not unreasonably interfered with;
3. Help protect streams, creeks, riparian areas, and other natural areas within the City; and
4. Reduce litter, clutter, and visual blight associated with abandoned or unattended shopping carts.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Findings. The Council hereby finds and declares the following:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Abandoned or unattended shopping carts that are found off the premises of retail establishments, on either public property or private property, are hereby declared a public nuisance.

SECTION 2. Title 8, Health and Safety, of the Municipal Code is amended to add Chapter 8.10 as follows:

8.10.010. Authority and Purpose

This Chapter is adopted pursuant to Business and Professions Code Sections 22435 through 22435.8 and the City's general police powers for the purpose of regulating and prohibiting the removal of shopping carts from the premises of retail establishments, including designated parking areas, without the authorization or consent of the shopping cart's owner, and to regulate the retrieval and disposition of abandoned or unattended shopping carts that are found off the premises of retail establishments.

8.10.020. Applicability

This Chapter applies to all businesses located in the City that provide shopping carts for customer use and to all shopping carts on and off the premises of businesses within the City.

8.10.030. Administration

The Director is authorized to administer this chapter which includes, without limitation, the ability to promulgate administrative policies and procedures to interpret, implement and enforce this chapter.

8.10.040. Definitions

The following definitions apply to the use of these terms for purposes of this chapter:

- A. "Abandoned or unattended shopping cart" means a shopping cart which is left unattended, discarded or abandoned upon any public or private property other than the premises from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the authorization or consent of the cart's owner.
- B. "Director" means the Community Development Director, or their designee.
- C. "Occurrence" means the retrieval or impoundment by the City pursuant to this chapter of all shopping carts of an owner in a one-day period.
- D. "Owner" means a person who owns or provides shopping carts for the use by customers in connection with the conduct or operation of a business. "Person" includes, without limitation, corporations, partnerships, and all other legal entities, and officers, employees, and authorized agents of an owner.
- E. "Premises" means the entire area owned and utilized by a retail establishment that provides shopping carts for use by customers, including any parking lot or other off-street area provided by or for an owner for use by customers for parking automobiles or other vehicles. For retail establishments that share a parking lot or off-street area for parking with other retail establishments, premises includes the entire parking lot or off-

street area for parking that is provided for use by customers of the retail establishments that share the parking lot or off-street area for parking.

- F. “Public areas” include, without limitation, City-owned properties, open spaces, parks, streams, creeks and riparian areas, public parking garages, portions of private property that are outdoor common areas of any building, business premise, apartment building or complex, or other premise, or any portion thereof, which is adjacent to public property and is open to the public.
- G. “Retail establishment” means any business located in the City of San Luis Obispo which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.
- H. “Shopping cart” means a basket mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

8.10.050. Required Signs and Identification

- A. Every owner must permanently affix to each shopping cart owned or provided by the owner a sign that includes the following information:
 - 1. Identification of the owner of the shopping cart or the retail establishment to which it pertains, or both.
 - 2. Notification that the unauthorized removal of the shopping cart from the premises of the retail establishment, or the unauthorized possession of the shopping cart, is a violation of law.
 - 3. Notification of the procedure for authorized removal of the shopping cart from the premises.
 - 4. A telephone number or address for returning the shopping cart to its owner or to the retail establishment identified thereon.
- B. In addition to signs on its shopping carts, every business that owns or provides shopping carts for use by its customers shall post conspicuous signs at or near all customer entrances and exits and at or near each entrance and exit to its parking lot or off-street parking area warning customers that removal of shopping carts from the premises is prohibited without written authorization by the owner.

8.10.060. Prohibitions

It is unlawful for any business to allow or permit the removal of a shopping cart from the premises of the cart’s owner.

8.10.070. Cart Containment and Retrieval by Owners

A. Daily Cart Confinement. All shopping carts located on the premises of a retail establishment (other than an establishment open for business twenty-four hours per day) must be collected at the end of each business day by the owner, employees, or authorized agents of the retail establishment and be collectively confined in a secured manner in a designated cart confinement area on the premises until the commencement of the next business day. All shopping carts located on the premises of any retail establishment open for business twenty-four hours per day, other than carts then currently in use by a customer, must be collected by the owner, employees, or authorized agents of the retail establishment and returned to a designated cart confinement area on the premises at least twice per calendar day between the hours of twelve p.m. (noon) and twelve a.m. (midnight) on each day the retail establishment is open for business.

This section does not apply to:

1. Shopping carts located within an enclosed building.
2. Shopping carts removed from the premises of a retail establishment for purposes of repair or maintenance that are in the possession or custody of the party to whom removal has been authorized in writing by the shopping cart owner.
3. Shopping carts being transported by the owner, or an officer, employee, or authorized agent of the owner, to or from a business location of the owner.

B. Prompt Retrieval of Carts. All abandoned shopping carts of a retail establishment that are found off the premises of the retail establishment must be retrieved as soon as practicable by the owner, or an authorized agent of the owner, including a cart retrieval service retained by the owner, but in no case longer than three business days after the owner has discovered or has been notified that the abandoned cart is off the premises of the retail establishment.

C. Retrieval Services. Persons retained to perform shopping cart retrieval services must carry written authorization from the owner to be presented upon request by the Director. Vehicles used by retrieval services must bear conspicuous signs identifying the name of the cart retrieval service.

8.10.080. Impoundment and Retrieval of Abandoned Shopping Carts

A. The Director may retrieve and impound any abandoned shopping cart pursuant to and in accordance with the provisions Business and Professions Code Section 22435.7.

B. Impoundment Following Three-Day Notice. A shopping cart that has a sign affixed to it in accordance with the provisions of this chapter and Business and Professions Code Section 22435.1 may be impounded by the City provided both of the following conditions are met:

1. The shopping cart is located outside the premises or parking area of a retail establishment; and

2. Except as provided in the Impoundment Without Three-day Notice section of this chapter, the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the City of the shopping cart's discovery and location.
- C. Impoundment Without Three-day Notice.
1. The City may retrieve and impound any abandoned shopping cart without first giving three-days' notice provided:
 - a. The Director provides actual notice to the owner, or his or her agent, of the impoundment of the shopping cart within twenty-four (24) hours following the impound;
 - b. The notice informs the owner, or his or her agent, of the location where the shopping cart may be claimed;
 - c. Any shopping cart reclaimed by the owner, or his or her agent, within three business days after the date of actual notice to the owner, or his or her agent, of the impound, must be released and surrendered to the owner, or his or her agent, at no charge, including the waiver of any impound and storage fees or fines which otherwise would be applicable; and
 - d. The shopping cart is held at a location that is both:
 1. Reasonably convenient to the owner of the shopping cart; and
 2. Open for business at least six (6) hours of each business day.
- D. Immediate Retrieval and Impoundment by City for Impeding Emergency Services.
- The Director or designee may immediately retrieve and impound any shopping cart from public or private property if the location of the shopping cart impedes emergency services.
- E. Any cart reclaimed by the owner or their agent within three business days from the date the owner of the shopping cart, or their agent, is given actual notice by the City of the shopping cart's discovery and location, or impoundment, shall not be deemed an occurrence for purposes of this chapter.
- F. The owner of any shopping cart that is not reclaimed within three business days after the date the owner has been given actual notice by the City of the shopping cart's discovery and location, or impoundment, is subject to prosecution or the imposition of administrative costs, fees, fines, interest and other penalties applicable under this chapter commencing four business days after the date of notice.
- G. Any shopping cart not reclaimed from the City within thirty (30) days of receipt by the owner, or the owner's agent, of actual notice from the City of the cart's discovery and location, or impoundment, and any shopping cart, the owner of which cannot be determined, may be sold, or otherwise disposed of by the City.

8.10.090. Recovery of Fines and Costs by City

- A. Pursuant to Business and Professions Code Section 22435.7(f), any owner that fails to retrieve the owner's shopping cart or shopping carts within three business days from the date of being given notice of the cart's or carts' discovery and location, or impoundment, by the City, is guilty of a violation of this chapter and may be punished with an administrative fine of fifty dollars (\$50) for each occurrence in excess of three during the six-month period starting January 1 and ending on June 30 or the six-month period starting July 1 and ending December 31 of each calendar year.
- B. In addition to the fines imposed above, the owner shall pay the City's actual costs for retrieving and storing the owner's shopping cart or carts except when the owner, or their authorized agent, reclaims their cart or carts within three business days from being given notice of the cart's or carts' discovery and location, or impoundment, by the City, in which case, all fines, costs and fees shall be waived.

8.10.100. Disposal of Abandoned Shopping Carts

The Director or designee may sell or otherwise dispose of any abandoned shopping cart that has not been reclaimed by its owner within thirty (30) days after the owner receives notice of the cart's or carts' discovery and location, or impoundment, by the City, or for which the owner of the shopping cart cannot be determined by the City.

8.10.110. Violation – Penalty

Any person who violates any provision of this Chapter is guilty of an infraction and is subject to punishment as provided for in Chapter 1.12 (General Penalty) or as provided under Chapter 1.24 (Administrative Code Enforcement Procedures).

SECTION 3. Publication. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The New Times, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after its final passage.

SECTION 4. Severability. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be considered a separate, distinct, and independent provision and such holding shall not affect the validity and enforceability of the other provisions of this Ordinance.

INTRODUCED on the 13th day of April 2021, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the ____ day of _____ 2021, on the following vote:

AYES:

NOES:

ABSENT:

Mayor Heidi Harmon

ATTEST:

Teresa Purrington,
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick,
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington,
City Clerk