



Council Agenda Report

Item 6c

Department: Public Works
Cost Center: 5001
For Agenda of: 5/17/2022
Placement: Public Hearing
Estimated Time: 30 Minutes

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SUBJECT: INTRODUCTION OF AN ORDINANCE AMENDING THE SAN LUIS OBISPO MUNICIPAL CODE TO ADD CHAPTER 8.10 (SHOPPING CARTS), REQUIRING THE PRIVATE MANAGEMENT OF SHOPPING CARTS AND RETRIEVAL OF CARTS FROM PUBLIC SPACES

RECOMMENDATION

Introduce an Ordinance entitled, “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.”

DISCUSSION

Background

On April 13, 2021, two ordinances were introduced to the City Council – the first related to the unauthorized removal of shopping carts from business premises and the second to clarify language about tents and similar structures that are prohibited encroachments in City parks. The Council discussed both recommendations at length and made modifications to the shopping cart ordinance for a second reading on May 4, 2021. On May 3, 2021, staff and Council received a demand letter on behalf of Unhoused Clients from California Rural Legal Assistance (CRLA) Public Interest Law Project (PILP) which threatened litigation against the City related to the adoption of the Ordinance Amendments. In response, on May 4, prior to the City Council meeting, the City Attorney’s office recommended that the Council continue the final adoption of both Ordinance Amendments to a date uncertain. Following this action, staff met with business owners and updated the shopping cart ordinance to encourage greater accountability on the part of shopping cart owners and focused the ordinance following review of best practices from other municipalities.

Public Nuisance and Landfill Impact of Abandoned or Unattended Shopping Carts

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. 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 for their intended purposes, and can create dangerous conditions for users of those public spaces. Since no City ordinance currently exists (there is State law guidance on this topic in the Business and Professions Code that permits implementing an ordinance at the local level), shopping cart owners do not actively retrieve carts, leaving the City to remove dozens of abandoned shopping carts every week from public spaces. They can also constitute a hazard to streams, riparian areas, and other natural spaces, and contribute substantially to litter, clutter, and visual blight. In some instances, they are returned, in other instances the owner picks them up, and in most cases, they are delivered to the landfill because of the significant time and effort that takes away from other core city services.

Chapter 19 of the California Business and Professions Code (Sections 22435 to 22435.13) permits cities to develop an ordinance with regulations to eliminate the accumulation of abandoned shopping carts within city limits, and it has guided the content of this ordinance.

The proposed ordinance would deem abandoned or unattended shopping carts found off the premises of retail establishments, on either public or private property, to be a public nuisance, subject to abatement by the City if the private retail owners of the shopping carts do not fulfill their obligations to maintain their carts on site or retrieve those that have migrated offsite.

The intent of the ordinance is to:

- 1) Provide for pedestrian and vehicle safety;
- 2) Ensure that the flow of pedestrian or vehicle traffic is not unreasonably interfered with, 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;
- 3) Protect streams, riparian areas, and other natural areas; and
- 4) Reduce litter, clutter and visual blight associated with abandoned or unattended shopping carts.
- 5) Divert cart waste from the landfill; and
- 6) Balance the rights and interests of the owners of shopping carts with the rights and interests of those who do not own shopping carts but are negatively impacted by shopping carts on private and public property.

The objective of the ordinance is to provide a mechanism to place primary responsibility for managing carts with retailers who provide shopping carts to their customers and to set requirements for the prompt retrieval of carts that have been taken off business premises.

Staff in the Community Development Department's Code Enforcement Division will track the occurrence of abandoned carts to define and measure the effectiveness of the ordinance and establish a follow-up process to identify businesses with the most abandoned carts, with the goal of improving cart security and reducing their share of abandoned carts.

Summary of Ordinance

This proposed ordinance adds Chapter 8.10 to the City's Municipal Code to facilitate the retrieval of abandoned shopping carts in the City of San Luis Obispo and defines "abandoned or unattended shopping cart" as a cart that 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." The ordinance encourages responsibility of retrieval by the shopping cart owner. It also establishes requirements for cart containment and retrieval by cart owners, procedures for impoundment of abandoned carts by the City, and recovery from the cart owner of fines and costs incurred by the City.

Partnership with Local Businesses and Abandoned Shopping Cart Prevention and Retrieval Plan

The benefits of the proposed ordinance (Attachment A) will be achieved through the establishment of best practices by businesses as follows:

1) Cart Identification

- a) Application of signage to each cart identifying the owner with their contact information;

2) Community Outreach

- a) Placement of signage at parking areas warning that the removal of carts from premises could result in a fine;

3) Loss Prevention Measures

- a) Measures to secure carts during off hours and the impoundment of the carts found off premises; and
- b) The development and approval of an Abandoned Shopping Cart Prevention and Retrieval Plan (Attachment B), for all businesses who provide or intend to provide twenty-five (25) or more shopping carts to customers, defining:
 - i) Loss prevention measures (e.g. electronic or other disabling devices, use of courtesy clerks, use of security personnel, or a security deposit system);
 - ii) Inspection, testing and repair of all abandoned carts returned to the owner prior to making the returned carts available for use;
 - iii) Ongoing employee training program, designed to prevent carts from being taken off premises; and
 - iv) A plan for retrieval of abandoned shopping carts within three (3) business days after knowing of a cart's removal from the owner's premises or after receiving notice from the City that the shopping cart has been abandoned.

Owners of shopping carts who provide less than twenty-five (25) carts can self-certify and are not required to submit an abandoned shopping cart prevention and retrieval plan.

Owners of over 25 shopping carts must submit Abandoned Shopping Cart Prevention and Retrieval Plans to the City within 60 days of the Ordinance becoming effective or alternatively, if a business opens after that date, then within 30 days after a business that uses shopping carts commences operations.

Since an Abandoned Shopping Cart Prevention and Retrieval Plan is required, any owner who fails to provide the abandoned shopping cart prevention and retrieval plan would be required to pay the City \$100 for each calendar month the plan is not provided, as a penalty for noncompliance.

Outreach on Shopping Cart Security Systems and City Incentive Offering

Last year, the Police Department and Public Works Department reached out to many of the large retail establishments regarding the businesses' practices regarding shopping cart retrieval. All of the store managers contacted wanted to partner with the City in finding a solution to shopping carts being taken off-premises. However, they indicated that they do not have the resources nor want the liability of having current staff retrieve the carts.

There are technology-based options, in addition to personnel and signage, to secure and retain shopping carts. One is for individual carts to have geographic technologies, similar to geofencing, installed on them to prevent them from being removed from properties and avoid retrieval costs. While such security systems can be costly to implement, some retail establishments have already installed wheel-lock devices on their carts, and the City has set aside \$60,000 in economic development grant funds to be awarded to shopping cart owners toward the installation of disabling devices or other security measures, following submittal and approval of their Abandoned Shopping Cart Prevention and Retrieval Plan. Owners may choose which method of cart containment will work best for their particular store. The proposed ordinance allows designated staff in the Community Development Department's Code Enforcement Division to review the plans for compliance and to make necessary corrections to plans before approval.

Outline of Penalties and Violations for Shopping Cart Retrieval

The ordinance outlines penalties for violations and noncompliance, as limited by the California Business and Professions Code. Any owner who 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, may be levied 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.

Additionally, the owner would 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. The cost to retrieve an impounded cart will be based upon the City's actual costs provided for in the Comprehensive Fee Schedule. If the owner takes action within three business days, all fines, costs and fees would be waived.

Policy Context

Enacted in 1997, Chapter 19 of the California Business and Professions Code (Sections 22435 to 22435.13) known as the "California State Shopping Cart and Laundry Cart Law," guides shopping cart abatement and impoundment. The California Business and Professions Code permits cities to develop an ordinance with regulations to eliminate the accumulation of abandoned shopping carts within city limits so long as it does not conflict with State law. However, those regulations only apply to a shopping cart that has a sign affixed to it. Since the cited provisions do not require shopping cart owners to affix the signs, many cities in California have adopted local ordinances to require signs and to further expand upon the provisions for management of shopping carts within their jurisdictions. The proposed ordinance is consistent with State law, which makes it unlawful to remove a shopping cart from business premises or to possess it after it has been removed and following all notification and impoundment guidelines.

The proposed Ordinance does not add any additional penalties against individuals for unlawfully removing a shopping cart. Individuals can already be cited under State law for this violation. The focus of the proposed ordinance is cart recovery and management by shopping cart owners. Staff believes that the implementation of the proposed additional language provides a clear, cost-effective and responsible approach to address the matter through proper responsible parties.

Public Engagement

The focus of public engagement has been to inform, educate, and listen to concerns. The public engagement on the topic of shopping carts has included business community outreach to businesses with shopping carts, the San Luis Obispo Chamber of Commerce and Downtown SLO. Last year, the Police Department and others met with managers of large stores that have shopping carts to explore options to manage and retrieve errant carts. Additionally, in March and prior to consideration of this ordinance, staff have sent a follow up letter to all stores that have 25 or more shopping carts, making them aware of this proposed ordinance.

CONCURRENCE

This report reflects a multi-departmental effort with the City Attorney, Administration, Police, Fire, and Community Services Group, including Community Development, Parks and Recreation and Public Works, all in concurrence with the above-described approach and recommendation.

ENVIRONMENTAL REVIEW

Pursuant to the California Environmental Quality Act (CEQA), it can be seen with certainty that there is no possibility that the proposed Municipal Code Amendment regarding the security of shopping carts will have any effect on the environment (General Rule Exemption CEQA Guidelines Sec. 15061(b)(3)).

Additionally, the proposed ordinance would be exempt per CEQA Section 15301 Existing Facilities, as there would be negligible or no expansion of use; CEQA Section 15308 Actions by Regulatory Agencies for the Protection of the Environment, as the proposed ordinance is intended to assure the maintenance and protection of the environment; and 15311 Accessory Structures, regarding potential placement on-premise signage needed for public notification associated with the proposed ordinance.

FISCAL IMPACT

Budgeted: Yes

Budget Year: FY 2021-22

Funding Identified: N/A

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$0	\$0	\$0	\$0
State				
Federal				
Fees				
Other:				
Total	\$0	\$0	\$0	\$0

There are no direct fiscal impacts associated with this action, although significant staff time is being expended to deal with abandoned shopping carts. While this cost is covered through the annual budget appropriation for the various programs that are affected, this ordinance would allow staff to concentrate on service and program delivery to the community.

Additionally, the incentive program referenced above will utilize \$60,000 in economic development grant funds that have been set aside for this purpose.

ALTERNATIVES

While staff believe the ordinance presented is complete work, Council may want to pursue the following:

1. ***Modify the ordinance as proposed.***
2. ***Do not adopt the ordinance as proposed.*** This action is not recommended by staff as cart retrieval has become a significant effort, diverting important resources and City staff to the removal efforts instead of to the City's core programs and services.
3. ***Provide further direction to staff regarding the ordinance.***

ATTACHMENTS

- A – Draft Ordinance adopting Chapter 8.10 (Shopping Carts)
- B – Draft Abandoned Shopping Cart Prevention and Retrieval Plan Template