

ORDINANCE NO. 1360

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUSTIN,
AMENDING ARTICLE 5 CHAPTER 9 OF THE TUSTIN CITY CODE
ESTABLISHING UPDATED REGULATIONS FOR THE ABATEMENT
OF SHOPPING CART NUISANCE

The City Council of the City of Tustin does hereby ordain as follows:

- I. The City Council finds and determines as follows:
 - A. That abandoned shopping carts cause blight and may be injurious to the public health, safety, and welfare and constitute a public nuisance.
 - B. That past efforts by the City and retailers have not been successful and significant costs to the City and taxpayers have been incurred to abate the abandoned shopping cart nuisance.
 - C. That the City of Tustin has a substantial interest in protecting the aesthetic appearance, public health and safety, and harmony of the community by providing strengthened, and clarified abatement of shopping cart requirements and standards that address abandoned shopping carts located outside the premises or parking areas of retail establishments and on public or private properties and viewable from the public right-of-way.
 - D. That Code Amendment 08-004 to amend Article 5 Chapter 9 of the Tustin City Code is necessary to strengthen and clarify the abatement of shopping cart nuisance regulations for the City of Tustin.
 - E. That Code Amendment 08-004 is regulatory in nature and would provide standards to establish reasonable regulations to supplement provisions of state law regarding the unauthorized removal of shopping carts from the premises and parking areas of retail establishments.
 - F. That on March 18, 2008, the Tustin City Council held a public meeting at which they considered the matters of abandoned shopping carts and measures other cities were taking to eliminate abandoned shopping carts in their communities. At such time, the City Council directed staff to implement a program similar to the City of Westminster's policy and hold a workshop with the affected retailers to receive input and develop an ordinance.
 - G. That on October 8, 2008, staff held a public workshop for retailers in the City of Tustin to discuss the proposed ordinance for abatement of shopping cart nuisance.
 - H. That on January 13, 2009, the Tustin Planning Commission held a public hearing and adopted Resolution 4106 recommending that the City Council approve Code Amendment 08-004.

- I. That on 2/3/09, the Tustin City Council held a public hearing and adopted Code Amendment 08-004 for Ordinance 1360.
 - J. That this Code Amendment is exempt from further environmental review pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect adverse physical change in the environment.
- II. Article 5 Chapter 9 of the Tustin City Code is hereby repealed in its entirety and replaced as follows:

CHAPTER 9 ABATEMENT OF SHOPPING CART NUISANCE

5900 DECLARATION OF PUBLIC NUISANCE AND PURPOSE

Abandoned shopping carts located outside the premises or parking areas of retail establishments and on public or private properties and viewable from the public right-of-way are injurious to the public health, safety, and welfare and constitute a public nuisance (hereinafter "shopping cart nuisance"). The nuisance is caused by persons unlawfully removing shopping carts from the premises or parking areas of retail establishments and by certain retail establishments failing to maintain adequate supervision of their premises and parking areas, failing to educate their customers, and failing to implement effective cart removal prevention programs or cart retrieval programs.

The purpose of this chapter is to:

1. Set forth regulations to ensure that reasonable measures are taken by owners and operators of businesses which provide shopping carts for the convenience of customers to (a) prevent the removal of shopping carts from business premises and parking lots, and (b) provide for the prompt retrieval of lost, stolen or abandoned shopping carts; and
2. Complement and supplement provisions of state law and adopt local regulations to the extent not otherwise preempted by state statute regarding the unauthorized removal of shopping carts from the premises and parking areas of retail establishments.

5901 DEFINITIONS

As used in this chapter, the following words and terms shall have the meaning ascribed thereto:

"Abandoned shopping cart," or "Lost, stolen or abandoned shopping cart." means a shopping cart which is either (1) removed from the premises of a retail establishment by any person without the prior written consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded, or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the 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 is either (a) the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (b) an officer, employee, or agent of a cart retrieval service hired by the owner to retrieve such carts, (c) enforcement personnel retrieving, storing, or disposing of said cart pursuant to the provisions of the applicable provisions of the California Business and Professions Code, or (d) has consent to be in possession of the shopping cart from the owner entitled to possession of the shopping cart.

"City" means the City of Tustin.

"Enforcement personnel" means any police officer, code enforcement officer, or other person employed or contracted by the City of Tustin.

"Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

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

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

"Person" means an individual or entity as defined in Tustin City Code Section 1112.

"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.

"Public property" means all real property in the City in which a public agency has a fee simple, easement, or leasehold interest. This includes, but is not limited to, streets, sidewalks, the civic center, parks, and flood control facilities.

"Retail establishment" means any trade establishment selling articles, commodity, or any line of merchandise 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 business, or is a membership store.

"Shopping cart" or "Cart" means a basket that is 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. The term "shopping cart" or "cart" includes a laundry cart.

"Unidentified shopping cart" means a shopping cart that is not an owner-identified cart, or an owner-identified shopping cart of a retail establishment located outside the City that has a permanently affixed sign that identifies it in accordance with applicable provisions of the California Business and Professions Code.

5902 NUISANCE ABATEMENT AUTHORITY

Sections 5903 through 5906 of this chapter may be implemented and enforced by designated representatives of the City of Tustin as designated by their respective department heads in writing.

5903 MANDATORY MEASURES TO PREVENT THE REMOVAL OF CARTS

Owners of every retail establishment that uses ten (10) or more carts shall implement the following measures to 1) prevent the unauthorized removal of carts from their premises, and 2) provide for the prompt retrieval of lost, stolen, or abandoned shopping carts which have been removed from the premises of the retail establishment:

- A. **Mandatory Cart Containment Plan.** Every retail establishment that uses ten (10) or more carts shall develop, implement, and comply with the provisions of a written plan submitted to and approved by the Community Development Director to prevent customers from removing shopping carts from the premises of such business without authorization of the owner (the "Cart Containment Plan"). 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. The Cart Containment Plan, at a minimum, shall include the following elements:
 1. **Signs Affixed to Carts.** In accordance with applicable provisions of the California Business and Professions Code, every shopping cart made available for use by customers shall have a sign permanently affixed to it that (a) identifies the owner of the cart or the retailer or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of state law, and (d) lists a valid telephone number and/or address for returning the cart removed from the premises to the owner or retailer.
 2. **Notice to Customers.** Written notice shall be provided to customers, in English and in 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.
 3. **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 at the cart confinement area on the premises as designated in the 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 hours per day, other than carts currently in use by a customer or patron, shall be collected by employees of the retail establishment and returned to the cart confinement area on

the premises as designated in the Cart Containment Plan at least once per calendar day between the hours of 9:00 p.m. and 12:00 a.m. 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.

4. Installation of one of the following physical measures:
 - i. Disabling devices on all carts, which are activated when they cross a barrier at the perimeter of the premises; or
 - ii. Physical barriers located at doors, around loading areas, or other defined perimeters 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.
5. 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 chapter and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment.

B. Mandatory Cart Retrieval Plan - Every retail establishment that uses ten (10) or more carts shall develop, implement, and comply with the provisions of a written plan submitted to and approved by the Community Development Director for the retrieval of lost, stolen or abandoned shopping carts which have been removed from the premises of the retail establishment. The Cart Retrieval Plan shall include the following elements:

1. Retrieval Personnel. The owner shall provide personnel for purposes of the retrieval of lost, stolen, or abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both. The Cart Retrieval Plan shall either (a) identify the number of employees who will be assigned such cart retrieval duties, provide the number of total hours per week that each assigned employee will perform such services (in addition to any on-premises retrieval duties to which such employee may be assigned), and include the training schedule that each such personnel has received or will receive concerning the retrieval of lost, stolen, or abandoned shopping carts, or (b) include a copy of each contract with a cart retrieval service (other than confidential financial information which may be obscured from the contract). The owner shall provide written authorization to all retrieval personnel. (For purposes of this section, those persons identified in the Cart Retrieval Plan as providing cart retrieval services, whether employees of the business or independent contract services, shall be referred to in this section as retrieval personnel). Such authorization shall be carried by each such person(s) while performing cart retrieval services off-site on behalf of the owner and shall be provided to any enforcement personnel upon request. Each vehicle used by retrieval personnel shall bear conspicuous signs on the vehicle identifying either the name of the retail establishment for which such retrieval service is being performed or, if applicable, the name of the cart retrieval service with which the retail establishment has contracted for such services.

2. Prompt Retrieval of Carts. Retrieval personnel or services shall assure that all public streets and all bus stops are patrolled and each lost, stolen, or abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found. At the discretion of the Community Development Director, the Cart Retrieval Plan shall (a) identify the perimeter streets and bus stops in which all streets within the perimeter area will be patrolled as required by this subsection; (b) the manner, frequency and times of such patrols; and (c) the procedures to be employed by the retail establishment to identify and retrieve any lost, stolen, or abandoned shopping carts. The Cart Retrieval Plan shall (d) identify the number of trucks; (e) hours of operation of the retrieval personnel; and, (f) such other information as reasonably required by the City to assure that the owner is devoting sufficient resources to cart retrieval operations to comply with the provisions of this section and the approved Cart Retrieval Plan.

5904 PLAN SUBMISSION AND APPROVAL

- A. New or Relocated Retail Establishments. Prior to the establishment of a business license, each new retail establishment and any existing retail establishment relocating to a different location within the City that utilizes ten (10) or more carts shall present to the Community Development Director written plans consistent with the requirements of Section 5903 setting forth the physical measures it plans to implement to comply with the requirements of this chapter. A user fee may be established by resolution of the City Council to recover the cost of plan review and processing the application. Such plan review fee shall be paid at the time of submitting plans and specifications for review.
- B. Existing Retail Establishments. Each existing retail establishment shall submit proposed plans complying with the requirements of Section 5903 of this chapter to the Community Development Director within 120 calendar days following the date of adoption of this ordinance. Such plan review shall be subject to fees established by resolution of the City Council to recover the cost of plan review and processing the application.
- C. Plan Review and Approval. Upon the filing of any proposed plan pursuant to Section 5903 of this chapter, the Community Development Director shall review the proposed plan in accordance with Chapter 2 Section 9272 of the Tustin City Code. The Director shall approve or deny the proposed plan within thirty (30) calendar days following receipt thereof. If the proposed plan complies with each of the applicable requirements of this chapter, the Director shall approve the plan; otherwise, the proposed plan shall be denied. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. A decision of the Director may be appealed by the owner in the time and manner provided in Section 5904.E.
- D. Amendments by Owner. The owner of any retail establishment which has an approved plan conforming to the requirements of this chapter may, at any time, submit a proposed amendment to the approved plan to the Community Development Director. Such amendment shall be processed in accordance with the procedure provided for a proposed plan as set forth in subsection C of this section.
- E. Filing of Appeal. Pursuant to Section 9272f of the Tustin City Code, any owner aggrieved by any adverse decision of the Community Development Director pursuant to this

chapter may appeal such decision to the Planning Commission. No appeal shall be accepted for filing and processing unless accompanied by the appeal processing fee as established by the City Council.

5905 REVOCATION

- A. Grounds for Revocation. An approved plan may be revoked by the Community Development Director upon his/her determination that any of the following grounds for revocation exist:
1. The owner of any retail establishment has received notice that the establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of said approved plan(s) and has failed to correct said violation(s) for a period of at least sixty (60) calendar days following the date of receipt of written notice of such violation(s) from the City.
 2. The mandatory Cart Containment Plan is inadequate to reasonably prevent the removal of shopping carts from the premises of the retail establishment.
 3. The mandatory Cart Retrieval Plan is inadequate to reasonably provide for the prompt retrieval of lost, stolen, or abandoned shopping carts which have been removed from the premises of the retail establishment.
- B. Notice of Revocation. If at any time following the approval of a plan, the Community Development Director obtains information or evidence that any of the grounds set forth in subsection A of this section may exist, the Community Development Director shall issue a written order (Notice of Revocation) stating why the approved plan should be revoked and provide the grounds upon which it is proposed to revoke the approved plan. The Notice of Revocation shall include the information and evidence, or a summary thereof, upon which such order was issued and shall specify the effective date of the revocation of the plan, which date shall be at least ten (10) days after the delivery of the Notice. The Notice of Revocation shall become effective on the proposed effective date unless the owner files a timely written appeal pursuant to subsection C. If a timely appeal is filed, the Notice of Revocation shall become effective on the date the Planning Commission acts upon the appeal, unless the Planning Commission determines the approved plan should not be revoked.
- C. Decision of the Director. The decision by the Director shall become final unless the owner files a written appeal to the Planning Commission within ten (10) days of delivery of the Notice of Revocation. Such appeal shall be subject to a filing fee in the amount as prescribed by City Council Resolution.
- D. Use of Shopping Carts Following Revocation Is Prohibited. No retail establishment owner shall provide or make available shopping carts for the use of customers following the effective date of any decision revoking a required plan pursuant to this chapter unless and until a new proposed plan is approved by the City for such retail establishment subject to the requirements of Section 5904 of this chapter.

5906 PENALTIES

- A. Except as otherwise expressly provided in this chapter, it shall be unlawful for the owner of any retail establishment that provides ten (10) or more shopping carts to provide or offer, or permit to be provided or offered, any shopping carts to customers of the retail establishment without an approved mandatory Cart Containment Plan and mandatory Cart Retrieval Plan as required by this chapter.

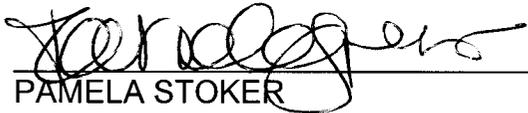
If at any time, the Community Development Director determines that the owner is not in compliance with the mandatory Cart Containment Plan and/or the mandatory Cart Retrieval Plan as approved and on file with the City, the owner is considered to be in violation and is subject to penalties. Each day shall be considered a new and separate violation when a violation of any provision of this chapter occurs.

1. **Penalty for Violation.** Violation of any of these provisions or failing to comply with the mandatory requirements of this Chapter may be prosecuted as provided for in Section 1121 of the Tustin City Code. The first violation to any provisions of this chapter committed by the owner of any retail establishment subject to the requirements of this chapter shall be an infraction. Any subsequent violations committed by the owner of any retail establishment after having previously been convicted of violating said same section shall be a misdemeanor.
 2. **Proceedings.** Any violation may be abated by the City through civil proceedings by means of a restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisances. Any person who violates any of the provisions of this chapter shall be responsible for the City's attorney fees and legal costs associated with the abatement.
 3. **Penalties Not Exclusive.** The penalties set forth herein are cumulative and in addition to all other remedies, violations, and penalties set forth in this chapter, or in any other ordinances, laws, rules, or regulations of the City of Tustin, County of Orange, and the State of California.
- III. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held out to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Tustin hereby declares that it would have adopted this ordinance and each section, subsection, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Tustin, at a regular meeting on the 17th day of February, 2009.



DOUG DAVERT,
Mayor



PAMELA STOKER
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF TUSTIN)

PAMELA STOKER, City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, does hereby certify that the whole number of the members of the City Council of the City of Tustin is 5; that the above and foregoing Ordinance No. 1360 was duly and regularly introduced at a regular meeting of the Tustin City Council, held on the 3rd day of February, 2009 and was given its second reading, passed, and adopted at a regular meeting of the City Council held on the 17th day of February, 2009 by the following vote:

COUNCILMEMBER AYES:	<u>Davert, Gavello, Nielsen</u>	(3)
COUNCILMEMBER NOES:	<u>Amante</u>	(1)
COUNCILMEMBER ABSTAINED:	<u>Palmer</u>	(1)
COUNCILMEMBER ABSENT:	<u>None</u>	(0)



PAMELA STOKER
CITY CLERK