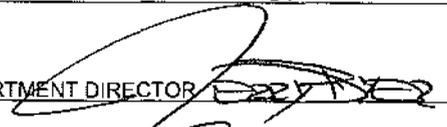
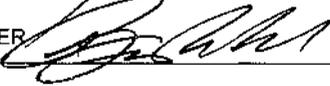


AGENDA ITEM NO.	16-1
COUNCIL MEETING	3/20/14
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 6, 2014

**FROM:** JERRY P DYER, Chief of Police  
Police Department

**BY:** Robert Dewey, Sergeant  
Police Department



Referred to City Council  
Date: 3/6/14  
Resolution: approved  
B-15

**SUBJECT:** Introduction of recommended amendment to Article 31, Chapter 9 of the Fresno Municipal Code relating to abandoned shopping carts

**RECOMMENDATION**

It is recommended that the City Council approve the amendment to Article 31, Chapter 9 of the Fresno Municipal Code.

**EXECUTIVE SUMMARY**

In response to community concerns regarding the use of shopping carts for illegal purposes, staff is recommending an amendment to Article 31, Chapter 9 of the Fresno Municipal Code (FMC). In coordination with community members, business owners, and the grocery industry association, the proposed amendments will enhance the City's ability to work with Cart Owners to maintain their property as part of their existing cart containment plans. Additionally, the amendments will allow the City to better enforce the collection of carts unlawfully removed from the Cart Owner's premises.

**BACKGROUND**

Community stakeholders have expressed a variety of concerns related to the unlawful use of shopping carts throughout the City. More specifically, grocers, retailers and other Cart Owners are experiencing significant financial impacts related to shopping cart losses. The Grocers Association has offered to work with the City to communicate and conduct outreach to their membership and members of similar associations like the Retailers Association, etc.

For the purpose of this report and the ordinance, the term "abandoned shopping cart" describes a cart that has been removed from the premises or parking area of a retail establishment without written consent of the owner or operator. Both residents and businesses are reporting property crimes made more convenient by the use of abandoned shopping carts as a primary means of transferring stolen property. The City's cross-departmental task force, led by the Fresno Police Department, was established to address encampment matters and has confirmed that the mobility and transportation of goods afforded by abandoned shopping carts is primarily associated with unlawful activities. Without

## REPORT TO CITY COUNCIL

(Intro) Adoption of Amendment to Fresno Municipal Code Article 31, Chapter 9

March 6, 2014

Page 2

the proposed amendments, it is the task force's estimation that abandoned shopping carts will continue to be a negative, contributing factor to the encampment issues observed throughout the City.

The FMC currently regulates abandoned shopping carts. However, in an effort to strengthen regulations on abandoned shopping carts and address the community's concerns regarding the use of shopping carts for illegal purposes, the proposed amendments to Article 31, Chapter 9 of the FMC remain consistent with the Council's findings and purpose of the original Abandoned Shopping Cart Ordinance but incorporate the following changes, in accordance with state law:

### **Cart Owner Requirements**

- All owners of carts, including but not limited to commercial Cart Owners, shall provide accurate and legible cart identification signs on every cart.
- Business owners have three business days to retrieve carts that leave their premises.
- Business owners must operate and maintain an on-site cart containment program (disabling devices, on-site security, posts and chains around the premises, security deposit for use of carts, rental/sale of carts, or other measures as approved by the Director).
- A business may be exempted if it provides proof of a contract with a cart retrieval service.

### **Immediate Impound by City of Identified Carts**

- The City may impound a cart without three days' notice if the City notifies the owner within twenty-four (24) hours and provides where and how to reclaim the cart. This would take place after a subject is found and cited for possession of a cart and the cart is removed by the Fresno Police Department.
- The City must hold impounded carts at a reasonably convenient location for at least six (6) business hours a day.
- The City cannot charge fees/fines if the cart is reclaimed by the owner within three business days.

### **Possession of Carts by Recycling Centers**

- Any recycling center that comes into possession of a cart cannot sell or use the cart for any purpose.
- If the cart has identification signs, the recycling center must notify the Cart Owner of the cart's location and hold the cart for three business days. If the cart is not reclaimed by the Cart Owner within three business days, the recycling center must notify the Fresno Police Department and arrange for the City to retrieve the cart.
- If the cart does not have identification signs, the recycling center must notify the Fresno Police Department and arrange for the City to retrieve the cart.

### **Enforcement and Remedies**

- An owner failing to retrieve abandoned shopping carts within three business days shall pay the City's administrative cost for retrieving the cart(s) and providing notice.

## REPORT TO CITY COUNCIL

(Intro) Adoption of Amendment to Fresno Municipal Code Article 31, Chapter 9

March 6, 2014

Page 3

- Failure to retrieve abandoned shopping carts more than three times in a six (6) month period shall be subject to a fifty dollar (\$50) fine per occurrence (per state law).
- Impounded carts can be sold or destroyed after thirty (30) days or failure to pay associated costs and fines.
- Director can require physical containment system after retrieval of more than ten (10) carts in thirty (30) days, or more than ten (10) citations in twelve (12) months.

In addition, business owners with more than twenty-five (25) shopping carts will be required to develop, implement and comply with an abandoned shopping cart prevention plan for the unauthorized removal of shopping carts from the owner's premises. This may be accomplished by completing a form provided by the City and renewed annually.

### **ENVIRONMENTAL FINDINGS**

N/A

### **LOCAL PREFERENCE**

N/A; amendment to existing ordinance only.

### **FISCAL IMPACT**

Minimal outreach expenses will be incurred to communicate with Cart Owners and update their cart containment plans. When possible, the City's expenses will be minimized by conducting outreach through e-mail or partnering with groups such as the Grocers Association.

The anticipated administrative costs associated with non-responsive cart retrieval issues will be recovered by fees collected from Cart Owners. Existing resources for storage, enforcement, and recovery of abandoned shopping carts will be reallocated for the initial implementation of the amended ordinance. Ongoing fiscal impacts will likely include nominal costs for enforcing related activity.

Attachment: Article 31, Chapter 9 of the Fresno Municipal Code

TNP:ns [64022ns/tnp]- 2/26/14

**This page intentionally left blank.**

BILL NO. \_\_\_\_\_

ORDINANCE BILL NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA  
AMENDING ARTICLE 31 OF CHAPTER 9 OF THE  
FRESNO MUNICIPAL CODE RELATING TO ABANDONED  
SHOPPING CARTS.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 31 of Chapter 9 of the Fresno Municipal Code is amended to read:

ARTICLE 31

ABANDONED SHOPPING CARTS

Section	9-3101	Title.
	9-3102	Findings and Purpose.
	9-3103	Definitions.
	9-3104	Unlawful Possession and Abandonment of Carts.
	9-3105	Cart Owner Requirements.
	9-3106	City Retrieval of Carts.
	9-3107	Immediate [Impound] by City of Identified Carts.
	9-3108	Possession of Carts by Recycling Centers.
	9-3109	Enforcement and Remedies.
	9-3110	Severability Clause.
	9-3111	Cumulative Remedy.

SECTION 9-3101. TITLE. This article shall be known as the "Abandoned Shopping Cart Ordinance."

SECTION 9-3102. FINDINGS AND PURPOSE. The Council of the City of Fresno finds that a[A]bandoned s[S]hopping e[C]arts in the city create potential hazard to the health and safety of the public, and interfere with pedestrian and vehicular traffic and create a public nuisance. The accumulation of

Date Adopted:

Page 1 of 20

Ordinance No.

Date Approved:

Effective Date:

City Attorney Approval: TNP

a[A]bandoned e[C]arts, sometimes wrecked and/or dismantled on public and private property tends to create conditions that reduce property values, and promote blight and deterioration and result in a public nuisance. This article is intended to insure that measures are taken by the owners of s[S]hopping e[C]arts to prevent the removal of the s[S]hopping e[C]arts from the [Cart] e[O]wner's [Business] p[P]remises, to make removal of the [C]eart a violation of the Code, and to facilitate the retrieval of a[A]bandoned s[S]hopping e[C]arts in a manner consistent with State law [and to use an administrative citation program to establish appropriate fines intended to act as a reasonable deterrent in preventing violations.]

SECTION 9-3103. DEFINITIONS. The definitions set forth in this section shall govern the application and interpretation of this article.

(a) "Abandoned Cart" [or "Abandoned Shopping Cart"] shall mean any Cart that has been removed, without the written consent of the [Cart] e[O]wner, from the owner's b[B]usiness p[P]remises or p[P]arking a[A]rea of the retail establishment of which the e[C]art e[O]wner's b[B]usiness p[P]remises are located and is located on either public or private property. The [Cart] e[O]wner's b[B]usiness p[P]remises may include a multi-store shopping center with shared areas of parking and public access.

(b) "Abandoned Cart Prevention Plan" shall mean a document submitted [in writing] by the [a Cart] e[O]wner pursuant [to Section 9-3105(c) of] ~~to~~ this article that provides a plan for how the owner will

~~prevent carts from becoming abandoned and, [prevention of Cart removal and for the recovery of Off-site Carts.] if accepted by the Director as adequate, an implied promise by the owner to comply with the plan.~~

[(c) "Business Premises" means the interior of a Cart Owner's commercial establishment, adjacent walkways, any loading area, and the Parking Area, as defined herein. The Cart Owner's Business Premises may include a multi-store shopping center with shared areas of parking and public access.]

~~(e) — [(d)] "Cart" or "Shopping Cart" means a basket which is mounted on wheels or a similar device generally used in a retail or commercial establishment by a customer for the purpose of transporting goods of any kind, including a basket used in a L[ ]aundromat or similar business. [A Cart sold by a commercial establishment to a retail customer for that customer's personal use is not a Shopping Cart for the purposes of this article.]~~

[(e) "Cart Identification Sign" means a sign or engraved surface which is permanently affixed to a Shopping Cart containing all of the information specified in Section [9-3105(a).]

(f) "Cart Owner" means the owner or operator of a commercial establishment which provides Carts for use by its customers for the purpose of transporting goods of any kind.

(g) "Cart Removal Warning" means a placard, sign or painted text which meets the requirements specified in Section [9-3105(c)(4).]

(h) “Cart Retrieval Company” or “Cart Retrieval Service” means a third party commercial service in the business of retrieving and returning Shopping Carts to the Cart Owner.]

~~(d)~~—[(i)] “Director” means the Director of the Development and Resource Management Department or his/her designees or such other person designated by the City Manager to administer this article.

~~(e)~~—“Owner” shall mean a person or business owning or using shopping carts in connection with its business.

(j) “Off-site” means not within the Business Premises.

(k) “On-site Cart Containment Program” means one or more of the following measures:

(1) Disabling devices on all Shopping Carts which prevent them from being removed from the Business Premises by locking the wheels or otherwise preventing the movement of the Carts.

(2) An on-site security guard to deter customers who attempt to remove Carts from the Business Premises.

(3) Posts and chains around the Business Premises to prevent Cart removal, if permitted by the applicable zoning and the site plan, and if approved by the fire marshal.

(4) Obtaining a security deposit from customers for the on-site use of Shopping Carts.

(5) The rental or sale of Carts that can be temporarily or permanently used for the transport of goods.

(6) Any other measure approved by the Director as a means to contain Carts on the Business Premises.

(l) "Parking Area" means a parking lot or other property provided by a commercial 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.

(m) "Physical Containment System" means one of the following, as approved by the Director:

(1) Disabling devices on all Shopping Carts which prevent them from being removed from the Business Premises by locking the wheels or otherwise preventing the movement of the Carts.

(2) Any other system of equipment approved by the Director which physically contains Shopping Carts on the Business Premises.]

(n) "Recycling Center" means any facility that is used in the process of collecting, sorting, cleansing, treating, processing, reconstituting, or storing materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw

material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.]

SECTION 9-3104. UNLAWFUL POSSESSION AND ABANDONMENT OF CARTS. Any person who violates any prohibition of this section is guilty of a misdemeanor as provided in California Business and Professions Code Section 22435.2 [22435.3]. This section shall not apply to Carts removed as authorized by the [Cart] o[O]wner, pursuant to Business and Professions Code Section 22435.4, including for the purposes of maintenance, repair or disposal.

[It is unlawful to do any of the following acts, if a Cart has a permanently affixed sign as provided in Business and Professions Code Section 22435.1:

~~(a) — It shall be unlawful for any person to remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with the intent to temporarily or errantly deprive the owner or retailer of possession of the cart.~~

~~(b) — It shall be unlawful for a person to be in possession of any shopping cart or laundry cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(c) — It shall be unlawful for any person to e in possession of any shopping cart or laundry cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(d) — It shall be unlawful for any person to leave or abandoned a shopping cart or laundry cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(e) — It shall be unlawful for any person to alter, convert, or tamper with a shopping cart or laundry cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

~~(f) — It shall be unlawful to be in possession of any shopping cart or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.~~

(a) To remove a Cart from the Business Premises of a retail or commercial establishment with the intent to temporarily or permanently deprive the Cart Owner of possession of the cart.

(b) To be in possession of any Cart that has been removed from the Business Premises of a retail or commercial establishment with the intent to temporarily or permanently deprive the Cart Owner of possession of the Cart.

(c) To be in possession of any Cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the Cart Owner of possession of the Cart.

(d) To leave or abandon a Cart at a location other than the Business Premises of the retail or commercial establishment with the intent to temporarily or permanently deprive the Cart Owner of possession of the Cart.

(e) To alter, convert, or tamper with a Cart or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a Cart, with the intent to temporarily or permanently deprive the Cart Owner or retailer of the possession of the Cart.

(f) To be in possession of any Cart while that Cart is not located on the Business Premises of the retail or commercial establishment which owns the Cart, with the intent to temporarily or permanently deprive the Cart Owner or retailer of possession of the Cart.]

SECTION 9-3105. CART OWNER REQUIREMENTS. All owners of Carts shall comply with the requirements of this ~~S~~[s]ection.

(a) ~~Cart Identification Required. Every owner of shopping carts, as defined by this article, shall mark or cause the cart to be marked and identified conspicuously with: the name, address, and telephone number of the owner; and a notice that provides that the removal of the cart from the premises of the owner is a violation of State law. Every owner of more than twenty five (25) shopping carts shall also mark or cause the cart to be conspicuously marked to provide a name and toll free telephone number or a party that is responsible for retrieval of the cart. [All Carts must have a permanently affixed sign identifying the owner of the Cart and~~

notifying the public of the procedure utilized for authorized removal of the Cart from the Business Premises and that unauthorized removal or possession of the Cart is a violation of state and local law. The sign shall contain a valid telephone number or address for returning a Cart to its owner. All owners of Carts, including but not limited to commercial Cart Owners, shall be responsible for complying with this section and continuously maintaining, or causing to be maintained, the Cart Identification Sign so that all information is accurate and clearly legible.]

(b) Daily Cart Retrieval. All [Cart] e[O]wners, regardless of the number of Carts owned, shall [retrieve all Carts daily to] ensure that all [the] e[C]arts are secured from public access after close of business hours.

(c) Abandoned Cart Prevention Plan. Every [Cart] e[O]wner who provides [of] more than twenty-five (25) Carts to their customers shall develop, implement and comply with the terms and conditions of an Abandoned Cart Prevention Plan to prevent the unauthorized removal by any person of any Carts from the owner's [Business] p[P]remises and, if removed, to retrieve the e[C]art within forty eight (48) [three (3) business days] ~~hours~~ of the removal or notice of the removal. The Abandoned Cart Prevention Plan shall be submitted [to the Director in writing] on a renewable annual basis and shall include the following elements:

(1) Name of Business/Owner. The name of the owner and the business name, the physical address where the business is

conducted, [and the] name, address and [tele]phone numbers(s) of [where] ~~the on-site and off-site owner if different~~ [all notices and/or citations are to be sent.]

(2) Inventory of Carts. ~~A complete list of all carts maintained on the owner's premises.~~ [The number of Carts owned.]

(3) Community Outreach. A description of a community outreach process under which the [Cart] o[O]wner shall cause notice to be provided to customers that the removal of e[C]arts from the [Business] p[P]remises is prohibited and is a violation of state and local law. This notice may include, but is not limited to, flyers distributed at the premises, warnings on shopping bags, direct mail, announcements using intercom systems at the [Business] p[P]remises, [a] web site or other means demonstrated to be effective to the reasonable satisfaction of the [D]irector.

(4) Signs. Multi-lingual signs shall be placed prominently and conspicuously at all entrances and exits to the e[C]art o[O]wner's [Business] p[P]remises, including the p[P]arking a[A]reas, that provide a notice of ~~substantially~~ [containing] the following information: "REMOVAL OF SHOPPING CARTS FROM THESE PREMISES IS PROHIBITED BY STATE LAW (B & P §22435.2) AND WILL SUBJECT THE VIOLATOR TO A MAXIMUM FINE OF \$1000.00 AND/OR ONE YEAR IN JAIL."

(5) Physical [Containment System.] ~~Loss-Prevention Measures.~~ [Every Cart Owner shall provide] A[a] description of the specific measures that the [Cart] e[O]wner shall implement to prevent e[C]art removal from the [Business] p[P]remises [which meets the requirements specified in Section 9-3103(m).] These measures may include, but are not limited to, [an] electronic or other disabling devices on the [a] e[C]arts so they can not [it cannot] be removed from the [Business] p[P]remises, effective management practices [rental or sale of utility carts that can be temporarily or permanently used to transport purchases], security personnel to prevent removal, security deposit for use of [a] e[C]art, or other demonstrable measures acceptable to the Director that are likely to prevent Cart removal from the [Business] p[P]remises.

(6) Employee Training. A description of an ongoing employee training program that shall be implemented and designed to educate new and existing employees on the Abandoned Cart Prevention Plan and conditions contained therein no less frequently than annually.

(7) Multiple Businesses. [A Cart Owner who has two (2) or more businesses may] ~~Two or more businesses may collaborate and submit a single plan~~ [Abandoned Cart Prevention Plan.]

(d) Administration of the Abandoned Cart Prevention Plan. The Abandoned Cart Prevention Plan shall be administered under the provisions of this subsection.

(1) At the time the [Cart] o[wner] submits the Abandoned Cart Prevention Plan, the [Cart] o[wner] shall pay a fee for the review and administration of the plan as set forth in the Master Fee Schedule.

(2) The Director must approve or deny the Abandoned Cart Prevention Plan within forty-five (45) days of its submission. The plan may be denied on the grounds that it fails to include the elements required under this section [article] or the plan is inadequate or insufficient to fulfill these [the] required elements. If the plan is denied, the Director shall do so in writing and provide an explanation for the basis of his or her decision. The [Cart] o[wner] has twenty (20) days, subject to an extension by the Director, to submit a new plan or appeal the Director's decision to the Administrative Hearing Officer pursuant to the Administrative Hearing Ordinance in Article 5 of Chapter 1.

(3) Once a plan is approved, the [Cart] o[wner] has thirty (30) days to begin implementation. If, at any time after the plan has been approved, the Director determines that the plan is inadequate to fulfill the required elements of this section [article], the Director may, in writing, require the [Cart] o[wner] to modify or

submit a new plan. Such a modification may include, but is not limited to, requiring the [Cart] e[O]wner to identify a new person to retrieve abandoned e[C]arts or changing the physical loss prevention measure. If the Director[,]requires the [Cart] e[O]wner to modify or submit a new plan, the [Cart] e[O]wner shall be given a reasonable time to comply and shall be provided an appeal to the Administrative Hearing Officer pursuant to Chapter 1, Article 5. A new plan or modified plan is subject to a fee for its review as provided in the Master Fee Schedule.

(e) On-Site Cart Containment System Program Required.]

~~Mandatory Cart Retrieval. A plan for retrieval of abandoned carts, including the requirements of sub-section (b), and plans for recovery of all abandoned carts within forty eight (48) hours. This plan must include either a plan for the owner or the owner's employees to retrieve the carts or for the owner to have entered into a contract for cart retrieval services that is approved by the city. The plan for retrieval shall include providing to the city, the name and toll free phone number of the party who will be responsible for the retrieval of the carts which the city may publish. [Every Cart Owner shall operate and maintain an On-Site Cart Containment Program as defined in Section 9-3103(k). A Cart Owner may be exempted from this requirement if he or she provides proof of contracting with a qualified Cart Retrieval Service and submits information to the Director which demonstrates to the satisfaction of the Director that the~~

qualified Cart Retrieval Service will: (i) actively locate Shopping Carts within a five-mile radius of the Cart Owner's Business Premises; and (ii) respond to complaints from the public in a manner which results in the retrieval of Shopping Carts within twenty-four (24) hours after receiving complaints.] Whoever is identified by the [Cart] o[O]wner as the party responsible for retrieval of the e[C]arts shall be made available for e[C]art retrieval six (6) days a week, eight (8) hours a day or during the [Cart] o[O]wner's business hours, whichever is shorter.

(f) Violations. Violation of any provision of this section, including, but not limited to, failure to submit a plan or comply with a plan submitted, ~~or failure to conduct the required daily sweep,~~ is a violation of this article and the city may pursue any available remedy provided under the Code for a code violation, including the issuance of an administrative citation under Section 1-406.

SECTION 9-3106. CITY RETRIEVAL OF CARTS. The city may retrieve an a[A]bandoned e[C]art from public property (or private property with the consent of the property owner) in the following circumstances:

(a) Where the location of the s[S]hopping e[C]art will impede emergency services.

(b) When the a[A]bandoned e[C]art does not identify the owner of the cart [Cart Owner] as required in Section 9-3105.

(c) When the city has contacted either the [Cart] o[O]wner, ~~the owner's agent, or the entity contracted with by the owner under the~~

~~Abandoned Cart Prevention Plan and actually notified them him or her of the a[A]bandoned e[C]art and the e[C]art has not been retrieved [reclaimed] within seventy two (72) hours [three (3) business days].~~

~~SECTION 9 3107[8]. IMPOUNDMENT, RETRIEVAL, PAYMENT OF COSTS.~~

~~(a) If the city retrieves a cart, the city shall hold the cart at a location that is reasonably convenient to the owner of the shopping cart and open for [business] at least six (6) hours on [of each] business days.~~

~~(b) Where the city has not already provided notice to the owner that an abandoned cart needs to be retrieved, the city shall notify the owner that the city has impounded their cart and provide information as to the carts location, how the cart may be retrieved, that failure to retrieve the cart may result in the cart's sale or destruction, that the owner will be responsible for the city's costs, and that the city may fine owners after the city has picked up the owner's carts more than three times. In the case of a cart that does not provide adequate identification or markings to determine its owner the city shall only be required to notify the cart owner if the city obtains actual knowledge of the owner's identify.~~

~~(c) [(b)] If a cart is not retrieved [reclaimed] by its owner within thirty (30) days after the owner has received notice of the cart being impounded, or if the cart's owner cannot be determined, within thirty (30) days after the cart has been impounded, the cart may be sold or destroyed by the city or its agents and/or contractors.~~

~~(d) — [(c)] — The Director may issue an administrative citation of fifty dollars (\$50), under the procedures in Section 1-306, against any cart owner for any day, after the first three days, during any specified six-month period [for each occurrence in excess of three (3) during a specified six (6) month period] in which the city picks up a cart under the circumstances found in Section 9-1406 [9-3106]. [An occurrence includes all carts impounded in accordance with this article in a one (1) day period.]~~

~~(e) — [(d)] — No cart shall be released to its owner under the procedures in this section unless [until] the owner pays a fee for the city's actual costs to retrieve and store the cart. The city's costs to retrieve and store [the cart] may be provided [are set forth] in the Master Fee Schedule.~~

SECTION 9-3108[7]. IMMEDIATE RETRIEVAL [IMPOUND] BY CITY OF IDENTIFIED CARTS. Notwithstanding any other section of this article, the city may immediately retrieve [impound] a e[C]art that does have the appropriate markings and identification under Section 9-3105 [without complying with the three (3) day advance notice requirement] provided the city actually notifies the [Cart] e[O]wner within twenty-four (24) hours that the city has impounded the cart and provides information to the [Cart] e[O]wner where and how the e[C]art may be retrieved [reclaimed]. The city may not collect a fee or impose a fine, nor count a retrieval for purposes of a fine under Section 9-3107(d), if the cart retrieved by the [city under this section, is collected by the owner within three (3) business days of the actual notice to the owner by the city [The City shall hold

the Cart at a location that is reasonably convenient to the Cart Owner and open for business at least six (6) hours of each business day. Any Cart reclaimed by the Cart Owner within three (3) business days following the date of actual notice shall be released and surrendered to the Cart Owner at no charge, including a waiver of any impound and storage fees or fines. Any Cart reclaimed within three (3) business days shall not be deemed an occurrence for purposes of Section 9-3109(a). If the e[C]art is not retrieved [reclaimed by the Cart Owner] within three (3) business days by its owner, the city may collect its actual costs[,] and impose a fine[,] and dispose of the e[C]art consistent with the provisions of Section [9-3109]. 9-3107[(e)].

[SECTION 9-310[8]. POSSESSION OF CARTS BY RECYCLING CENTERS. Any Recycling Center that comes into possession of a Cart shall not sell or use the Cart for any purpose and shall comply with the requirements of this section as follows:

(a) Carts with Identification Signs. Any Recycling Center that possesses a Cart with Cart Identification Signs shall notify the Cart Owner of the Cart's location. After notifying the Cart Owner, the Recycling Center shall hold the Cart on its premises for three (3) business days to ensure that the Cart will not be sold or otherwise recirculated to the public. If the Cart is not reclaimed by the Cart Owner within three (3) business days after receiving notice, the Recycling Center shall notify the City's Police Department and arrange for the City to retrieve the Cart.

(b) Carts without Identification Signs. Any Recycling Center that possesses a Cart without a Cart Identification Sign shall notify the City's Police Department and arrange for the City to retrieve the Cart. The Recycling Center shall hold the Cart on its premises to ensure that the Cart will not be sold or otherwise recirculated to the public.

SECTION 9-31[9]. ENFORCEMENT AND REMEDIES. The City may exercise the following remedies:

(a) Pursuant to Business and Professions Code Section 22435.7, any Cart Owner that fails to retrieve its Abandoned Cart(s) within three (3) business days after receiving notice from the City, shall pay the City's administrative costs for retrieving the Cart(s) and providing the notification to the Cart Owner. Any Cart Owner who fails to retrieve Abandoned Carts in accordance with this Chapter in excess of three times during a specified six-month period shall be subject to a fifty dollar (\$50) fine for each occurrence. An occurrence includes all Carts owned by the Cart Owner that are impounded by the City for a one-day period.

(b) If a Cart is not retrieved by its owner within thirty (30) days after the Cart Owner has received notice of the Cart being impounded, including a failure to pay costs and fines, or if the Cart Owner cannot be determined, the Cart will be sold, destroyed or otherwise disposed of as the City sees fit.

(c) Following the city having retrieve more than ten (10) Carts in any thirty (30) day period or the issuance of more than ten (10)

administrative citations in any twelve (12) month period, the Director may require the Cart Owner to install a Physical Containment System.]

SECTION 9-3109[10]. SEVERABILITY CLAUSE. If any provision, paragraph, word or section of this article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

SECTION 9-3140[11]. CUMULATIVE REMEDY. Nothing herein is intended to limit the city from pursuing any other remedy available at law or in equity against any person or entity maintaining, committing, or causing a public nuisance or any other violation of the Code or State or Federal law.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_ day of \_\_\_\_\_, 2014.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2014  
Mayor Approval/No Return: \_\_\_\_\_, 2014  
Mayor Veto: \_\_\_\_\_, 2014  
Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Tracy N. Parvanian, Deputy

TNP:ns:elb [63100ns/elb/tnp] – Ord. 2/26/14

AGENDA ITEM NO. 1G-2  
COUNCIL MEETING 3/20/14  
APPROVED BY \_\_\_\_\_

DEPARTMENT DIRECTOR \_\_\_\_\_

CITY MANAGER \_\_\_\_\_



**DATE:** March 6, 2014

**FROM:** BRUCE RUDD, City Manager  
Interim Director, PARCS Department

**SUBJECT:** Introduction of recommended amendment to section 5-502 of Fresno Municipal Code relating to shopping carts in City parks

**RECOMMENDATION**

It is recommended that the City Council approve the amendment to the Fresno Municipal Code section 5-502.

**EXECUTIVE SUMMARY**

In response to concerns raised by residents and local businesses that use City parks, staff recommends an amendment to Section 5-502 of the Fresno Municipal Code (FMC) that would prohibit shopping carts in City parks. Currently, individuals wheel shopping cart(s) onto City park properties and (1) abandon the cart or multiple carts on park properties; (2) park carts in areas that are reserved for recreation and family activities; (3) use the carts and materials contained in the carts for illegal purposes; and (4) cause City parks to direct scarce resources to clean-up and collect abandoned carts. The proposed amendment is recommended in order to maintain a family-friendly environment at City parks.

**BACKGROUND**

The FMC currently regulates activities in City parks to maintain the peacefulness, aesthetics, and intended purposes of parks. However, it does not currently address the possession of shopping carts in parks.

If approved, the amendment to Section 5-502 of the FMC will make it unlawful, without written permission of the Parks, After School, Recreation & Community Services (PARCS) Director, to possess one or more shopping carts while in a City of Fresno park. By including this amendment in the FMC, the City will have the ability to provide appropriate enforcement and maintain a family-friendly environment at these locations.

**ENVIRONMENTAL FINDINGS**

N/A

Presented to City Council

Date 3/6/14

Disposition approved

B-16

**REPORT TO THE CITY COUNCIL**

(Intro) Adoption of Amendment to Fresno Municipal Code 5-502

March 6, 2014

Page 2

**LOCAL PREFERENCE**

N/A – Amendment only

**FISCAL IMPACT**

Nominal enforcement costs over and above the existing costs of enforcing related illegal activity in the parks.

Attachment: Fresno Municipal Code Section 5-502

10:30am  
3/6/14

February 27, 2014

The Honorable Steve Brandau  
Council President  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721



RECEIVED  
MAR 4 AM 11 14  
CITY CLERK, FRESNO CA

**RE: Shopping Cart Ordinance Amendments**

Dear Councilmember Brandau,

On behalf of the California Grocers Association, I write to express our comfort with the proposed amendments to the shopping cart ordinance on the March 6, 2014 agenda. We believe the proposed amendments represent best practices and processes which have been successfully implemented in other California jurisdictions. We appreciate the opportunity to work in cooperation with the city to address the challenges that stolen and subsequently misused or abandoned carts present retailers, residents, and the city.

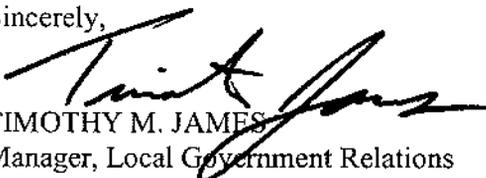
The California Grocers Association is a non-profit, statewide trade association representing the food industry since 1898. CGA represents approximately 500 retail member companies operating over 6,000 food stores in California and Nevada, and approximately 300 grocery supplier companies. Retail membership includes chain and independent supermarkets, convenience stores and mass merchandisers. CGA members include numerous grocery companies operating throughout Fresno.

When shopping carts are stolen and subsequently misused or abandoned not only is the retailer unlawfully deprived of their property, but neighborhoods are negatively impacted and, ultimately, the city must expend energy and effort to deal with the impacts— all three entities are victims. The initial ordinance along with the proposed amendments represents best practices to reduce shopping cart theft as well as deal with shopping carts which are stolen and subsequently misused or abandoned. In our experience coordinated efforts by both retailers and jurisdictions to limit shopping cart theft and subsequent misuse or abandonment are effective in controlling impacts.

Specific to the proposed amendments many grocers already have a shopping cart retrieval program as well as employ strategies to prevent shopping cart theft. It is important to note that many of the provisions, especially in regards to cart identification, city impoundment and enforcement, are consistent with existing state law which is appreciated. These amendments represent little to no additional impact for retailers already employing best practices in regards to shopping cart management.

Thank you for your consideration and the opportunity to work with the city cooperatively to address this issue. Please consider CGA a partner as you implement this ordinance.

Sincerely,

  
TIMOTHY M. JAMES  
Manager, Local Government Relations

cc: Members, Fresno City Council  
The Honorable Ashley Swearingin, Mayor, City of Fresno  
Mr. Bruce Rudd, City Manager, City of Fresno

**This page intentionally left blank.**

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 5-502 OF THE FRESNO MUNICIPAL CODE, RELATING TO PROHIBITED ACTS IN PARKS.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 5-502 of the Fresno Municipal Code is amended to read:

SECTION 5-502. PROHIBITED ACTS IN PARKS. Within the limits of any park, no person shall:

(a) Sell any tickets for a performance or activity or seek contributions for a performance or activity, whether conducted in the park or elsewhere, except with the prior written permission of the Director.

(b) Cut, break, injure, deface, or disturb any tree, shrub, plant, rock, building, cage, pen, monument, fence, bench, or other structure, apparatus, or property; or pluck, pull up, cut, take or remove any shrub, bush, plant, or flower, or mark or write upon any building, monument, fence, bench or other structure, or carry any flowers, shrubs, or branches into or through any park.

(c) Cut or remove any wood, turf, grass, soil, rock, sand, or gravel.

(d) Distribute any commercial handbills, or circulars, or post, place, or erect an advertising device of any kind.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: TNP

Page 1 of 5

Ordinance No.

(e) Swim, bathe, wade in, or pollute the water of any fountain, pond, lake, or stream, except that wading and swimming shall be permitted in pools provided for these purposes.

(f) Make or kindle a fire for any purpose, except at places provided for such purpose, unless prior special permission has been obtained from the Director.

(g) Camp or lodge at any place not set apart for that purpose without prior written permission of the Director.

(h) Ride, drive, or propel any vehicle elsewhere than on the paths, roads, or drives provided for such purpose with the exception of wheelchairs or other power-driven mobility devices used by persons with mobility disabilities, if those devices can be safely operated pursuant to City policy and consistent with the Americans with Disabilities Act.

(i) Indulge in riotous, threatening, indecent or immoral conduct, or abusive, threatening language or throw stones or missiles.

(j) Sell, or offer for sale, any merchandise, article or thing, whatsoever, without prior written permission of the Director.

(k) Fish in any park except in lakes provided for that purpose and at the times designated by the Park Superintendent.

(l) Play or practice golf or archery, or fly motor driven model aircraft in any park except in areas specifically designated and posted for such purpose.

(m) Play or bet at or against any game which is played, conducted, dealt or carried on with cards, dice, or other device, for money, chips, shell, credit, or other representative of value, or maintain or exhibit any gambling table or other instrument of gambling or gaming, or play any game prohibited by any provision of this Code.

(n) Practice, carry on, conduct, or solicit for any trade, occupation, business, or profession, without the written permission of the Director.

(o) Row, or sail on any pond, lake or waters in any boat or raft, excepting one provided for that purpose by the city or holder of boating privileges, without first obtaining the written permission of the Director.

(p) Enter, remain, stay, loiter, park or leave standing any vehicle between the hours of midnight and five a.m., of the following day, without the written permission of the Director.

(q) Take into, exhibit or use in any park any firearm, air gun, sling shot, firecrackers, torpedoes, rockets, or other fireworks, or other articles of like character.

(r) Go upon any lawn or grass plot, where prohibited by the Director, and which prohibition is indicated by legible signs.

(s) Open, expose, or interfere with any water or gas pipe, hydrant, stopcock, sewer, basin, or other construction, in any park.

(t) Use a sound amplification system which violates the City's Noise Ordinance as set forth in Chapter 10 of this Code.

(u) Possess a lighted or burning tobacco or tobacco-related product, including but not limited to cigars, cigarettes and pipes; use or chew tobacco or tobacco-related products; or dispose of any lighted or unlighted tobacco or tobacco-related product in any place other than a designated waste disposal container.

(v) Throw or place any paper, bottle, trash, or refuse matter of any kind whatsoever, or any other article or thing, upon the grounds in any public park or pedestrian mall, or in any of the fountains, lakes, ponds, or streams therein.

(w) Hunt, pursue, annoy, throw stones or missiles at, or molest or disturb in any way, any animal, bird or reptile.

(x) Remain in, or place anything in, any public place or way in a park so as to obstruct, or unreasonably hinder the use for which such place was designed.

[(y) Possess one or more shopping carts while in a park, without first obtaining the written permission of the Director.]

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2014  
Mayor Approval/No Return: \_\_\_\_\_, 2014  
Mayor Veto: \_\_\_\_\_, 2014  
Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Tracy N. Parvanian  
Deputy City Attorney

KBD:ns [62831ns/kbd] Rev 2/21/14

**This page intentionally left blank.**