



## AGENDA SUMMARY REPORT

**SUBJECT:** Discussion and Possible Introduction by Title Only of an Ordinance Adding Various Sections to the Ukiah City Code to Regulate Shopping Cart Containment and Retrieval

**DEPARTMENT:** Community Development

**PREPARED BY:** Darcy Vaughn

**ATTACHMENTS:**

[Attachment 1 - Shopping Cart Ordinance Amended \(Redline\)](#)

[Attachment 2 - Shopping Cart Ordinance Amended \(Clean\)](#)

[Correspondence Received - Johnny and Gloria Keyes](#)

**Summary:** The City Council will discuss and consider introducing an ordinance adding various sections to the Ukiah City Code to regulate shopping cart containment and retrieval by title only. While the proposed Shopping Cart Ordinance does require businesses using shopping carts to have measures in place for containment, the Ordinance also provides the Ukiah Police Department with a mechanism to enforce theft by requiring identifying signs and explicitly stating that removal, alteration, or possession of a shopping cart off-site is a misdemeanor under State law and a violation of the Ordinance.

**Background:** In 2015, in response to the proliferation of stolen and abandoned shopping carts in the City, the Council voted to form an ad hoc to develop a shopping cart ordinance, consisting of Vice Mayor Mulheren and Councilmember Brown. Ultimately, the Council elected not to proceed with an ordinance, instead directing Staff to work with the businesses to seek voluntary adoption of security measures to prevent shopping cart theft and to retrieve abandoned carts. Although Staff worked with businesses on this voluntary compliance program, cart

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**RECOMMENDED ACTION:** Staff asks that the City Council discuss and consider introducing an ordinance adding various sections to the Ukiah City Code to regulate shopping cart containment and retrieval by title only.

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**BUDGET AMENDMENT REQUIRED:** No

**CURRENT BUDGET AMOUNT:** N/A

**PROPOSED BUDGET AMOUNT:** N/A

**FINANCING SOURCE:** N/A

**PREVIOUS CONTRACT/PURCHASE ORDER NO.:** N/A

**COORDINATED WITH:** Vice Mayor Mulheren and Councilmember Brown

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Approved:

Sage Sangiacomo, City Manager

theft has persisted and abandoned carts have accumulated in particular areas of town, causing visual blight.

The shopping cart ad hoc disbanded pursuant to the Council's vote at their December 2, 2015 meeting. In recent months, however, the City's internal Homeless Working Group, along with Vice Mayor Mulheren and Councilmember Brown, has been discussing the continued development of an ordinance to address the issue of stolen and abandoned shopping carts. This group has reviewed and consulted with other jurisdictions that have successfully developed and implemented effective shopping cart ordinances. According to the California Grocers Association, approximately 120 jurisdictions in California have implemented ordinances related to shopping cart containment. That work has resulted in the Shopping Cart Ordinance that was presented to the Council at their meeting of February 21, 2018.

At the February 21, 2018 Council meeting, the Council received public comment from stakeholders including representatives of stores operating in the City that use shopping carts and from homeless population advocates. The Council opted not to introduce the Shopping Cart Ordinance at that time but instead directed staff to provide the Council with additional information on how the proposed Ordinance would be enforced and to work with store representatives to discuss and clarify a set of objective standards that would be used to evaluate the loss prevention component of the shopping cart plan required under the Ordinance. In this report, staff will provide the Council with additional information on how the Ordinance will be enforced. In addition, staff has consulted with store owners as directed and has implemented a number of changes to the Shopping Cart Ordinance (see Attachment 1 for a redline version and Attachment 2 for a clean version of the Ordinance) in order to clarify the standards by which the shopping cart plan will be evaluated.

**Discussion:** Summary of Changes in Response to Council Requests and Concerns:

The Council expressed concern that the proposed Shopping Cart Ordinance lacks an objective set of standards for the Administrator's evaluation of shopping cart plans and thus does not provide sufficient information for store owners to comply with the Ordinance and to submit a shopping cart plan that will be approved by the Administrator. Council requested that the standards for evaluation of shopping cart plans be clarified in the Ordinance. In response, staff removed the language in Section 2384.D of the Ordinance that stated that the Administrator may deny a shopping cart plan if, in the Administrator's opinion, the plan is insufficient to prevent cart removal. Staff also inserted language that clarifies that the Administrator may deny a plan that fails to meet the objective standards for addressing cart removal prevention that are set forth in Section 2384.C.5 of the Ordinance. Specifically, a store owner can opt to implement one of the particular removal prevention methods listed in Section 2384.B, use security personnel, require a security deposit for cart use, or implement any other cart removal prevention method demonstrated to be effective.

In addition, because of general concerns about the impact of the Ordinance requirements on small businesses in the community, staff has opted to remove the requirement of a fee for processing a submitted shopping cart plan, exception, or renewal in order to reduce the burden on local, independent stores complying with the Ordinance.

Finally, the Ukiah Police Department already has policies and procedures in place that would dictate how they must enforce the Shopping Cart Ordinance against individuals who are actively using offsite shopping carts to transport their personal possessions. In addition, to the extent that any other City department is retrieving abandoned shopping carts, those carts will not be in active use and will not contain the user's personal possessions and, as such, the City will not need additional procedures to guide storage and return of personal property. If any other City department does intend, during the course of an illegal campsite clean-up, to retrieve an offsite shopping cart that is being actively used to transport and store personal possessions, the City can then rely on the procedures already required in the Camping Ordinance Clean-Up Procedures. As such, staff has removed the provision that requires the City to adopt additional procedures specifically for shopping cart retrieval.

#### Summary of Enforcement Provisions:

At the February 21, 2018 meeting, the Council asked for an explanation of how the Shopping Cart Ordinance would be enforced.

As noted by the Ordinance, the Administrator (Director of Community Development) is authorized to enforce the provisions of the Ordinance that apply to store owners, while the Ukiah Police Department (“UPD”) is authorized to enforce the provisions of the Ordinance that apply to persons who remove, alter, possess offsite, or abandon offsite shopping carts in violation of the Ordinance.

Staff do not expect to require many enforcement actions against owners of stores operating in the City as, during the current outreach process to store owners and during the voluntary compliance period described in the Background section, the vast majority of store owners have been cooperative and interested in reducing shopping cart loss and abandonment. The enforcement measures that are expected to be taken by the Administrator would apply if a store owner refuses to cooperate or comply with the Ordinance. If shopping carts from a particular store are found on public property on seven or more occasions within the prior three-month period, the likely enforcement measure to be taken by the Administrator would either be to require that store to adopt a stricter shopping cart plan or to revoke a previously granted exemption and require the store owner now submit a shopping cart plan with a new proposal for loss prevention and retrieval. Should a store owner refuse to submit an exemption or shopping cart plan entirely, the Administrator would seek any administrative remedies available or perhaps seek an injunction against the store owner requiring them to abate the public nuisance caused by their refusal to comply with the Ordinance. In these same extreme cases, the Administrator could also seek to impose a fine for refusal to comply with the Ordinance, as set forth in Section 2385.C.4 of the Ordinance.

With regard to enforcement of the Ordinance by the UPD against persons who remove, alter, possess offsite, or abandon offsite shopping carts in violation of the Ordinance, the UPD already looks to City, State, and Federal law, as well as its own policies and procedures, to determine how to enforce laws dealing with seizure of stolen property, as well as with storage and return of abandoned property. The enforcement provisions of the Ordinance amend the City Code to make it easier for the UPD to enforce existing State law and the Ordinance itself by explicitly defining what constitutes a violation of the Ordinance: removing, altering, and possessing or abandoning a shopping cart off-site. In addition, the Ordinance provides the UPD with a mechanism for enforcing State law and the requirements of the Ordinance itself, i.e. the identifying sign requirement that both (1) triggers the operation of the State Business & Professions Code that designates removal and possession offsite of a shopping cart without express permission from the store owner a misdemeanor offense and (2) gives the UPD probable cause to identify the cart as property stolen from the store that can be seized and returned to the store. The UPD has consistently maintained during the process of drafting the Ordinance that the proposed enforcement provisions that deal with stolen carts in active use by a person should only be addressed by the UPD. If the UPD decides to remove a stolen shopping cart from the possession of someone who has illegally removed it from store premises, that cart would likely be taken as evidence of a crime, and would eventually be returned to the possession of the store. Any personal property removed from the cart that is seized as evidence of a crime could either be returned to the owner of that personal property or stored by the City until the person can reclaim the property. As noted previously, removal and possession of a shopping cart in violation of State law is a misdemeanor offense and violators may be subject to fine and imprisonment as noted in the Ordinance. These more severe penalties would likely apply only to individuals who are repeatedly cited for and found guilty of violation of the Ordinance and underlying State law.

#### Detailed Discussion:

The Shopping Cart Ordinance adds a number of sections to the divisions of the City Code regulating businesses and setting forth police regulations ensuring public peace and order. While the Ordinance is based in large part on the State’s existing regulatory regime to curb shopping cart theft and abandonment as set forth in the Business and Professions Code Section 22435 and following, it also introduces a number of specific requirements and prohibitions for business owners and individuals.

Business owners of establishments providing shopping carts for transport of goods on the business premises must permanently affix a sign to each cart which will (1) identify the business that owns the cart, (2) indicate a valid address or phone number for the business or owner for purposes of returning a cart to the business or owner, (3) notify the public that removal of the cart from the premises or unauthorized possession of the cart is a violation of state law and local ordinance, and (4) notify the public that there is no circumstance in which removal of the cart from the premises is authorized. These identification and notification elements are required by and set forth in the Business and Professions Code Section 22435.1 and the proposed Ordinance.

In addition, business owners are required to submit to the shopping cart program Administrator, designated in the Ordinance as the Director of Planning and Community Development, a shopping cart plan for retaining and retrieving that business's shopping carts. Once the business owner obtains approval of the shopping cart plan from the Administrator, the owner must also effectively implement the approved plan. If this Ordinance is introduced and adopted by the Council, each business operating within the City that provides shopping carts for use on the premises must submit a shopping cart plan to the Administrator within 90 days after the Ordinance goes into effect. Any new business operating after the Ordinance goes into effect must submit a shopping cart plan within 60 days of obtaining a business license. However, a business owner may, instead, request an exemption to the shopping cart plan requirement if the owner can demonstrate that the business already has effective restraints that prevent carts from being taken from the premises or from operating off-premises or otherwise secures all shopping carts when the business is closed.

A shopping cart plan must include the contact information for the business and its on-site manager, the number of carts on-site and the requirements for sign identification, and a description of how the business will notify the public that removal of a shopping cart from the premises is a violation of State and City law. In addition, the plan must describe the business's employee training program, to be held at least annually, to educate current and new employees about the business's shopping cart plan. Finally, the plan must describe how the business will prevent removal of shopping carts from the premises, how any shopping carts that are removed from the premises and found off-site will be retrieved, and how the plan will be modified if these measures do not prove to be effective.

Once a shopping cart plan is submitted, the Administrator has 30 days to either approve or deny the plan or request additional information. The business owner then has 30 additional days to either provide a more complete or adequate plan if this is the basis for denial, or to provide the additional information requested. Business owners may submit a modification to the shopping cart plan to address changed circumstances or ineffective provisions of the plan.

An accepted shopping cart plan or exemption is subject to renewal via written application by July 1st, every two years, without modification, if no more than 6 of the business's carts are found off-site within the previous 3 month period. The renewal may be denied, or an existing plan revoked, if (1) shopping carts from that business have been found off-site on 7 or more occasions within the prior 3 month period, (2) the owner violates the Ordinance, or (3) the owner knowingly makes false statements or fails to disclose material information in the plan application, renewal, or any required report.

As applicable to business owners, the Shopping Cart Ordinance prohibits failure to affix permanent, identifying signs to that business's shopping carts, failure to submit a shopping cart plan or request an exemption, and failure to comply with an approved shopping cart plan. As applicable to the public generally, the Shopping Cart Ordinance prohibits removing shopping cart from the business premises, possessing an off-site shopping cart, and altering, converting, or tampering with a shopping cart, including removing or defacing an identifying sign or a cart serial number.

The Shopping Cart Ordinance also sets forth enforcement requirements for the Ordinance and penalties for violation. A business owner is required to retrieve off-site carts within 3 business days of being notified of the off-site cart by the Administrator. A violation of this provision, or of any other provision of the Ordinance, is

subject to any enforcement procedures permitted by law, including plan revocation, administrative procedures for nuisance abatement, civil enforcement, revocation of a use or site development permit, or, in extreme cases, fines or prosecution as a misdemeanor under Business and Professions Code Sections 22435.2, 22435.3, or 22435.13, or the Ordinance. While the UPD will serve as the enforcement entity for the Ordinance for violations by members of the public, the Director of Planning and Community Development, in his role as Administrator under the Ordinance, will serve as the enforcement entity for violations of the Ordinance by Business Owners. The UPD is authorized to enforce violations of the Ordinance through fines or prosecution as a misdemeanor under Business and Professions Code Sections 22435.2, 22435.3, or 22435.13, or the Ordinance.

CEQA Compliance:

The proposed City ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15061(b)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect adverse physical change in the existing environment and because there is no possibility that it may have a significant adverse effect on the environment.