

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER
9.61 [SHOPPING CARTS] TO TITLE 9
[PUBLIC PEACE, SAFETY AND
MORALS] OF THE FORT BRAGG
MUNICIPAL CODE, REGARDING THE
REGULATION OF SHOPPING CARTS**

ORDINANCE NO. 942-2018

WHEREAS, the City of Fort Bragg, pursuant to its police power, may enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the abundance of abandoned shopping carts on both private and public property encourages crime, tends to reduce property values and may be injurious to the public health, safety, and welfare; and

WHEREAS, abandoned shopping carts are unsightly and constitute a public nuisance; and

WHEREAS, a shopping cart is the valuable property of the business owner and its removal from the premises is unlawful and undesired; and

WHEREAS, the prompt return of shopping carts is in the best interest of the City and the business owner; and

WHEREAS, abandoned shopping carts also obstruct pedestrian access, interfere with pedestrian and vehicular traffic, and emergency services; and

WHEREAS, the City Council of Fort Bragg finds the regulations set forth in this ordinance are necessary to protect the public safety and welfare of the residents of the City; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this ordinance.
2. Adoption of this ordinance is in the best interest of the City of Fort Bragg in that this ordinance regulates abandoned shopping carts, and in so doing, promotes the public

health, safety, and welfare of the residents of the City.

Section 2: Chapter 9.61 (Shopping Carts) of Title 9 (Public Peace, Safety and Morals) is hereby added to the Fort Bragg Municipal Code as follows:

CHAPTER 9.61 SHOPPING CARTS

9.61.010 PURPOSE – DECLARATION OF NUISANCE.

Many retail establishments provide shopping carts for the convenience of customers while shopping on the premises of such businesses. However, shopping carts removed from the premises of such businesses and left abandoned on public or private property throughout the city constitute a public nuisance and a potential hazard to the health and safety of the public. Lost, stolen or abandoned shopping carts on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots and other ways, interferes with pedestrian and vehicular traffic on public and private streets, and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this chapter or in any other manner provided by law. The purpose of this chapter is to set forth regulations to ensure that reasonable measures are taken by the owners and operators of businesses which provide shopping carts for the convenience of customers to either prevent the removal of shopping carts from business premises and parking lots, or provide for the prompt retrieval of lost, stolen or abandoned shopping carts, to complement and supplement provisions of State law, and to adopt local regulations to the extent not otherwise preempted by State statute.

9.61.020 DEFINITIONS.

For purposes of this chapter, the following words or phrases, when used in this chapter, shall have the following meanings ascribed to them:

ABANDONED SHOPPING CART. Any cart that has been removed without written permission of the owner or on-duty manager from the premises of the business establishment, regardless of whether it has been left on either private or public property. This provision shall not apply to carts that are removed for purposes of repair or maintenance.

ACTUAL NOTICE. A telephone call to the telephone number permanently affixed to the cart, as required by Section 9.61.030 (D), written noticed mailed by United States Postal Service (USPS) to address permanently affixed to the cart, as required by Section 9.61.030 (E), written notice delivered or mailed to the address as printed on the current City of Fort Bragg Business License for the business located at the address provided as required Section 9.61.030 (E), or an email from the City to the email address of the

business on file with the City.

CART. A basket which is mounted on wheels or a similar device provided by a business establishment for use by a customer for the purpose of transporting goods of any kind, including, but not limited to grocery store shopping carts. This definition shall exclude from enforcement under this chapter those devices which do not have a "basket" mounted on wheels in which goods can be placed for transport. This shall not apply to laundry carts typically found at self-service Laundromats.

CODE ENFORCEMENT SUPERVISOR. The Supervisor of the Code Enforcement Department or his/her designee.

CITY. The city of Fort Bragg, California.

CITY COUNCIL. The City Council of the City.

ENFORCEMENT PERSONNEL. Any police officer, code enforcement officer, or other City of Fort Bragg employee designated by the City Manager.

IDENTIFIED CART. A cart that has a permanently affixed sign that identifies, in accordance with Business and Professions Code Section 22435.1, the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the owner's premises; notifies the public that the unauthorized removal of the cart from the cart owner's premises or cart owner's parking area or the unauthorized possession of the cart, is a violation of State law; lists a valid telephone number or address for returning the cart to the owner or retailer.

OWNER. Any person or entity, both for profit or nonprofit, who in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes any cart available to customers or the public. For purposes of this chapter, owner shall also include the owner's onsite or designated agent that provides the carts for use by its customers.

PREMISES. The entire area owned, leased, or rented and utilized by the business establishment that provides carts for use by customers, including any parking lot or other property provided by the owner for customer parking.

SHOPPING CART RETRIEVAL SERVICE. A contract with a service to retrieve and return shopping carts to their respective owners. A contract with a commercial service to retrieve and return shopping carts to the owners which fails to meet minimum service requirements established by the Code Enforcement Supervisor is not a shopping cart retrieval service within the meaning of this chapter.

UNIDENTIFIED CART. A cart that is not an owner identified cart, or an identified cart of a retail establishment located outside the City.

9.61.030 REQUIRED SIGNS ON CARTS.

Every cart owned or provided by any business establishment in the City must have a sign permanently affixed to it that contains the following information:

- A. Identifies the owner of the cart or the name of the business establishment, or both;
- B. Notifies the public of the procedure to be utilized for authorized removal of the cart from the business premises;
- C. Notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City law;
- D. Lists a telephone number to contact to report the location of the abandoned cart for retrieval by the owner of the cart or designated shopping cart retrieval service; and
- E. Lists an address for returning the cart to the owner or business establishment.

It is unlawful for a business to provide or make available in its regular course of business, any cart that does not meet the requirements of this Section.

9.61.035 REQUIRED NOTICE BY OWNER.

- A. Signs shall be placed in prominent locations on the business premises that warn customers that unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City law.
- B. Employees shall be notified that unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City law and if they witness such removal they are instructed to contact the police department and report the incident.

9.61.040 UNAUTHORIZED CART REMOVAL, ABANDONMENT, ALTERATION, POSSESSION PROHIBITED.

It is unlawful to do any of the following if a cart has a permanently affixed sign as set forth in Section 9.61.030:

- A. To remove a cart from the business premises with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- B. To be in possession of any cart that has been removed from the business premises with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

- C. To be in possession of any cart with owner identification information removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- D. To leave or abandon a cart at a location other than the business premises with the intent to temporarily or permanently deprive the owner or retailer 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 owner identification information on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- F. To be in possession of any cart while that cart is not located on the business premises of a business establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

9.61.050 REMOVAL OF UNIDENTIFIED CARTS.

Once an unidentified cart is discovered on public or private property, the City or its authorized contractor may remove and impound said cart. If the removal is from private property, the City or its authorized contractor must first obtain the property owner's consent. The unidentified cart shall be marked with a tag indicating the date and location of its discovery and shall be stored for thirty (30) calendar days at a location selected by the City. Any claims for an unidentified cart shall be presented to the Code Enforcement Supervisor and shall be accompanied by proof of ownership of the cart. A person demonstrating proof of ownership of an unidentified cart stored by the City shall pay the City's nuisance abatement fee prior to the cart being released by the City.

9.61.060 REMOVAL OF IDENTIFIED CARTS.

- A. When the City identifies an abandoned cart, City staff will call the contact number listed on the permanently affixed signage and notify the owner of the location of the cart and that they have 48 hours to retrieve the abandoned cart. If the cart remains after 48 hours, the City, or its authorized contractor, may remove and impound any abandoned identified shopping cart from any public property, or from private property with the property owner's consent, provided that the identified cart is located outside the premises or parking area of the retail establishment which owns the cart. Nothing in this Section shall limit the right of a member of the public from calling the contact number listed on the permanently affixed signage to notify the owner of the location of the cart and request timely retrieval.
- B. In the event the City, or its authorized contractor, removes and impounds an identified cart, the City, or its authorized contractor, shall provide actual notice to

the owner of the identified cart or his or her representative within twenty-four (24) hours following the impound of the cart, indicating the location where the cart may be claimed. Nothing in this section shall limit the right of the City or a member of the public from returning the shopping cart to the address listed on the permanently affixed signage, in lieu of impounding the cart.

- C. Notwithstanding Subsection A of this Section, the City or its authorized contractor may remove and impound any identified cart from any public or private property in instances where the location of the cart may impede emergency services or present a health or safety risk.

9.61.070 DISPOSAL.

- A. Any identified cart not reclaimed from the City or its authorized contractor within thirty (30) days of receipt of a notice of impoundment by the owner of the cart, may be sold or otherwise disposed of by the City.
- B. In the event a cart remains unclaimed, is disposed of or destroyed, the City reserves the right to collect any applicable redemption fees and/or fines from the cart owner.

9.61.080 NUISANCE ABATEMENT COST RECOVERY AND/OR FINE.

- A. Cost Recovery. The City may recover from the owner of a shopping cart, actual costs incurred in impounding the shopping cart pursuant to California Business and Professions Code Section 22435.7(d).
- B. Fine. In addition to the payment of the City's costs as set forth in Subsection A, the owner of a shopping cart may also be subject to a fine in the maximum amount established by Business and Professions Code Section 22435.7(f), as may be amended from time to time, for each occurrence in excess of three during any six-month period for failure to retrieve identified carts in accordance with this chapter. An occurrence includes all identified carts impounded by the City or its authorized contractor in a one-day period.

9.61.090 REDEMPTION BY OWNER.

- A. A cart owner or authorized representatives may, upon prior appointment, inspect impounded carts to determine if any of the owner's carts are present and may redeem such carts upon proof of ownership and payment of all applicable cost recovery or administrative fines.
- B. An impounded cart may be redeemed by the owner at any time during normal business hours prior to disposal or destruction. The owner shall be entitled to receive the cart upon payment of all applicable cost recovery or administrative fines.

- C. Any impounded cart redeemed by the owner or authorized representative within three (3) business days following the date of actual notice of impoundment shall be released and surrendered to the owner or authorized agent at no charge.
- D. Any impounded cart redeemed by the owner or authorized representative within three (3) business days following the date of actual notice of impoundment shall not be deemed an occurrence for purposes of Section 9.61.080(B) of this chapter.
- E. Any impounded cart that is not redeemed by the owner or authorized representative within three (3) business days following the date of actual notice of impoundment shall be subject to any applicable cost recovery or administrative fines imposed pursuant to Section 9.61.080 of this chapter, commencing on the fourth (4th) business day following the date of the notice of impoundment.
- F. No cart shall be released to a person seeking to redeem an impounded cart, unless such person submits, to the sole satisfaction of the City, proof of ownership or right to possession of the impounded cart.
- G. Any release of a cart to a person deemed by the City to be entitled thereto, shall be an absolute defense of the City against any other person claiming to be entitled thereto.

9.61.100 APPEALS OF CART IMPOUND.

A person who can demonstrate that they are the owner of an impounded cart may appeal the imposition of the nuisance abatement cost recovery or administrative fine by presenting evidence that the cart removal and storage was not performed substantially in accordance with the provisions of this chapter. Appeals shall be made in writing to the Code Enforcement Supervisor within ten (10) calendar days of paying the cost recovery or fine. An office hearing will be held within thirty (30) calendar days of the receipt of a request for an appeal. The cart owner or authorized representative shall appear and be heard on the matter. If the Code Enforcement Supervisor determines that the shopping cart was not removed and stored in substantial accordance with the provisions of this chapter, the nuisance abatement cost recovery or administrative fine shall be refunded. The decision of the Code Enforcement Supervisor or his or her designee shall be final.

9.61.160 FAILURE TO PREVENT REMOVAL OF CARTS.

In the event that owner(s) fail to retrieve an abandoned shopping cart resulting in City or authorized contractor personnel picking up and storing shopping carts, shopping carts are not being retrieved within 48 hours, and/or the owner(s) have failed to affix the sign as required by Section 9.61.030, the owner may be required to install a standardized cart containment system with a wheel locking or stopping mechanism that is used in conjunction with an electronic or magnetic barrier along the perimeter of the

store premises. The wheel locking or stopping mechanism would activate when the shopping cart crosses the electronic or magnetic barrier.

9.61.170 MAINTENANCE REQUIREMENTS FOR CART DISABLING DEVICES.

If an owner has equipped carts with disabling devices, either voluntarily or by order from the City, the owner shall conduct regular maintenance to ensure the disabling devices are working properly. If at any time, the owner determines the disabling device installed on a cart is not working properly, the cart shall be pulled from circulation until it is repaired. The owner shall inspect, test, and repair all abandoned carts returned to the owner prior to making the returned carts available for use.

9.61.180 PENALTIES.

Any person who violates any provision of this chapter is subject to being charged with (i) a misdemeanor or infraction, and (ii) subject to a civil penalty of \$50 for every day of non-compliance in excess of three during a six-month period.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other civil, or administrative remedy or penalty authorized by, or set forth in the Fort Bragg Municipal Code. None of the penalties or remedies authorized by or set forth in the City's Municipal Code shall prevent the City from using other penalty or remedy under State statute which may be available to enforce this chapter or to abate a public nuisance.

Section 3. Repeal of Inconsistent Sections. Any provision of the Fort Bragg Municipal Code or appendices thereto inconsistent with the provisions of the Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to the extent necessary to effect the provisions of this Ordinance.

Section 4. Environmental Review. The Council finds that adoption of this ordinance is not a "project" pursuant to California Public Resources Code Section 21065 because this ordinance only adds a chapter in the code that regulates shopping carts, which will not have any significant effect on the environment, and there is no reasonable basis to conclude that this ordinance may cause a significant effect on the environment, thus no environmental review under the California Environmental Quality Act is required.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 6. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember _____ at a regular meeting of the City Council of the City of Fort Bragg held on September 10, 2018, and adopted at a regular meeting of the City of Fort Bragg held on September 24, 2018, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

**LINDY PETERS
Mayor**

ATTEST:

**June Lemos, CMC
City Clerk**

**PUBLISH: September 13, 2018 and October 4, 2018 (by summary).
EFFECTIVE DATE: October 24, 2018.**