

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BEAUMONT, CALIFORNIA
ADDING CHAPTER 8.55 “REGULATION OF SHOPPING CARTS”
TO THE BEAUMONT MUNICIPAL CODE**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BEAUMONT DOES
ORDAIN AS FOLLOWS:**

SECTION 1. CEQA. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 2. Severability. The City Council hereby declares that if any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 3. Violation of Prior Ordinances. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the City of Beaumont Municipal Code, committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 4. The City Council hereby amends Title 17, to add Chapter 8.55, entitled “Regulation of Shopping Carts” to the Beaumont Municipal Code, to read as specifically set forth in Exhibit “A”, which Exhibit is attached hereto and made a part hereof.

Chapter 8.55
REGULATION OF SHOPPING CARTS

Sections:

- 8.55.010 Declaration of Public Nuisance.
- 8.55.020 Definitions.
- 8.55.030 Cart Containment and Retrieval Plan.
- 8.55.040 Plan Submission and Approval.
- 8.55.050 Penalties for Failing to Submit or Implement a Plan.
- 8.55.060 Appeals.

- 8.55.070 Unlawful Acts by Persons.
- 8.55.080 Enforcement.
- 8.55.090 Shopping Cart Abatement.
- 8.55.100 Procedures for Abatement.
- 8.55.110 Fee.

8.55.010- Declaration of public 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. The proliferation of removed and abandoned shopping carts on public and private property causes blight 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 these reasons, such removed 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 division or in any other manner provided by law. The purpose of this division is to set forth regulations to ensure that reasonable measures are taken by the owners and operators of retail establishments to either prevent the removal of shopping carts from the premises, or provide for the prompt retrieval of removed 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.

8.55.020 Definitions.

Except as otherwise expressly set forth herein, the following words and terms as used in this Chapter shall have the following meanings:

- A. *Abandoned* means a shopping cart which is left unattended or discarded 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 or without the permission of the owner. For purposes of this Chapter, any shopping cart left unattended or discarded on any public property shall be presumed abandoned, and any shopping cart left unattended or discarded on any private property shall be presumed abandoned unless the owner or occupant of the private property is: (i) the owner, or an employee or authorized agent of the owner, entitled to possession of

said shopping cart, (ii) an officer, employee or agent of a cart retrieval service hired by the owner to retrieve shopping carts, or (iii) is enforcement personnel retrieving, storing or disposing of a cart pursuant to the provisions of this Chapter.

- B. *City* means the City of Beaumont, California.
- C. *Community development director* means the Community Development Director of the City.
- D. *Customer* means any person who enters the premises of a retail establishment.
- E. *Enforcement personnel* means any police officer or code enforcement officer employed by the City, or otherwise designated by the City Manager.
- F. *Owner* means any owner, manager, or operator of any retail establishment.
- G. *Parking area* means a parking lot or other property provided by a retail establishment for the use of customers of the retail establishment 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.
- H. *Parkway* means that area between the sidewalks and the curb of any street, and where there is no sidewalk, that area between the edge of the roadway and the adjacent property line. Parkway shall also include any area within a roadway which is not open to vehicular travel.
- I. *Planning commission* means the planning commission of the City.
- J. *Premises* means any building, property or other area upon which any retail establishment is conducted or operated in the City, including the parking area provided for customers of such retail establishment.
- K. *Public property* means and includes, but is not limited to, all that area dedicated to public use for public street purposes, civic purposes, roadways, parks, parkways, alleys, sidewalks, flood control channels and any other public right-of-way.
- L. *Removed* means a shopping cart which is removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart.
- M. *Retail establishment* means any business located in the City which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of

whether such business is open to the general public, or is a private club or business, or is a membership store.

- N. *Shopping cart* or *cart* means a basket or platform which 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.

8.55.030 - Cart containment and retrieval plan.

Except as otherwise provided in this Chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the City to prevent customers from removing shopping carts from the premises of such business and to provide for the retrieval of removed or abandoned shopping carts which have been removed from the premises of the retail establishment (the "plan"), and shall demonstrate compliance with all other purposes and provisions of this Chapter. The plan, at a minimum, shall include the following elements:

- A. *Owner information.* The name of the owner; the physical address where the retail establishment is conducted; and the name, address, and telephone number(s) of the owner and all on-site managers, including any changes of such persons.
- B. *Cart inventory.* The number of carts to be used or located on the premises.
- C. *Signs affixed to carts.* Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart; notifies the public that the unauthorized removal of the cart from the premises of the retail establishment, or the unauthorized possession of the cart, is a violation of state and local law, and lists a valid telephone number and address for returning the cart removed from the premises to the owner.
- D. *Notice to customers.* Written notice shall be provided to customers, that removal of shopping carts from the premises is prohibited by state law. The plan shall identify the specific measures to be implemented to comply with this notice requirement. In addition, signs shall be placed and maintained on the premises near all customer entrances and exits throughout the premises, including the cart storage areas, warning customers that removal of shopping carts from the premises is prohibited by state law.
- E. *Prevention measures.* A description of the specific measures that the business owner will implement to prevent removal of any cart from the business premises. Such measures

may include, but are not limited to, electronic or other disabling devices on any cart so they cannot be removed from the business premises; management practices; use of courtesy clerks to accompany customers and return carts to the inside of the business premises; use of security personnel to prevent removal; security deposits for cart usage; and other proven measures acceptable to the City that are likely to prevent removal of carts from the business premises.

- F. *New development requirements.* New developments and businesses of over 5,000 square feet in area or having more than ten carts shall be required to install a wheel lock containment system, or similar system, to the satisfaction of the Community Development Director prior to the issuance of a certificate of occupancy for the facility.
- G. *Mandatory cart retrieval operations.* The procedure by which the business owner or qualified cart retrieval service will search, find and return carts removed from the business premises. The cart retrieval operation must demonstrate that carts will be actively located within one mile of the business premises and respond to complaints from the public or notifications from City enforcement personnel in a manner which results in the retrieval of carts within 24 hours of receiving the notification. If a business owner contracts with a cart retrieval service, the retrieval service must be a City licensed and approved service and shall not place limits on daily loads or days per week to retrieve carts within the City. The owner shall provide written authorization to all retrieval personnel, which authorization shall be carried by each such person while performing cart retrieval services 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.
- H. *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 the plan and the provisions of state and local law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment. The plan shall expressly describe the employee training program.

- I. *Daily cart confinement.* All shopping carts located on the premises of the retail establishment (other than an establishment open for business 24 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 in the cart confinement area, as designated in the approved plan, until the commencement of the next business day. All shopping carts located on the premises of any retail establishment open for business 24 hours per day, other than carts then currently in use by a customer or patron, shall be collected by employees of the retail establishment and returned to the cart confinement area, as designated in approved plan, at least once per calendar day between the hours of 9:00 p.m. and midnight 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.
- J. *Collaboration with other businesses.* 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 plan.
- K. *Additional information.* Any other information deemed appropriate by the Community Development Director to ensure compliance with this Chapter and specified within the plan application.
- L. *Exemptions.* The requirements of this Chapter shall not apply to any retail establishment which provides a total of less than ten (10) shopping carts for use by customers of such business.

8.55.040 - Plan submission and approval.

- A. *New or relocated retail establishments.* Unless otherwise expressly exempt hereunder, each new retail establishment, and any existing retail establishment relocating to a different location with the City, shall submit a proposed plan complying with the requirements of this Chapter to the Community Development Director, and obtain approval thereof by the City, prior to the issuance of a business license or certificate of occupancy, whichever occurs first. Each proposed plan shall be accompanied by a processing and inspection fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Community Development Director unless accompanied by the fee established by the City Council.

- B. *Existing retail establishments.* Unless otherwise expressly exempt hereunder, each existing retail establishment shall submit a proposed plan complying with the requirements of this Chapter to the Community Development Director within 60 calendar days following the date of adoption of this ordinance. Each proposed plan shall be accompanied by a processing and inspection fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Community Development Director unless accompanied by the fee as established by the City Council.
- C. *Plan review and approval.*
- (1) Upon the filing of any proposed plan pursuant to this Chapter and receipt of the required processing fee, the Community Development Director shall review the proposed plan and either approve, revise or deny the proposed plan within 30 calendar days following the receipt thereof by the Community Development Director.
 - (2) If approved, the plan shall be implemented no later than 30 days from the date of notification to the owner of the approval. An inspection by enforcement personnel shall be made of the premises to confirm compliance at the conclusion of the 30-day period.
 - (3) The decision of the Community Development Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment. 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. The owner may appeal a decision of the Community Development Director in the time and manner provided in Chapter 1.16.
 - (4) The Community Development Director may deny a plan based upon any of the following grounds:
 - a. Implementation of the plan would violate provisions of the building, zoning, health, safety, fire, police or other municipal codes, or any county, state, or federal law that substantially affects public health, welfare or safety;
 - b. The plan fails to include all the information required by this Chapter;
 - c. The plan is insufficient or inadequate to deter removal of carts from the owner's premises;
 - d. The plan fails to address any special or unique conditions, due to the geographical location of the premises, as they relate to cart retention and prevention efforts;

- e. Implementation of the plan would violate a term or condition of another City policy or requirement of this Code;
 - f. The owner has knowingly made a false statement of fact, or omits a fact required to be revealed in an application for a plan, or in any addendum or report or other information required to be provided regarding the plan.
- (5) If the plan is rejected as incomplete or inadequate, the Community Development Director shall indicate the areas of incompleteness or inadequacy, and the owner shall have an additional 15 days in which to resubmit a corrected plan.
- D. *Plan modification.* At any time, subsequent to the Community Development Director's approval of a plan, the owner may request a modification of a previously approved plan to address a change in circumstances, an unanticipated physical or economic impact of the plan, or a need to modify an ineffective plan. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed amendment shall be accepted for filing and processing by the Community Development Director unless accompanied by the processing fee as established by the City Council. Any addition of carts to a business shall be reported to the Planning Department within 10 days.
- E. *Annual renewal.* Every owner that is subject to this Chapter shall annually update the plan on file with the community development department, on or before the annual renewal of the retail establishments' business license. The update shall include any changes, additions or modifications to the plan; or a declaration that the information contained in the plan is still accurate and in full force and effect. Notwithstanding the forgoing, retail establishments that have installed a physical containment system, (such as wheel locks or similar electronic devices), that has been found to effectively deter the removal of carts from the premises and subsequently being abandoned on public and private property, will be subject to renewal of the plan once every three years.

8.55.050 - Penalties for failing to submit or implement a plan.

Any owner that fails to submit a plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in this division shall be subject enforcement proceedings and penalties pursuant to Chapter 1.16 of this Code.

8.55.060 - Appeals.

Any owner aggrieved by any adverse decision of the Community Development Director pursuant to this division may appeal such decision pursuant to Chapter 1.16 of this Code.

8.55.070 - Unlawful acts by persons.

It is unlawful for any person to do any of the following acts:

- A. To remove a shopping cart from the premises of a retail establishment with the intent to temporarily or permanently deprive the owner of possession of the cart.
- B. To be in possession of any shopping cart while that cart is not located on the premises of a retail establishment, with the intent to temporarily or permanently deprive the owner of possession of the cart.
- C. To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner of possession of the cart.
- D. To abandon a shopping cart at a location other than the premises of the retail establishment with the intent to temporarily or permanently deprive the owner of possession of the cart.
- E. To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, or to remove a sign required by this division from a cart, with the intent to temporarily or permanently deprive the owner of possession of the cart.

8.55.080 -Enforcement.

- A. The provisions of this Chapter shall be administered and enforced by enforcement personnel. In the enforcement of this division, enforcement personnel may enter upon public property which the City owns or has a right to enter to examine a shopping cart or parts thereof, or to obtain information as to the identity of a shopping cart and remove, or cause removal of, a shopping cart, or parts thereof, declared to be a nuisance pursuant to this division. Enforcement personnel may enter upon public property which the City does not own or have a right to enter or private property to enforce the provisions of this division after obtaining

permission to enter from the owner or occupant of the property or after obtaining a warrant from a court of competent jurisdiction authorizing entry onto the property.

- B. The City may enforce violations of this division by use of administrative citations as provided in Chapter 1.17 or 8.32. of this Code, and by any other means authorized in this Code.

8.55.090 - Shopping cart abatement.

Upon discovering the existence of a removed or abandoned shopping cart which is not properly identified as belonging to a particular retail establishment, or parts thereof, on public or private property within the City, enforcement personnel shall have the authority to cause the abatement and removal thereof in accordance with the procedures described in this Chapter.

8.55.100 - Procedures for abatement.

- A. *Shopping carts with signs affixed.* A removed or abandoned shopping cart that has a sign affixed to it may be impounded by enforcement personnel pursuant to either of the following procedures.

- (1) Upon the discovery of a removed or abandoned cart, enforcement personnel give the owner of the cart notice of the cart's discovery and location. If three days after such notice is given the cart has not been retrieved by the owner or his or her agent, enforcement personnel may impound the cart. The owner of any cart impounded pursuant to this subsection (a)(1) shall be subject to any applicable fee or fine imposed pursuant to subdivision (e) or (f). A cart impounded pursuant to this subsection (a)(1) that is not reclaimed within 30 days of the owner's receipt of the notice provided for herein shall be disposed of pursuant to subsection (g).
- (2) Upon the discovery of a removed or abandoned cart, enforcement personnel shall immediately impound the cart and give the owner of the cart actual notice that the cart has been impounded within 24 hours of the impoundment. Any shopping cart impounded pursuant to this subsection (a)(2) that is reclaimed within three business days following the date of actual notice to the owner shall be released and surrendered to the owner or his or her agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (e) or (f) of this section. Any cart reclaimed within the three business day period shall not be deemed an

occurrence for the purposes of subdivision (f) of this section. The owner of any cart impounded pursuant to this subsection (a)(2) that is not reclaimed within three business days following the date of actual notice to the owner shall be subject to any applicable fee or fine imposed pursuant to subdivision (e) or (f) commencing on the fourth business day following the date of the notice. Any cart not reclaimed within 30 days of the actual notice provided to the owner of the cart shall be disposed of pursuant to subsection (g).

- B. *Shopping carts without signs affixed.* A removed or abandoned shopping cart that does not have a sign affixed to it identifying the owner may be impounded immediately upon its discovery by enforcement personnel. Carts impounded pursuant to this subsection (b) may be disposed of immediately.
- C. *Emergency removal.* Notwithstanding subsection (a) of this section, a removed or abandoned shopping cart with a sign affixed to it identifying the owner may be impounded immediately if the location of the shopping cart will impede emergency services. Enforcement personnel shall give the owner or his or her authorized agent notice of the impoundment within three business days of the impoundment. The owner of any cart impounded pursuant to this subsection (c) shall be subject to any applicable fee or fine imposed pursuant to subdivision (e) or (f). Any cart not reclaimed within 30 days of the date the owner of the cart receives notice of its impoundment shall be disposed of pursuant to subsection (g).
- D. *Impound location.* Any shopping cart that is impounded by the enforcement personnel pursuant to this division shall be held at a location that is reasonably convenient to the owner of the shopping cart and open for business at least six hours of each business day. The City's corporate yard is centrally located within the City and open at least six hours each business day, and the City finds that holding impounded shopping carts at the corporate yard satisfies the requirements of this subsection.
- E. *Recovery of costs.* The City Council may provide by resolution for the recovery of the actual cost in providing the service of impounding shopping carts.
- F. *Fines.* In addition to the fee for the service of impounding shopping carts, a fine in the amount of \$50.00 is hereby imposed upon each owner of a shopping cart for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this Chapter in a one-day period. This subsection does not apply to and does not limit or

prohibit any other fee, fine or penalty that the City may charge for violation of the other provisions of this Chapter.

- G. *Disposal of carts.* Any shopping cart not reclaimed from the City within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the City as determined by City in its sole and absolute discretion. The preferred method of disposal shall be recycling.
- H. *Actual notice.* A notice, as required by this division, may be served personally upon the designated owner identified in a sign permanently affixed to a shopping cart or by mail as prescribed by California Code of Civil Procedure Section 1013.

8.55.110 - Fee.

The City Council has set by resolution processing and inspection fees for the submissions required by this Chapter at the cost recovery fees authorized by Resolution 2017-48. . The fees set by the resolution of the City Council with regards to this section shall not exceed the amount reasonably necessary for the City to perform the services provided.

SECTION 8. Effective Date and Publication. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within 15 days after adoption in accordance with Government Code Section 36933. This Ordinance shall take effect 30 days after adoption in accordance with Government Code Section 36937.

NOW, THEREFORE, BE IT ORDAINED the City Council of the City of Beaumont, California, approves an amendment to the City Code.

INTRODUCED AND READ for the first time and ordered posted at a regular meeting of the City Council of the City of Beaumont, California, held on the 7th day of July 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Beaumont, California, held on the 7th day of July 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

Rey Santos, Mayor

Attest:

Steven Mehlman, City Clerk

Approved as to form:

John O. Pinkney, City Attorney