

CITY COUNCIL ORDINANCE NO. 10-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE ADDING CHAPTER 7 TO TITLE 4, DIVISION 11 OF THE IRVINE MUNICIPAL CODE TO ESTABLISH REGULATIONS RELATING TO SHOPPING CARTS

CHAPTER 7: SHOPPING CART RETRIEVAL AND CONTAINMENT BY OWNERS

Section 4-11-701. Purpose.

The purpose of this chapter is to establish regulations to ensure that reasonable measures are taken by the owner and operators of businesses which provide shopping carts for the convenience of customers to prevent the removal of shopping carts from business premises and parking lots, and to 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.

Section 4-11-702. 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 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 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.

Section 4-11-703. Definitions.

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

"Cart" or "shopping cart" means a basket that is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. The term "shopping cart" or "cart" includes a laundry cart.

“Chief Building Official” means the Chief Building Official of the City of Irvine.

“City” means the City of Irvine, California or its designated representative.

“Enforcement personnel” means any police officer or code enforcement officer employed by the City of Irvine.

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

“Lost, stolen or abandoned shopping cart” means a shopping cart which is either (1) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (2) left unattended, discarded, or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (a) is the owner, or an employee or authorized agent of the owner, entitled to possession of the shopping cart, (b) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, (c) is an enforcement officer retrieving, storing or disposing of said cart pursuant to the provisions of Section 4-11-709 C of this chapter, or (d) has written permission or consent to be in possession of the shopping cart from the owner entitled to possession of the shopping cart.

“Owner” means any owner, manager, or operator of any retail establishment that provides shopping carts.

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

“Premises” means any building, property or other area upon which any retail establishment business is conducted or operated in the City of Irvine, including the parking area provided for customers.

“Retail establishment” means any business that provides shopping carts located in the City of Irvine, regardless of whether the business is advertised or

operated as a retail or wholesale business, and regardless of whether the business is open to the general public, or is a private club or business, or is a membership store.

Section 4-11-704. Cart retrieval plan.

A. Except as otherwise provided in this chapter, every owner who provides shopping carts to customers to 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 provide for the retrieval of lost, stolen or abandoned shopping carts which have been removed from the premises of the retail establishment (the "cart retrieval plan"). The cart retrieval plan, at a minimum shall include the following elements:

1. 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 or the retailer or both, including store name, store address, and phone number; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises to the owner or retailer.
2. Notice to Customers. Written notice shall be provided to customers that removal of shopping carts from the premises is prohibited by state law. Such notice may be provided in the form of notice printed on shopping bags, direct mail, website notices, or any other means demonstrated to be effective. The cart retrieval plan shall identify the specific measures to be implemented to comply with this notice requirement. In addition, conspicuous signs shall be placed and maintained on the premises near all customer entrances and exits and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by state law.
3. Retrieval Personnel. The owner shall provide personnel for purposes of the retrieval of lost, stolen or abandoned shopping carts. Such personnel may be either employees of the business or one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both. The cart retrieval plan shall either (i) identify the number of employees who will be assigned such cart retrieval duties, the number of total hours per week that each assigned employee will perform such services (in addition to any on-premises retrieval duties to which such employee may be assigned), and the training each of such personnel has received or will receive concerning the retrieval of lost, stolen or abandoned shopping carts, or (ii) include a copy of each contract with a cart retrieval service (other than confidential financial

information which may be redacted from the contract). For purposes of this Section 4-11-704, those persons identified in the cart retrieval plan as providing cart retrieval services, whether employees of the business or independent contract services, shall be referred to in this section as "retrieval personnel."

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.

4. Prompt Retrieval of Carts. The owner shall provide retrieval personnel in sufficient number to assure that all public streets within a minimum two mile radius of the premises of the retail establishment are patrolled no less often than every 24 hours, and all bus stops within a minimum one mile radius of the retail establishment are patrolled no less often than every 24 hours or twice every 24 hours where required by the Chief Building Official, and each lost, stolen or abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found. The cart retrieval plan shall identify: (i) the streets and bus stops which will be patrolled as required by this subsection; (ii) the manner, frequency, and times of such patrols; and (iii) the procedures to be employed by the retail establishment to identify and retrieve any lost, stolen or abandoned shopping carts. The cart retrieval plan shall identify the number of trucks, hours of operation of the retrieval personnel, and such other information as reasonably required by the City to assure that the owner is devoting sufficient resources to cart retrieval operations to comply with the provisions of this Section 4-11-704 and the approved cart retrieval plan.
5. Monthly Reports. The owner shall provide, or cause to be provided by each cart retrieval service under contract with the owner, on or before the twentieth day of each month, a written report to the Chief Building Official specifying the number of lost, stolen, or abandoned shopping carts retrieved by retrieval personnel during the preceding calendar month period.
6. 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 at the cart confinement area on the premises as designated in the cart retrieval 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 on the premises as designated in the cart retrieval plan at least once per calendar day between the hours of 9:00 p.m. and 12:00 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.

B. Exemptions. The requirements of this Section 4-11-704 shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment complies with the requirements of Section 4-11-705 of this chapter.

Section 4-11-705. Cart containment plan.

A. 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 without authorization of the owner (the "cart containment plan"). The cart containment plan, at a minimum, shall include the following elements:

1. 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 or the retailer or both, including store name, store address and phone number; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises of the business, or the unauthorized possession of the cart, is a violation of state law, and lists a valid telephone number or address for returning the cart removed from the premises to the owner or retailer.
2. Notice to Customers. Written notice shall be provided to customers that removal of shopping carts from the premises is prohibited by state law. Such notice may be provided in the form of flyers distributed on the premises, warnings printed on shopping bags, direct mail, website notices, or any other means demonstrated to be effective. The cart containment plan shall identify the specific measures to be implemented to comply with this notice requirement. In addition, conspicuous signs shall be placed and maintained on the premises near all customer entrances and exits and throughout the premises, including the parking

area, warning customers that removal of shopping carts from the premises is prohibited by state law.

3. **Physical Measures.** Specific physical measures shall be implemented and maintained by the owner to prevent, deter or impede the removal of shopping carts from the premises. Such physical measures shall be specifically identified in the cart containment plan and may include, but are not limited to, the following: disabling devices installed and maintained on carts, maintaining one or more designated employees assigned the responsibility to deter or stop customers from removing shopping carts from the premises, preventing any shopping carts from being taken outside the confines of building exits unless accompanied by an employee of the business, physical barriers, including devices placed on the carts themselves, which effectively prevent transporting shopping carts into the parking area or off the premises while maintaining accessible paths of travel compliant with state Title 24, Part 2, California Building Code and federal Americans with Disabilities Act, requiring security deposits by customers for cart use, or rental or sale of carts to customers. Written approval of the property owner shall be provided to the City for any physical measures required by the plan to be installed on the property of the retail shopping center or multi-store complex in which the retail establishment is located.
4. **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 at the cart containment area on the premises as designated in the cart containment plan until the commencement of the next business day. All shopping carts located on the premises of any retail establishment open for business 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 on the premises as designated in the cart containment plan at least once per calendar day between the hours of 9:00 p.m. and 12:00 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.
5. **Employee Training.** The owner of the retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of the cart containment plan and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment. The cart containment program shall expressly describe the employee training program.

B. 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 cart containment plan.

C. Exemptions. The requirements of this Section 4-11-705 shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment is in compliance with the Cart Retrieval Plan requirements of Section 4-11-704 of this chapter.

Section 4-11-706. Incentives for plan compliance.

Notwithstanding any other provision of this Code to the contrary, any existing retail establishment which (i) provides a total of more than ten shopping carts for use by customers of such business and (ii) submits and obtains the approval of a cart retrieval or containment plan within the time specified in Section 4-11-707 of this chapter, shall be exempt from the payment of any plan processing fee otherwise required by Section 4-11-707 of this chapter to implement such cart retrieval or containment plan.

Section 4-11-707. 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 within the City, shall submit a proposed plan complying with the requirements of either Section 4-11-704 or Section 4-11-705 of this chapter to the Chief Building Official, and obtain approval thereof by the City, prior to providing any shopping carts to customers of the retail establishment. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Chief Building Official unless accompanied by the processing 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 Section 4-11-704 or Section 4-11-705 of this chapter to the Chief Building Official within 180 calendar days following the date of adoption of this chapter. No such retail establishment existing on the date this chapter is adopted shall provide or continue to provide shopping carts for the use of its customers after the 360th calendar day following the date of adoption of this chapter without a plan approved by the City and determined to conform to the requirements of either Section 4-11-704 or Section 4-11-705 of this chapter; provided, however, such date shall be extended for the period, if any, during which an appeal of the denial of such plan is pending pursuant to the provisions of this chapter. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be

accepted for filing and processing by the Chief Building Official unless accompanied by the processing fee as established by the City Council.

C. Plan Review and Approval. Upon the filing of any proposed plan pursuant to either Section 4-11-704 or Section 4-11-705 of this chapter (collectively referred to herein as the "plan"), and receipt of the required processing fee, the Chief Building Official shall review said proposed plan and either approve or deny said proposed plan within 30 calendar days following the receipt thereof by the Chief Building Official. If the proposed plan complies with each of the applicable requirements of this chapter, the Chief Building Official shall approve the plan, otherwise the proposed plan shall be denied. The decision of the Chief Building Official shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. The notice of decision of the Chief Building Official shall be deemed given to the owner on the date of personal delivery or on the date of the fax transmission to the owner; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the owner on the third day following the date of deposit in the course of transmission with the United States Postal Service, first-class mail, postage prepaid. If the proposed plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed plan was denied. A decision of the Chief Building Official may be appealed by the owner in the time and manner provided in Section 4-11-708 of this chapter.

D. Amendments by Owner. The owner of any retail establishment which has an approved plan conforming to the requirements of this chapter may, at any time, submit a proposed amendment to the approved plan which amendment shall be processed in accordance with the procedure provided for a proposed plan as set forth in subsection C of this section. 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 Chief Building Official unless accompanied by the processing fee as established by the City Council.

E. Revocation or amendment by City.

1. Grounds. An approved plan may be revoked by the City upon any of the following grounds:
 - a. The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of said approved plan and has failed to correct said violation(s) for a period of at least 30 calendar days following the date of receipt of written notice of such violation(s) from the City; or

- b. The owner of any retail establishment with an approved plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this chapter and has failed to correct said violation(s) for a period of at least 30 calendar days following the date of receipt of written notice of such violation(s) from the City; or
 - c. The cart containment plan, as approved, is inadequate to reasonably prevent the removal of shopping carts from the premises of the retail establishment; or
 - d. The cart retrieval plan, as approved, is inadequate to ensure the prompt retrieval of lost, stolen or abandoned shopping carts removed from the retail establishment.
- 2. Order to Show Cause. If at any time following the approval of a plan, the Chief Building Official obtains information or evidence that any of the grounds set forth in paragraph E.1 above may exist, the Chief Building Official shall issue a written order to show cause as to why the approved plan should not be revoked and schedule a hearing thereon which hearing shall not be less than 15 calendar days, nor more than 30 calendar days following the date such order to show cause is given to the owner of the retail establishment. The order shall state the grounds upon which it is proposed to revoke the approved plan and shall include the information and evidence, or a summary thereof, upon which such order was issued.
- 3. Notice of Hearing. Notice of the hearing on any order to show cause issued pursuant to this section shall be given in the same time and manner provided in subsection C of this section for notice of decisions.
- 4. Conduct of Hearing. The hearing shall be conducted informally and the legal rules of evidence shall not be applicable. The owner and the City shall each have the opportunity to present evidence and witnesses. The parties may each be represented by legal counsel or other representatives of their choice. The City shall bear the burden of proof to establish, by a preponderance of the evidence that grounds exist to revoke the plan. The Chief Building Official, at his or her discretion, and as an alternative to revocation, may consider amendment of the plan if the grounds for the order to show cause are solely the inadequacy of the approved plan.
- 5. Decision of Chief Building Official. Within 15 calendar days following conclusion of the hearing, the Chief Building Official shall render his or her decision in writing either dismissing the proceedings or revoking or amending the plan. If the plan is revoked or amended, the decision shall

specify the findings of fact and the reasons for such action. If the plan is amended, the decision shall also specify the amendment(s) to the plan.

6. Notice of Decision. Notice of the decision of the Chief Building Official shall be given in the time and manner specified in subsection C above.
7. Appeal of Decision. The decision of the Chief Building Official shall be subject to appeal by the owner within the time and manner specified in Section 4-11-708 of this chapter. In the absence of a timely appeal, the decision of the Chief Building Official shall be final and conclusive.

Section 4-11-708. Appeals.

A. Filing of Appeal. Within ten working days from the date of a notice of decision by the Chief Building Official pursuant to this chapter, any owner affected by any adverse decision of the Chief Building Official pursuant to this Chapter may appeal such decision to the Zoning Administrator; such appeal shall be in writing and shall state the objections and the name and address of the person filing the appeal. The notice of decision shall be deemed given on the date as provided in Section 4-11-707 C of this chapter. The appeal shall be filed with the City Clerk and shall be presented by the Clerk to the Zoning Administrator at the next regular meeting of the Zoning Administrator following the date of filing. The Zoning Administrator, at such meeting, or at such meeting to which the matter may be continued by the Zoning Administrator, shall hear and pass upon the appeal.

B. Within ten working days from the date of the decision of the Zoning Administrator, any owner affected by said decision may appeal to the City Council the determination of the Zoning Administrator; such appeal shall be in writing and shall state the objections and the name and address of the person filing the appeal. The appeal shall be filed with the City Clerk and shall be presented by the Clerk to the City Council at the next regular meeting of the City Council following the date of filing. The City Council, at such meeting, or at such meeting to which the matter may be continued by the City Council, shall hear and pass upon the appeal.

C. Upon the hearing of the appeal, the City Council shall consider all objections or protests, if any, to the decision of the Zoning Administrator and may continue the hearing. Upon conclusion of the hearing, the City Council by resolution may determine whether to affirm, revise or modify the decision of the Zoning Administrator. The decision of the City Council on the appeal shall be final and subject to judicial review in accordance with California Code of Civil Procedure section 1094.6.

Section 4-11-709. Violations and Enforcement.

A. Except as otherwise expressly provided in this chapter, it shall be unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, any shopping carts to customers of said retail establishment without an approved cart retrieval plan or cart containment plan as required by either Section 4-11-704 or Section 4-11-705, respectively, of this chapter; provided, however, this prohibition shall not apply to any retail establishment, or the owner thereof, which provides a total of ten or less shopping carts for the use of customers of said retail establishment.

B. It shall be unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, to customers of said retail establishment any shopping cart which does not have a sign permanently affixed thereto containing all of the information specified in Section 22435.1 of the Business and Professions Code of the State of California.

C. In enforcing the provisions of this Section, the Chief Building Official or his representatives, and the City's officers charged with the enforcement of the law, may enter onto private property as allowed by law, or with the consent of the property owner, or by warrant, to survey or examine a shopping cart or parts thereof, or to obtain information as to the identity of a shopping cart owner, and to remove, or cause the removal of, a shopping cart, or parts thereof consistent with state law.

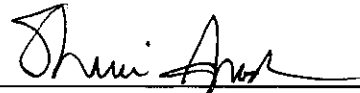
D. Any owner, operator, manager, employee and/or independent contractor of a shopping cart owner violating or permitting, counseling, or assisting the violation of any of these provisions regulating shopping carts, shall be guilty of a misdemeanor in accordance with Section 4-13-103 of this code.

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsection, subdivision, sentence, clause, phrase, or portions thereof be declares invalid or unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 23rd day of March, 2010.


MAYOR OF THE CITY OF IRVINE

ATTEST:


CITY CLERK OF THE CITY OF IRVINE

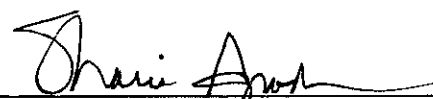
STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 9th day of March, 2010, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 23rd day of March 2010, by the following vote:

AYES: 3 COUNCILMEMBERS: Agran, Krom and Kang

NOES: 1 COUNCILMEMBERS: Choi

ABSENT: 1 COUNCILMEMBERS: Shea


CITY CLERK OF THE CITY OF IRVINE