

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF PORTERVILLE ADDING
ARTICLE X TO CHAPTER 18 OF THE PORTERIVLLE MUNICIPAL CODE REGARDING
NUISANCES RELATED TO SHOPPING CARTS

WHEREAS: The City of Porterville has seen a significant increase in recent years in the use of shopping carts outside of the premises of the business that they serve; and

WHEREAS: Such carts have resulted in increased littering, have been dumped in the various water channels throughout the community, and have been the subject of multiple fires; and

WHEREAS: Such littering and fire activities are found to be a nuisance to the people of Porterville; and

WHEREAS: On July 5, 2018, the Environmental Coordinator made a preliminary determination that the project has no potential to result in an environmental impact and is therefore not subject to review under the California Environmental Quality Act; and

WHEREAS: On July 17, 2018, the City Council held a public hearing to consider adding Article X to Chapter 18 of the Porterville Municipal Code to regulate the place and manner of use of shopping carts, and all comments received were duly considered.

NOW, THEREFORE, BE IT ORDAINED: That the City Council of the City of Porterville does hereby adopt an ordinance adding Article X to Chapter 18 of the Porterville Municipal Code as it relates to reduction of nuisance and blight related to shopping carts, and prohibiting the removal of shopping carts from the premises of the business that they serve, as follows:

18-100 Findings and purpose.

The City Council finds that abandoned shopping carts on public and private property create conditions that are unsightly, interfere with pedestrian and vehicular traffic, accumulate over time on public and private property, promote blight, resulting in reduction of property values and deterioration of neighborhoods, are detrimental to the public health, safety and welfare, and constitute a public nuisance. This chapter is intended to ensure that measures are taken to prevent the removal of the shopping carts from the owner's premises and facilitate the retrieval of abandoned shopping carts in a manner consistent with state law.

18-101 Definitions.

"Abandoned cart" shall mean any cart that has been removed, without the written consent of the owner, from the owner's business premises or parking area of the retail establishment on which the cart owner's business premises are located, is located on either public or private property, and is no longer in the possession or under the physical control of the person who

removed the cart. A cart abandoned by a person, other than the owner, shall not constitute a relinquishment of ownership of the cart by the owner.

"Business premises" means the interior of a cart owner's commercial establishment, adjacent walkways, any loading area, and parking areas, as defined herein. The owner's business premises may include a multi-store shopping center with shared areas of parking and public access. The entire area owned, rented, leased or utilized by a business establishment that provides shopping carts for customer use, including parking areas.

"Cart". A basket or platform which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind or 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. This includes, but is not limited to, laundry, grocery or shopping carts.

"Cart identification sign" means a sign or engraved surface which is permanently affixed to a shopping cart containing all of the information specified in Section 22435.1 of the California Business and Professions Code.

"Cart owner" means the owner or operator of a commercial establishment which provides carts for use by its customers for the purpose of transporting goods of any kind. Any person, business establishment or entity that owns, possesses or has the power to make a shopping cart available to customers. For the purpose of this chapter, OWNER includes, but is not limited to, the store owner, manager, on-site manager, on-duty manager or other designated agent of a business establishment providing shopping carts for customer use.

"Cart removal warning" means a placard, sign or painted text which meets the requirements specified in Section 18-106.

"Cart retrieval service" means a third party commercial service in the business of retrieving and returning shopping carts.

"Director" The City Manager or his or her designee.

"Enforcement Officer" means any officer or employee of the city designated with the authority to enforce the applicable provisions of the Porterville City Code.

"Individual cart identification number" means a number unique to each cart owned or provided by a cart owner.

"On-site cart containment program" means one or more of the following measures:

1. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.
2. An on-site security guard to deter customers who attempt to remove carts from the business premises.

3. Bollards and chains around the business premises to prevent cart removal, if permitted by the applicable zoning and the site plan, and if approved by the fire marshal.
4. Obtaining a security deposit from customers for the on-site use of shopping carts.
5. The rental or sale of carts that can be temporarily or permanently used for the transport of goods.
6. Any other measure approved by Community Development as a means to contain carts on the premises.

"Parking area" means a parking lot or other property provided by a commercial establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center, "parking area" includes the entire parking area used by or controlled by the complex or center.

"Physical containment system" means one of the following, as approved by the Director of Community Development:

1. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.
2. Any other system of equipment approved by the Community Development Director or designee which physically contains shopping carts on the premises.

"Shopping cart" or "cart" means a basket which is mounted on wheels or a similar device provided by the operator of a commercial establishment for the use of customers for the purpose of transporting goods of any kind. A cart sold by a commercial establishment to a retail customer for that customer's personal use is not a shopping cart for the purposes of this chapter.

"Shopping cart or Laundry cart retrieval business" To search for, gather and restore possession to the owner, or an agent thereof, for compensation or in expectation of compensation, of shopping carts or laundry carts located outside the premises or parking area of a retail establishment.

"Person" Any person, corporation, partnership, association, joint-stock company, limited-liability company, limited liability partnership and other entity capable of being sued.

"Street" Any street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert, crosswalk, sidewalk, park, parking lot, parking area and place used by the general public.

18-102 Enforcement authority and remedies.

(A) This chapter shall be administered and enforced by the Director with the assistance of the Police Chief, Fire Chief and their designated agents and Code Enforcement Officers. The Director is hereby authorized and directed to promulgate and implement rules, regulations and procedures necessary or appropriate for the enforcement of this chapter. The Director, Police Chief, Fire Chief and their designated agents and code enforcement officers are authorized as follows:

(1) To enter upon and inspect any public and private property or premises to ascertain whether the provisions of this chapter or applicable state laws are being obeyed. As used herein, PUBLIC PROPERTY includes the outdoor common area of any building, business premises, apartment building or complex or other premises or portion thereof which is adjacent to public property, open to the public and which contains a shopping cart or shopping carts visible at street or ground level from the adjacent public property. All inspections, entries and examinations shall be done in a reasonable manner. If an owner, tenant, occupant or agent or other responsible party refuses to grant the city permission to enter or inspect, the city may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure. Nothing contained in this section shall be deemed a limitation upon the Director to enter private property pursuant to permission from the owner or occupant thereof or pursuant to a duly issued inspection warrant or other court order;

(2) To examine a shopping cart or parts thereof, or to obtain information as to the identity of the owner of any shopping cart, or to retrieve shopping carts in accordance with the provisions of this chapter;

(3) To determine whether a violation of this chapter exists and to take appropriate action to gain compliance with the provisions of this chapter and applicable state laws; and

(4) To issue administrative citations and to impose civil penalties for any violation of this chapter.

(B) The Police Chief, city police officers and designated city employees, who shall be designated by a separate resolution pursuant to the provisions of Cal. Penal Code § 836.5, shall have the authority to issue criminal citations for violations of this chapter. The City Attorney and the District Attorney shall have the authority to file criminal complaints to enforce this chapter.

(C) In addition to the above listed authority, the city may exercise the following remedies:

(1) Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) business days after receiving notice from the city, shall pay the city's administrative costs for retrieving the cart(s) and providing the notification to the owner. Any owner who fails to retrieve abandoned carts in accordance with this chapter in excess of three (3) times during a specified six (6)-month period shall be subject to a fifty dollar (\$50) fine for each occurrence. An occurrence includes all carts owned by the owner that impounded by the city a one (1)-day period.

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

(3) Following the city having retrieved more than ten (10) carts in any thirty (30)-day period or the issuance of more than ten (10) administrative citations in any twelve (12)-month period, the Director of Community Development may require the owner to install a physical containment system.

(4) Violations by any person of 18-103 may be enforced through any of the penalties for municipal code violations specified in Porterville City Code 1-9.

18-103 Prohibition against removing, possessing and altering carts.

It is unlawful for any person except the owner of a cart or the owner's agent to do any of the following acts:

(A) No person shall be deemed to be authorized to remove a cart with cart identification from the business premises unless he or she possesses written authorization from the cart owner. Removal authorization shall be valid for a period not to exceed twelve (12) hours. The authorization shall include: the date and time of removal, the name, address, and phone number of the store where the cart was removed, as well as the name, title and signature of the person authorizing the removal. This section shall not apply to the possession of a shopping cart removed from the business premises at the direction of the cart owner for the purposes of repair, maintenance, or when found in the possession of a cart retrieval service returning it to the cart owner.

(B) To be in possession of any cart while that cart is not located on the premises or parking lot of the owner of the cart without the express written consent of the owner. Written permission to remove a shopping cart shall be valid for a period not to exceed 12 consecutive hours;

(C) It shall be unlawful for a person to possess a shopping cart with a cart identification sign on sidewalks, streets, trails, other public property open to the public, or on private property open to public view, without written authorization from the cart owner, unless the person has written permission of the cart owner to repair or maintain the cart, is a cart retrieval service in the process of returning an empty cart to the cart owner, or is moving the cart so it can be picked up by a cart retrieval service.

(D) To be in possession of any shopping cart with serial numbers removed, obliterated or altered; or

(E) To alter, convert or tamper with a cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers or the cart identification sign on a cart.

18-104 Prohibition against abandoning carts.

It is unlawful for any person to leave, abandon or store any cart upon any sidewalk, street or other public place, or upon private property exposed to public view, at a location other than the premises of the owner.

18-105 Impoundment of abandoned carts.

(A) The City of Porterville hereby adopts California Business and Professions Code Section 22435 in reference to the impoundment of abandoned carts. Pursuant to the provisions of the Business and Professions Code, a cart that has a sign affixed to it in accordance with Cal. Business and Professions Code Section 22435.1 may be impounded by the city provided both of the following conditions have been satisfied.

(1) The shopping cart is located outside the premises or parking area of a retail establishment. 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 complex or center.

(2) Except as provided in division (G) above, the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city of the shopping cart's discovery and location.

(B) In instances where the location of a shopping cart will impede emergency services, the city is authorized to immediately retrieve the shopping cart from public or private property.

(C) When the city impounds a shopping cart under the authority provided in divisions (A) and (B) above, the city is authorized to recover its actual costs for providing this service.

(D) Any shopping cart that is impounded by the city pursuant to divisions (A) and (B) above shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart; and

(2) Open for business at least six hours of each business day.

(E) The city shall fine the owner of a shopping cart in an amount as set by the Porterville City Council 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 section in a one-day period.

(F) The city may sell or otherwise dispose of 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.

(G) Notwithstanding division (A)(2) of this section, the city may impound a shopping cart that otherwise meets the criteria set forth in division (A)(1) without complying with the three-day advance notice requirement provided that all of the following occur:

(1) The owner of the shopping cart, or his or her agent, is provided actual verbal or written notice within 24 hours following impound of the cart and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with division (D) of this section.

(H) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to division (G)(1) of this section, shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to divisions (C) or (E) of this section. Any cart reclaimed within the three business day period shall not be deemed an occurrence for purposes of division (E) of this section.

(I) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to division (G)(1) of this section,

shall be subject to any applicable fee or fine imposed pursuant to divisions (C) or (E) of this section commencing on the fourth business day following the date of the notice.

(J) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to division (G)(1) of this section, may be sold or disposed of in accordance with division (F) of this section.

18-106 Cart identification signs.

(A) Removal prevention and retrieval. Every owner who provides or intends to provide carts to be used by customers shall do the following:

(1) Pursuant to Business and Professions Code Section 22435.1, each shopping cart owned or used within the City shall have permanently affixed to it and easily visible a cart identification sign or engraved surface which includes all of the following information: The name of the cart owner; the telephone number of the cart owner and/or commercial establishment to which the cart belongs; a valid toll-free phone number for cart retrieval; the procedure (if any) to be followed to obtain permission to remove the cart from the business premises; and a notice to the public that unauthorized removal of the cart from the business premises is a violation of state law and city ordinance.

(2) In addition to the cart identification and cart removal notice required on each cart, the cart owner shall post a notice in substantially the following form prominently and conspicuously in the area where carts are stored for customer use. Post prominently and conspicuously at all public entrances and exits where there is frequent cart activity, a notice no smaller than 12 inches by 18 inches, or approved by the Director, in the following form:

“REMOVAL OF SHOPPING CARTS (OR LAUNDRY CARTS, IF APPLICABLE,) FROM THESE PREMISES IS PROHIBITED BY LAW (PMC § 18-103) AND WILL SUBJECT THE VIOLATOR TO A FINE OF UP TO \$1,000.00 OR SIX MONTHS IN JAIL OR BOTH THE FINE AND THE JAIL TERM.”

The notice required by this section shall be considered exempt from the Porterville City Code Chapter 21 Section 305.

(B) It shall be the responsibility of each cart owner to comply with subsections A(1) and A(2) of this section, and to continuously maintain, or cause to be maintained all signs so that all of the required information is accurate and clearly legible

(C) A cart without a sign attached, pursuant to division (A) of this section, shall bear some form of identification to establish ownership. Every business that utilizes shopping carts during normal operations within the City of Porterville shall provide the director with a valid, current telephone number of the owner or provider of the cart.

(D) Carts provided by individual stores or retailers that are owned by or affiliated with the same company and share the same name (chain stores) shall bear some form of identification which identifies the specific store that the cart is assigned to.

(E) A cart that does not have a sign attached as required by division (A) above or fails to provide information to the director as required in division (C) of this section is presumed to be abandoned if it has been left standing unattended on any public or private property other than the owner's or the owner's agent. The city may impound, sell or otherwise dispose of such a cart immediately upon discovery of the cart.

18-107 Cart containment system required.

Every cart owner shall operate and maintain an on-site cart containment program as defined in Section 18-101. A cart owner may be exempted from this requirement if he or she provides proof of contracting with a qualified cart retrieval service and submits information Community Development Director or designee which demonstrates to the satisfaction of the Director that the qualified cart retrieval service will: (i) actively locate shopping carts within the city limits of Porterville seven (7) days per week, eight (8) hours per day; and (ii) respond to complaints from the public in a manner which results in the retrieval of shopping carts within twenty-four (24) hours after receiving complaint(s).

18-108 Retrieval services.

(A) Any person who engages in the business of shopping cart or laundry cart retrieval, as defined in this chapter, in the city shall have a city business license and shall retain records showing written authorization from the cart owner, or an agent thereof, to retrieve the cart or carts and to be in possession of the cart or carts retrieved, unless the person is an employee of the cart owner.

(B) A copy of the record showing written authorization shall be maintained in each vehicle used for shopping cart or laundry cart retrieval.

(C) Each vehicle employed for the retrieval of shopping carts or laundry carts shall display a sign that clearly identifies the retrieval service or the carts owner.

(D) Any person who violates the provisions of this section is guilty of a misdemeanor and subject to punishment in accordance with Section 1-9 of this code.

18-109 Penalty.

Any person who violates any provision of this Code, or the California Business and Professions Code as referenced above shall be guilty of a misdemeanor and subject to punishment in accordance to Cal. Penal Code Section 19. Upon recommendation of the prosecuting attorney, the court may reduce the charged offense from a misdemeanor to an infraction, punishable under 1-9 of this code. An administrative fine may also be imposed as set forth in Chapter 2-144 of the Porterville City Code. Nothing in this chapter shall prevent the city from pursuing criminal, civil, administrative or any other legal remedy to address violations of this chapter.

18-110 Prosecution for theft not precluded.

The provisions of this chapter are not intended to preclude the application of any other laws relating to prosecution for theft.

18-111 Severability.

If any provision, clause, sentence or division of this chapter or the application thereof to any person or circumstance shall be held invalid, the invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are declared to be severable.

SECTION 2: This ordinance shall be in full force and effect thirty days from and after its publication and passage.

PASSED, APPROVED, AND ADOPTED this ___ day of ____, 2018.

By: _____

Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By: _____

Patrice Hildreth, Chief Deputy City Clerk