

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 7 OF THE OCEANSIDE CITY CODE BY ADDING ARTICLE XII RELATING TO THE REGULATION AND CONTAINMENT OF SHOPPING CARTS

WHEREAS, the Oceanside City Council finds that abandoned shopping carts cause blighting conditions in our community;

WHEREAS, abandoned shopping carts detract from the aesthetics of streets, sidewalks, neighborhoods, and residences and tend to diminish property values;

WHEREAS, the abandonment of shopping carts is a public nuisance;

WHEREAS, abandoned shopping carts left in streets or on sidewalks are a danger to the safety and welfare of persons using public rights-of-way and interfere with pedestrian and vehicular travel;

WHEREAS, abandoned shopping carts are an attractive nuisance to children and may cause injury to children; and

WHEREAS, the Oceanside City Council desires to take into account the good faith efforts of stores in complying with the provisions of this Ordinance.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

SECTION 1. Article XII is hereby added and shall read as follows:

ARTICLE XII. REGULATION AND CONTAINMENT OF SHOPPING CARTS.

Section 7.102. Findings and purpose.

(a) The Oceanside City Council finds that abandoned shopping carts cause blighting conditions in our community. More specifically, abandoned shopping carts detract from the aesthetics of streets, sidewalks, neighborhoods, and residences and tend to diminish property values. The abandonment of shopping carts is a public nuisance. Left in streets or on sidewalks, abandoned shopping carts are a danger to the safety and welfare of persons using public rights-of-way and interfere with pedestrian and vehicular travel. Abandoned shopping carts are an attractive nuisance to children and may cause injury to children.

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1 (b) The ordinance codified in this Article is enacted for the purpose of promoting the  
2 public health, safety, and general welfare of our citizens by requiring shopping cart owners to  
3 contain shopping carts on their own premises. This Article is not intended to be construed or  
4 applied in any manner inconsistent with California Business and Professions Code section  
5 22435 et seq., or any other provisions of state law.

6 Section 7.103. Definitions.

7 In this Article, the following terms have meanings as set forth below:

8 *Abandoned shopping cart* shall mean a shopping cart which has been removed from the  
9 business premises without the consent of the shopping cart owner.

10 *Premises* shall mean the entire lot area maintained and managed by the shopping cart  
11 owner, including the building, parking lot, and adjacent walkways where shopping carts are  
12 permitted.

13 *Shopping cart* shall mean a basket which is mounted on wheels or a similar device  
14 generally used in a retail establishment by a customer for the purpose of transporting goods of  
15 any kind.

16 *Shopping cart containment plan or plan* shall mean the document submitted by the  
17 owner pursuant to section 7.110 of this Article.

18 *Shopping cart owner* shall mean any person, entity, firm, business, corporation,  
19 partnership, company or similar entity, who in connection with the conduct of a business, makes  
20 shopping carts available for customer or public use within the boundaries of the business  
21 premises.

22 *Shopping cart retrieval service* shall mean a service operated by the shopping cart owner  
23 or an independent contract business that searches for, retrieves and/or restores abandoned  
24 shopping carts to the possession of the shopping cart owner.

25 Section 7.104. Enforcement.

26 Except as otherwise provided in this article, the provisions of this article shall be  
27 administered and enforced by the City Manager or his or her designees. The City Manager or  
28 his or her designees may enter onto private property to examine a shopping cart to obtain

1 information as to the owner of the shopping cart or to cause the removal of a shopping cart  
2 pursuant to the provisions of this Article.

3 Section 7.105. Applicability.

4 This Article shall apply to:

5 (a) All shopping cart owners that provide shopping carts for customer use.

6 (b) Any person in possession of a shopping cart off site of the premises of a business  
7 establishment pursuant to the provisions of section 7.113

8 Section 7.106. Shopping cart containment.

9 Every shopping cart owner who provides shopping carts for customer or public use shall  
10 contain and control all shopping carts within the boundaries of the premises, except as expressly  
11 provided for in Business and Professions Code section 22435.4.

12 Section 7.107. Shopping cart retrieval.

13 All shopping cart owners shall secure and continuously maintain a shopping cart  
14 retrieval service to retrieve abandoned shopping carts belonging to the shopping cart owner. All  
15 shopping cart owners shall provide evidence of the retrieval service as part of a required  
16 shopping cart containment plan submitted to the City pursuant to section 7.110 or at any other  
17 time upon the City's request.

18 Section 7.108. Mandatory signage on premises.

19 Shopping cart owners must post a sign in a conspicuous place on their premises within  
20 two (2) feet of all customer entrances and exits which states at a minimum:

21 Removal of shopping carts from the premises is prohibited by law.

22 B & P Code section 22435.2.

23 Section 7.109. Shopping cart identification.

24 Shopping cart owners shall permanently affix a sign to all shopping carts which contains  
25 the following information:

26 (a) The identity of the shopping cart owner, including business name and store number  
27 if applicable;

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1 (b) A notification of the procedures for authorized removal of the shopping cart from  
2 the premises;

3 (c) A notification that unauthorized removal of the shopping cart from the premises, or  
4 unauthorized possession, is a violation of law; and

5 (d) A valid address and telephone number to enable the shopping cart to be returned to  
6 the shopping cart owner.

7 Section 7.110. Shopping cart containment plan.

8 If at any time more than ten (10) shopping carts within a one-week period are found  
9 abandoned, the shopping cart owner shall submit a shopping cart containment plan within thirty  
10 (30) days of notification by the City Manager or his or her designee. This plan, at a minimum,  
11 shall include:

12 (a) Identification of owner: The name, address, phone number, and store number of the  
13 business/owner. The plan must also include the address where the shopping carts are offered  
14 for use.

15 (b) Shopping cart inventory: The total number of shopping carts maintained in or on the  
16 premises.

17 (c) Mandatory signage: A complete description of all signs to be placed in or on the  
18 premises and the shopping carts pursuant to section 7.108 and section 7.109. These  
19 descriptions must include size, wording, and location where the signs are to be placed.

20 (d) Shopping cart containment measures: Shopping cart owners shall describe the  
21 specific measures to be implemented to prevent unauthorized removal of the shopping cart from  
22 the premises.

23 (e) Shopping cart retrieval: Description and identification of the shopping cart retrieval  
24 service maintained pursuant to section 7.107 of this Article. If an independent shopping cart  
25 retrieval service is used, a copy of the valid contract must be submitted. The owner may delete  
26 information relating to the cost of the contract or other personal information from the copy.

27 (f) The requirements of section 7.110 shall not apply to any business which provides  
28 less than ten (10) shopping carts for use by customers.

1 Section 7.111. Plan approval or denial.

2 (a) The shopping cart containment plan pursuant to Section 7.110 must be submitted to  
3 the City Manager within thirty (30) days after initial notification of the plan requirement. Each  
4 proposed plan shall be accompanied by a processing fee established by resolution of the City  
5 Council. No plan will be accepted without the processing fee. The City may approve or deny a  
6 plan and must notify the owner in writing of the decision. If approved, the plan shall be  
7 implemented by the owner within thirty (30) days from the date of approval.

8 (b) The City may revoke or deny a plan for any of the following reasons:

9 (1) The implementation of the plan would violate any City code, law or ordinance,  
10 or State or Federal law, statute or regulation;

11 (2) The plan fails to include all of the information required by section 7.110;

12 (3) The plan does not prevent the removal of shopping carts from the premises; or

13 (4) The plan omits facts, including special or unique conditions of the premises,  
14 which are required to be provided to ensure adequacy of the plan.

15 (c) If a plan is rejected by the City for incompleteness, or any of the reasons listed in  
16 subsections (b)(1) through (4) of this section, the City shall inform the owner in writing of the  
17 reasons for the rejection and any corrections which need to be made to the plan for it to be  
18 approved. The owner will have ten (10) days from the date of rejection to submit a corrected  
19 plan.

20 (d) If, at any time, the plan is ineffective as defined herein, the City may revoke the  
21 implemented plan and require the owner to submit a new plan for approval or denial by the City  
22 pursuant to the provisions set forth herein. A plan shall be deemed ineffective if shopping carts  
23 originating from a shopping cart owner's premises are found abandoned.

24 (e) If, at any time, the shopping cart owner wants to modify a plan approved by the City,  
25 the shopping cart owner shall submit the modified plan for approval or denial by the City  
26 pursuant to the provisions set forth herein.

27 (f) Any shopping cart owner in the City who fails to submit a complete plan, fails to  
28 implement an approved plan, fails to maintain a shopping cart retrieval service, fails to correct a

1 rejected plan, or maintains an ineffective plan in violation of this Article shall be subject to  
2 enforcement of these requirements as provided for in Chapter 1.

3 Section 7.112. Appeal of plan denial or revocation.

4 A shopping cart owner may appeal the imposition, denial, or revocation of a shopping  
5 cart containment plan. The appeal must be submitted in writing and filed within ten (10)  
6 calendar days upon receipt of the notice by the City informing a shopping cart owner of the  
7 imposition, denial, or revocation of a cart containment plan. Upon timely receipt of a written  
8 request for an appeal, the City Manager or his or her designee shall schedule a hearing which  
9 shall be held no later than thirty (30) calendar days after the receipt of the request for appeal.  
10 The City Manager or his or her designee shall serve by first-class mail a notice to the shopping  
11 cart owner at least ten (10) calendar days prior to the scheduled date of the hearing. At the  
12 hearing, the shopping cart owner shall be given the opportunity to present witnesses and  
13 relevant documentary evidence. The hearing will be conducted informally and the technical  
14 rules of evidence shall not apply. Any and all evidence which is deemed reliable, relevant and  
15 not unduly repetitious may be considered. The City shall provide the shopping cart owner with  
16 a written decision sustaining, reversing or modifying the shopping cart containment plan  
17 revocation or denial action within ten (10) calendar days after the hearing.

18 Section 7.113 Unauthorized removal or possession of a shopping cart.

19 It is unlawful for any person to do any of the following, if a shopping cart has a  
20 permanently affixed sign pursuant to section 7.109:

21 (a) To remove a shopping cart from the premises or parking area of a retail  
22 establishment with the intent to temporarily or permanently deprive the owner or retailer of  
23 possession of the cart;

24 (b) To leave or abandon a shopping cart at a location other than the premises or  
25 parking area of the retail establishment with the intent to temporarily or permanently deprive the  
26 owner or retailer of possession of the cart;

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1 (c) To alter, convert, or tamper with a shopping cart, or to remove any part or portion  
2 thereof or to remove, obliterate, or alter serial numbers on a cart with the intent to temporarily  
3 or permanently deprive the owner or retailer of possession of the cart;

4 (d) To be in possession of any shopping cart while that cart is not located on the  
5 premises of a business establishment with the intent to temporarily or permanently deprive the  
6 owner or retailer of possession of the cart;

7 Section 7.114. Violations.

8 It shall be unlawful for any person to violate or fail to comply with any of the provisions  
9 of this Article.

10 SECTION 2. Severability.

11 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be  
12 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
13 shall not affect the validity of the remaining portions of this Ordinance. The City Council  
14 hereby declares that it would have passed this Ordinance and adopted this Ordinance and each  
15 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,  
16 subsections, clauses or phrases be declared invalid or unconstitutional.

17 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this  
18 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
19 days after its passage in the North County Times, a newspaper of general circulation published  
20 in the City of Oceanside.

21 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
22 from and after its final passage.

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1 INTRODUCTION at a regular meeting of the City Council of the City of Oceanside,  
2 California, held on the \_\_\_\_ day of \_\_\_\_\_, 2008, and, thereafter,

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
4 Oceanside, California, held on the \_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

5 AYES:

6 NAYS:

7 ABSENT:

8 ABSTAIN:

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MAYOR OF THE CITY OF OCEANSIDE

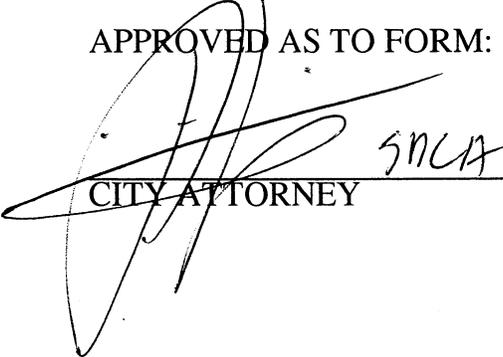
12 ATTEST:

APPROVED AS TO FORM:

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\_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
CITY ATTORNEY

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