

ORDINANCE NO. 2023-07

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS,
CALIFORNIA, ADDING CHAPTER 9.85 "SHOPPING CARTS" TO THE
ENCINITAS MUNICIPAL CODE TO REQUIRE CONTAINMENT OF SHOPPING
CARTS ON BUSINESS PREMISES AND MAKING IT UNLAWFUL TO
REMOVE A SHOPPING CART THEREFROM**

The City Council of the City of Encinitas hereby finds and declares as follows:

WHEREAS, shopping carts are routinely abandoned on public property, including parks, streets and rights of way within the City of Encinitas (City); and

WHEREAS, the presence of abandoned shopping carts on public property is a public nuisance that contributes to a decline in the quality of life for residents of and visitors to the City; and

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

WHEREAS, the presence of abandoned shopping carts in City waterways and open spaces disrupts natural flow and drainage patterns and contributes to environmental degradation; and

WHEREAS, the City Council desires to implement regulations to require adequate containment measures by shopping cart owners and to make it unlawful to remove a shopping cart from a premises; and

WHEREAS, it is the intent of the City Council that these regulations shall not be enforced or interpreted in a manner that expressly conflicts with the provisions of Article 1, Chapter 19, Division 8 of the Business and Professions Code.

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

SECTION 1. All the above recitals are true and correct.

SECTION 2. Chapter 9.85 is hereby added to the Encinitas Municipal Code is to read as follows:

CHAPTER 9.85
SHOPPING CARTS

9.85.010 Title.

This chapter shall be known as the “City of Encinitas Shopping Cart Ordinance”.

9.85.020 Purpose and Intent.

The purpose of this chapter is to promote the public health, safety, and general welfare of the community by requiring owners to contain shopping carts on their premises and to make it unlawful for a person to remove a shopping cart from a premises.

9.85.030 Definitions.

For purposes of this Chapter the terms below have the following meaning:

- A. “City” means the City of Encinitas.
- B. “City manager” means the city manager of the city or designee.
- C. “Owner(s)” means any person, entity, firm, business, corporation, partnership, company, or similar entity who, in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes five (5) or more shopping carts available for customer or public use within the boundaries of the business’ premises. Owner shall also include the owner’s onsite or designated agent.
- D. “Person” means any natural person, business, corporation, or event organizer or promoter; public, nonprofit, or private entity, agency, or institution; or partnership, association or other organization or group, however organized.
- E. “Premises” means the entire area owned, maintained, used or managed by the owner, including the building, parking lot, walkways, or other property for customer use or parking.
- F. “Shopping Cart” means a non-motorized basket 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.
- G. “Marked shopping cart” means a shopping cart to which ownership and other required information has been affixed as pursuant to Business and Professions Code section 22435.1.
- H. “Notification” means and includes verbal notice given to an owner and/or an owner’s retrieval service and/or written notice delivered to the address of an owner or retrieval service.

9.85.040 Unauthorized Removal Prohibited.

It is unlawful for any person, either temporarily or permanently, to remove a marked shopping cart from a premises or be in possession of a marked shopping cart that has been removed from a premises without the written consent of the owner. This does not apply to

shopping carts removed, as authorized by the owner, for purposes of repair, maintenance, or disposal.

9.85.050 Abandonment Prohibited.

It is unlawful and a public nuisance for any shopping cart owner to allow one or more of the owner's shopping carts to be abandoned or remain unattended on any private property (except the premises of the shopping cart owner), or any city street, right-of-way, alley, sidewalk, facility, park, beach, open space or other public property for any period of time, and/or fail to recover, retrieve and/or remove a shopping cart or carts therefrom within two (2) business days following notification by the city manager to the owner and/or their retrieval service of the location of the shopping cart.

9.85.060 Required Shopping Cart Removal and Abandonment Prevention Measures.

A. Shopping Cart Ownership Identification

1. Each owner must permanently affix ownership information to each shopping cart that includes the owner's name, address, phone number and other information as required by Business and Professions Code section 22435.1.

B. Shopping Cart Removal Warning Signs

1. Visible signage that conform to the requirements of Chapter 30.60 shall be placed near all customer entrances and exits and in parking lots, notifying the public that removal of shopping carts off the premises is prohibited by this Chapter.

9.85.070 Required Physical Shopping Cart Containment Measures or Shopping Cart Retrieval Services

A. All owners are required to implement physical shopping cart containment measures and/or enter into an agreement with a shopping cart retrieval service consistent with the following provisions.

1. Physical shopping cart containment measures must include at least one (1) of the following:

- a. Physical disabling devices on all shopping carts;
- b. Security deposit requirement for use of shopping carts;
- c. Use of a security guard or security service to prevent removal of shopping carts from the premises;
- d. Installation of bollards, chains, or other physical barriers to prevent removal of shopping carts from the premise; or
- e. Any combination of the above measures as necessary to effectively prevent the removal of shopping carts from the premises.

2. Shopping cart retrieval service agreements must meet the following requirements:

- a. Each owner that elects to secure a shopping cart retrieval service

agreement must continuously maintain an agreement with a shopping cart retrieval service to search for, locate, and return shopping carts removed from the premises. Self-service cart retrieval is not an allowable option.

- b. Shopping cart retrieval service agreements must require that shopping carts located off premises, regardless of distance, jurisdictional boundary, or reporting party, will be located, and returned no later than two (2) business days after the owner or retrieval service has been notified.

9.85.080 Shopping Cart Security After Hours.

Any owner must lock or otherwise effectively secure all shopping carts during hours when the premises are not open for business.

9.85.090 Shopping Cart Containment Plan.

A. All owners shall submit a Shopping Cart Containment Plan, to the satisfaction of the City, no later than (30) days after the effective date of this Ordinance. The Shopping Cart Containment Plan shall include:

1. Identification of the Owner: The name, address, phone number, of the business establishment and the owner.
2. Shopping Cart Inventory: The total number of shopping carts maintained on the premises.
3. Shopping Cart Ownership Identification and Shopping Cart Removal Warning Signs: A description of required ownership identification and removal warning signs, including a description of the location of sign placement.
4. (a) Physical Shopping Cart Containment Measures: A description of physical shopping cart containment measure(s), consistent with Section 9.85.070(1) of this Ordinance.

Or;

- (b) Shopping Cart Retrieval Service: Shopping cart retrieval service agreement information including the name of the service provider and all direct contact information including contact name, address, phone number, and e-mail address. Provided that all required information is included, a copy of the current and fully executed service agreement may be submitted to fulfill this requirement.
5. Shopping Cart Security: Verification that shopping carts are locked or otherwise secured during hours when the premises are not open for business.

B. All owners shall annually certify that all information provided in the shopping cart containment plan is accurate and true. Owners shall provide updated information to the City as needed to ensure accurate information is maintained and current, and to ensure that all related requirements are being satisfied.

9.85.100 City Retrieval of Abandoned Shopping Carts.

A. The City may retrieve an abandoned shopping cart from public property, or private property with the consent of the owner thereof, including but not limited to in any of the following circumstances:

1. When a Shopping Cart is abandoned in a location or in such a manner that may impede the provision of emergency services.
2. When a Shopping Cart is abandoned in a location or in such a manner that creates a hazard to the public, health, safety and/or welfare.
3. When the City has notified the shopping cart owner and/or an owner's retrieval service of an abandoned shopping cart, and the cart has not been retrieved within two (2) business days.

B. Shopping cart owners shall be responsible for all costs associated with retrieval by the City of an abandoned shopping cart recovered pursuant to the specific circumstances set forth in section 9.85.100(A).

9.85.110 Enforcement.

A. Any violation of this Chapter is a misdemeanor and may also be enforced by Administrative Citation pursuant to section 1.08.080.

B. Each violation of this chapter shall be considered a separate offense.

C. The remedies and penalties provided in this chapter are cumulative and not exclusive and nothing in shall preclude the City from pursuing any other remedy at law or in equity, including, but not limited to those set forth in Chapter 1.08.

9.85.120 No Conflict with Federal or State Law.

Nothing in this chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

SECTION 3. ENVIRONMENTAL COMPLIANCE

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment".

SECTION 4. CONSISTENCY

Any provision of the Encinitas Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5. SEVERABILITY

If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California, held on December 13, 2023, and thereafter

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 17th day of January 2024.

APPROVED:

DocuSigned by:

A. J. Kranz

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Tony Kranz, Mayor

ATTEST:

DocuSigned by:

Kathy Hollywood

48FC63DB4D92448C

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Tarquin Preziosi

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Tarquin Preziosi, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 13th day of December, 2023 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 17th day of January, 2024 by the following vote, to wit:

AYES: **Blackwell, Ehlers, Hinze, Kranz, Lyndes**

NOES: **None**

ABSENT: **None**

ABSTAIN: **None**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 17th day of January, 2024.

DocuSigned by:

Kathy Hollywood

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Kathy Hollywood, City Clerk