

Rutland City Charter & Ordinance Committee

April 7, 2022 Meeting

Members Present: Chair Alderman Neary, Vice-Chair Alderman Gillam, Alderwoman Tadio, Alderman Etori

Members Absent: Alderman Doenges, Alderman Whitcomb, Alderwoman Davis

Others Present: Attorney Bloomer, Zoning Administrator Strniste, Building Inspector Mark Sadakierski, Chief Kilcullen,

Minutes

Chair Neary called the meeting to order at 5:31PM.

The first item on the agenda was the draft Shopping Cart Ordinance as it was referred to committee from the full board. The meeting began with a committee review of a frequently asked questions (FAQ) memo prepared by Attorney Bloomer. The memo included details on compliance, fines, roles, and responsibilities to directly address concerns voiced at the previous full board meeting. See attached FAQ memo and updated ordinance. The committee discussed the collaborative intent of the ordinance to work with businesses regarding identification, notification, planning, and retrieval.

The committee discussed the elements of the effective retrieval program required by the ordinance, including cart information, signage, and retrieval plan. A plan template and guidance document will be created by the city to ensure compliance and consistency and make the process less onerous for businesses.

The committee also discussed the process by which the business will be notified of an abandoned cart. Several options to implement the ordinance exist, such as building and zoning code enforcement officer, downtown beat patrol officer, and city residents. Building and zoning expressed concerns about potential burden on the department as the city will need to maintain a spreadsheet of notifications to businesses. The required signage on carts will include a number for people to call and notify the store of the abandoned cart, a potential reporting system could be added to a new city website. Many of the abandoned carts are found in repeat locations and the retrieval could be focused on these areas. The city will share the map of abandoned carts that were collected by DPW to aid in business collection. Overall, the committee wanted to avoid any burden on city departments and would hold an additional implementation meeting and evaluate the effectiveness of the ordinance 6 months following adoption.

The committee also discussed the lack of enforcement in the current ordinance. The current ordinance is not enforced due to the burden it places on public works, police, and the city

attorney. Fines against businesses or customers from the current ordinance have never been levied, creating a lack of accountability by businesses.

The fine schedule was also reviewed and set by the committee. The effective cart nuisance abatement program noncompliance fees are \$300 for first offense, \$400 for second offense, and \$500 for third and subsequent offenses with \$150, \$200, and \$300 waivers fees. The cart nuisance fines are \$100 for first offense, \$200 for second offense, and \$300 for third and subsequent offense with \$50, \$100, and \$150 waiver fees. The program fees were higher to encourage compliance by businesses, and fees for nuisance are only incurred after the city has retrieved carts more than three times after a three-day notification period within a calendar year.

A motion by Alderman Etori to recommend to full board the approval of the updated shopping cart ordinance in substantially the form presented.

Meeting adjourned at 6:10 PM.

Alderman Devon Neary



Devon Neary <aldermanneary@gmail.com>

FAQ | Shopping Cart Ordinance

1 message

Matt Bloomer <mattb@rutlandcity.org>

Wed, Apr 6, 2022 at 2:36 PM

To: David Allaire <mayorallaire@rutlandcity.org>

Cc: Mark Sadakierski <marks@rutlandcity.org>, andrews@rutlandcity.org, Mike Brookman <mikeb@rutlandcity.org>, Chief Brian KilCullen <brian.kilcullen@vermont.gov>, Jim Rotondo <jimr@rutlandcity.org>

Bcc: Aldermanneary@gmail.com

Dear Board-

In anticipation of the Shopping Carts meeting tomorrow night, I wanted to send a quick FAQ regarding the proposed ordinance (attached).

1. **Why are we fining businesses when they are the ones being stolen from?** Businesses are not being fined when shopping carts are removed from their premises. They are only being fined if the City notifies them that a cart has been abandoned at X address and they fail to go pick up the shopping cart within 3 days of the notice. (And, as proposed, they are not fined the first 3 times this happens in a given year. They get 3 freebies.) Furthermore, a business will never be fined for a cart that they aren't aware is out there. The notification is what triggers the 3 days and potential for a fine.
2. **Why should the businesses be responsible for picking up the cart?** It would be impossible to have a system where the culprit is forced to bring the cart back. So that leaves 3 options: 1) businesses must pick up, 2) City must pick up or 3) leave them all where they lie. The current ordinance is set-up for the City to pick up and either hold or return to the businesses. Everyone seems to agree that the City doesn't have the resources to do this on a regular basis and that system has not worked well. Therefore, if the City wants the shopping carts to be picked up, the ultimate responsibility needs to be with the businesses.
3. **But doesn't the City still have a role in the proposed ordinance?** Yes, but it should be a much more limited role, especially because the fine would create an incentive for the businesses to pick up the carts themselves. The City is taking on the responsibility to notify the business and track whether the carts have been picked up. B&Z is getting a new position and this may be something that could be done by the Code Enforcement Officer and the administrative staff without too much effort. As it stands now, various departments get calls about shopping carts on a regular basis and have to respond in some fashion to constituents. The City will still ultimately have the right to go pick up a cart that has been abandoned for more than 3 days, but under the proposed ordinance, the City doesn't need to store it – it could immediately trash or sell for scrap, etc. One final note: Nothing in the ordinance says that DPW has to be the group that picks up the carts; the City could hire a guy with a pickup truck to pick them up and pay him with the proceeds from the fines.
4. **What about the people who are taking the carts?** The current ordinance has a civil penalty of \$50. I'm not aware of that ever having been enforced, at least in the 5 years I've been here. Nor am I aware of anyone being criminally prosecuted for theft. This is likely the result of a lack of police and legal resources (including the State's Attorney Office), as well as the fact that these "thefts" are not for great personal gain – my assumption is the carts are being taken strictly to transport purchases (mostly food) when the person has no other transportation options. The proposed ordinance makes clear that removing the carts is "unlawful possession", so a criminal charge is still an option. My personal opinion is that a civil penalty would be difficult to collect (time-consuming and some defendants would not have the money to pay the fine) and would therefore be of limited deterrent value, particularly when the person may not have other transport options.

I have added a fine schedule to the attached for the businesses for discussion tomorrow. (\$300-\$500 for not submitting a plan or complying with the approved plan; \$100-\$300 for not picking up the carts after 3 days.)

Please feel free to reach out with any additional questions.

Thanks, --Matt

Matthew A. Bloomer, Esq.
City Attorney, City of Rutland
City Hall
1 Strong's Avenue
Rutland, Vermont 05701
P: (802) 770-5366
F: (802) 773-1827
mattb@rutlandcity.org

CONFIDENTIALITY NOTE

PLEASE READ CAREFULLY BEFORE FORWARDING THIS EMAIL. It is intended only for the individual or entity to whom it is addressed in the salutation, may be confidential and may contain attorney-client communication or attorney work product. If you are not the proper addressee or intended recipient of this email, or it was forwarded to you in error, you are hereby notified that any disclosure, printing, copying, distribution of it or its content or the taking of any action in reliance on the information contained in it is strictly prohibited and may result in liability.

If you have received this email in error, please delete it and notify me immediately. Thank you.



Shopping Carts Ordinance - v4 MB trackchanges.pdf

38K

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22
+ Fine Amounts and Date Changes

CHAPTER 4

Shopping Carts

§ 4446. Authority; Definitions; Nuisance defined; Enforcement.

(a) This ordinance is hereby enacted pursuant to the authority granted the City of Rutland by 24 V.S.A. §2291 (14) and Rutland City Charter 3-1 (50).

(b) Definitions.

- i. "Abandoned Shopping Carts" means any Cart that is located outside the premises or Parking Area of a Retail Establishment/Cart Owner which owns the Cart, except a Cart that is in the physical possession of a Person who has the express written consent of the Cart Owner.
- ii. "Cart" means a basket that is mounted on wheels or a similar device generally used in Retail Establishments by a patron and/or the public for the purpose of transporting goods of any kind. Shopping Cart also includes a Cart used in a coin-operated laundry or dry-cleaning Retail Establishment for purposes of transporting clothes and necessary cleaning materials.
- iii. "Cart Owner" means every business or Person who, in connection with the conduct of a Retail Establishment owns, rightfully possesses, or makes any Cart available to patrons and/or the public. This shall include the Cart Owner's agent or authorized representative.
- iv. "Director" means the City's Building Inspector or other employee designated by the Building Inspector or the Mayor to enforce or carry out the provisions of this Chapter 4.
- v. "Effective Shopping Cart Nuisance Abatement" means the Retail Establishment/Cart Owner's ongoing activities to prevent the theft and abandonment of Shopping Carts from their premises and Parking Area, combined with the Retail Establishment's ongoing activity to retrieve any abandoned Shopping Cart owned by the Retail Establishment/Cart Owner from public or private property within three (3) business days.
- vi. "Effective Retrieval Program" means no more than three (3) Abandoned Shopping Carts are removed by the City within the twelve (12) month period commencing on ~~April~~ July 1 of each year.
- vii. "Identified Cart" means a Shopping Cart that complies with Section 4449 below.
- viii. "Parking Area" means a parking area or other property provided by a Retail Establishment/Cart Owner 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.

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22
+ Fine Amounts and Date Changes

- ix. "Person" means a natural Person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.
 - x. "Retail Establishment" means any trade establishment selling articles, commodities, services, or any line of merchandise where Shopping Carts are made available for and used by patrons and/or the public.
 - xi. "Shopping Cart" means a Cart, as defined above.
 - xii. "Unidentified Cart" means a Shopping Cart that is not an Identified Cart, as defined above.
- (c) The Board of Aldermen of the City of Rutland hereby finds that the taking of Shopping Carts off the premises of Retail Establishments and the abandonment of Shopping Carts on the public streets, sidewalks, right-of-ways and other public property of the City is a public nuisance that could impede emergency services, interfere with pedestrian and vehicular traffic, reduce property values, promote blight and deterioration, comprise an attractive nuisance and create other hazards to the health, safety, and general welfare of the community.
- (d) Every Cart Owner who violates any provision of such Cart Owner's Effective Cart Nuisance Abatement Program, and every Person who violates any provision of this Chapter 4, shall be subject to enforcement procedures for each violation by any lawful means available to the City. The provisions and enforcement of this ordinance is intended to be in addition to any and all legal remedies or enforcement available at law and is not intended to prevent the enforcement of any civil or criminal law of the State of Vermont.

§ 4447. Effective Cart Nuisance Abatement Program.

As of ~~April~~ July 1, 2022, it is unlawful for any Person owning a Retail Establishment not to implement and maintain an Effective Cart Nuisance Abatement Program.

Effectiveness is measured by the performance of the Retail Establishment's Effective Cart Nuisance Abatement Program in compliance with this Section 4447. Cart Owners shall implement and use any reasonable means in any combination to: (i) prevent the removal or theft of their Carts from their premises and Parking Area and subsequent abandonment of their Carts within the City limits; and (ii) if such prevention measures are not one hundred percent (100%) effective, Cart Owners shall retrieve any and all of their Abandoned Shopping Carts from within the City boundaries within three (3) business days.

- (a) *Elements of an Effective Cart Nuisance Abatement Program.* Within the timeframes set forth in Section 4447(b) below, all Retail Establishments/Cart Owners must (i) notify the Director that they own Carts for the use of their customers on their premises, and (ii) submit a written plan for the implementation of an Effective Cart Nuisance Abatement Program. The program shall include, but is not limited to, the following:

- i. A customer outreach process under which the Cart Owner shall cause additional notice to be provided to customers in addition to the standard signage and marking of the Shopping Cart as per Section 4449 that the removal of Carts from the premises is prohibited and is a violation of local law. This customer outreach notification may include, but is not limited to: flyers distributed at the premises, warnings on shopping bags, direct mail, announcements using intercom systems at the premises, website communication, and

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22

+ Fine Amounts and Date Changes

other available information tools. It may also include marketing to customers their own personal Shopping Cart for use in lieu of the Retail Establishment's Shopping Cart. The exact means and frequency of this outreach is to be determined by the Retail Establishment.

- ii. A plan to prevent the removal or theft of their Carts from their premises and Parking Area.
- iii. An "Effective Retrieval Program" as defined in Section 4446(b). If a Retail Establishment has a valid and operational contract with a contractor to retrieve Abandoned Shopping Carts and return them to the Retail Establishment on an ongoing and regular basis of at least three (3) times per week, then the Cart Owner is presumptively deemed to have an Effective Retrieval Program, which presumption may be rebutted if the Cart retrieval contractor fails to meet the standards for "effectiveness" set forth in the definition of "Effective Retrieval Program" in Section 4446 above. Nothing in this subparagraph waives or limits compliance with the signage and Cart marking mandates in Section 4449.

(b) *Submission of Plans for Implementing Effective Cart Nuisance Abatement Program; Renewal.*

As of ~~April~~ July 1, 2022: (i) any new Retail Establishments shall submit their initial plans for implementing an Effective Cart Nuisance Abatement Program at least ninety (90) days prior to operating, or (ii) for Retail Establishments operating as of ~~April~~ July 1, 2022, the initial plan for implementing an Effective Cart Nuisance Abatement Program shall be submitted by ~~April~~ July 1, 2022. Once an initial plan implementing an Effective Cart Nuisance Abatement Program is approved, such plan shall be re-submitted for renewal at least sixty (60) days prior to the second ~~April~~ July 1 to occur following the approval of the plan (i.e. at least every 2 years). The proposed plan for an Effective Cart Nuisance Abatement Program shall contain the following information:

- i. That the Retail Establishment owns Carts for the use of their customers on their premises and Parking Areas;
- ii. The address of the Retail Establishment and a map identifying the associated Parking Areas utilized directly for its Carts;
- iii. A contact phone number at the Retail Establishment in the City for the Person or Persons, or job title of the Person, who will be notified by the City regarding Abandoned Shopping Carts removed by the City;
- iv. The type, color and number of Carts owned;
- v. Whether the Retail Establishment is subject to a valid and operational contract with a contractor to retrieve Abandoned Shopping Carts and return them to the Retail Establishment on an ongoing and regular basis of at least three (3) times per week, and if so a copy of such contract;
- vi. Photographic proof of compliance with the signage and Cart marking mandates in Section 4449; and

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22
+ Fine Amounts and Date Changes

- vii. A narrative description, and any plans, photographs or other evidence demonstrating the implementation of an Effective Cart Nuisance Abatement Program as defined in Section 4446(b) and in compliance with this Section 4447.

(c) *Director Review and Approval; Timeframes for Compliance.* The Director shall review the plan for the proposed Effective Cart Nuisance Abatement Program and approve or deny the plan within thirty (30) days of its receipt. If the program plan is approved, the Retail Establishment/Cart Owner shall implement the approved Effective Cart Nuisance Abatement Program within thirty (30) days from the date of approval. If the plan is incomplete, the Director shall notify the Cart Owner in writing to revise the plan and resubmit it within fifteen (15) days of Director's notice. The Director may deny a plan for a proposed Effective Cart Nuisance Abatement Program based upon one or more of the following grounds:

- i. Implementation of the plan would violate one or more provisions of this Chapter 4 or of any local, county, state, or federal law or regulation;
- ii. The proposed program fails to include all of the information required by this Chapter 4;
- iii. The proposed plan is insufficient or inadequate to qualify as an Effective Cart Nuisance Abatement Program as defined in Section 4446(b) and in compliance with this Section 4447;
- iv. The proposed program fails to address any special or unique conditions to the geographical location of the Retail Establishment/Cart Owner or its Parking Area as such conditions relate to Cart removal prevention; or
- v. Implementation of the proposed program would violate a term or condition of any agreement between the City on the one hand, and the Retail Establishment, or owner of the Parking Area, or Cart Owner, on the other hand.

The director's denial of a plan for an Effective Cart Nuisance Abatement Program shall be the final administrative decision unless such denial is appealed to the Mayor in writing within five (5) business days. The Mayor shall review the Director's decision and render a decision, which shall be the final administrative decision.

(d) Noncompliance. A Cart Owner who fails to submit an Effective Cart Nuisance Abatement Program, or whose program is denied, or whose program is approved but who then does not comply with the terms of the approved program shall be liable for a fine in ~~an~~ the amount listed below (or as established by resolution of the Board of Aldermen) for each occurrence. Each day during which a Retail Establishment/Cart Owner has not complied with the provisions of this Chapter 4 shall constitute a separate violation.

<u>First offense:</u>	<u>\$300</u>	<u>\$150 waiver fee</u>
<u>Second offense:</u>	<u>\$400</u>	<u>\$200 waiver fee</u>
<u>Third and subsequent offenses:</u>	<u>\$500</u>	<u>\$300 waiver fee</u>

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22
+ Fine Amounts and Date Changes

§ 4448. Unlawful Possession.

It is unlawful for any Person other than a Cart Owner or its authorized representative to do any of the following acts:

- (a) To remove or cause to be removed any Cart from a Retail Establishment or a Parking Area without the prior written consent of the Cart Owner.
- (b) To possess any Cart that has been removed from a Parking Area without the prior written consent of the Cart Owner, with the intent to temporarily or permanently deprive the Cart Owner of possession of the Cart.
- (c) To alter, convert, or tamper with any Cart, or remove any part or portion thereof, or to remove, obliterate, or alter any identification, including but not limited to any serial numbers, or to possess any Cart that has been altered, converted, or tampered with or whose identification has been removed, obliterated, or altered, with the intent to temporarily or permanently deprive the Cart Owner of possession of the Cart without the prior written consent of the Cart Owner.
- (d) To abandon or leave any Cart, which has been removed from a Retail Establishment or a Parking Area, upon any public property or upon any private property that is not the premises of the Retail Establishment or the Parking Area.
- (e) For purposes of all provisions in this chapter, any Person removing a Cart from the Retail Establishment or Parking Area with consent of the Cart Owner shall carry a copy of such written consent on their Person.

§ 4449. Identification required.

As of ~~April~~ July 1, 2022, all Carts shall be maintained as Identified Carts, including:

- (a) The Cart Owner shall provide signage on their premises in a conspicuous location notifying Cart users that removal of Carts from the premises or Parking Area is prohibited without the written consent of the Cart Owner.
- (b) The Cart Owner shall mark all Carts used in its business by its customers. The Cart Owner shall permanently affix a sign to each Cart that identifies the Cart Owner or the Retail Establishment, or both; notifies the public that the unauthorized removal of the Cart from the Retail Establishment/Cart Owner's premises or Parking Area or the unauthorized possession of the Cart is a violation of this Chapter 4; lists a valid telephone number and address for purposes of facilitating the retrieval of the Cart by the Cart Owner.

§ 4450. Removal; Impoundment; Final Disposition of Unclaimed Carts; Fines.

- (a) *Removal.* The Director shall have the authority to remove any Abandoned Shopping Cart on a City street, sidewalk, right-of-way or on public property, under the following conditions:
 - i. *Identified Carts.* If the Abandoned Shopping Cart is an Identified Cart, removal may occur three (3) business days after the Director gives the Cart Owner actual notice of the Cart's discovery and location. The Cart Owner shall be provided actual notice by telephone to the person identified for such purpose in the Cart Owner's approved plan

PROPOSED Ordinance, as recommended by Charter & Ordinance Committee on 1/24/22
+ Fine Amounts and Date Changes

for Effective Cart Nuisance Abatement Program and the Cart Owner is deemed to have actual notice if a message is left. The Director shall maintain a record of the time, date, and name of the person notified (or whether a message was left).

- ii. *Unidentified Carts.* If the Abandoned Shopping Cart is an Unidentified Cart, but other information on the Cart provides sufficient information as to the identification of the Cart Owner, removal may occur either after the Director notifies the Cart Owner by telephone of the Cart's discovery and location and grants a reasonable period of time, not to exceed twenty-four (24) hours, for the Cart Owner to retrieve such Cart, or immediately after reasonable efforts by the Director to notify the owner by telephone have failed. The Director shall maintain a record of the time, date, and name of the person notified or attempted to be notified.
 - iii. *Unidentifiable Carts.* If the Cart Owner cannot be determined from information on the Cart, the Cart may be removed immediately by the City and sold or disposed of in accordance with Section 4450(c) below.
- (b) *Immediate Impoundment.* Notwithstanding Section 4450(a), the City may remove an Abandoned Shopping Cart that was (I) involved in a violation of Section 4448, or (II) otherwise meets the criteria set forth in Section 4450(a), without complying with the three (3) business day advance-notice requirement provided that each of the following is met:
- i. The Cart Owner of the Abandoned Shopping Cart is provided actual notice in the same manner outlined by Section 4450(a) within twenty-four (24) hours following the removal and that notice informs the Cart Owner as to the impoundment location where the Cart may be claimed.
 - ii. Any Cart reclaimed by the Cart Owner within three (3) business days following the date of actual notice as provided pursuant to this subsection, shall be released and surrendered to the Cart Owner at no charge whatsoever and shall not be deemed an "occurrence" under Section 4450(d) below.
 - iii. Any Cart not reclaimed by the Cart Owner within three (3) business days following the date of actual notice as provided pursuant to this section, may be sold or disposed of immediately in accordance with the procedures outlined in Section 4450(c) below.
- (c) *Final Disposition of Unclaimed Carts.* Any Abandoned Shopping Cart removed by the Director in accordance with Sections 4450(a) above may be sold at public auction or otherwise disposed of. Any proceeds derived from such auction or disposal shall be used to pay the costs of removal, storage, and related administrative procedures. Surplus proceeds derived from such auction or disposal shall be deposited in the general fund of the City.
- (d) *Fines.* The Cart Owner shall be liable for a fine in ~~an~~ the amount below (or as) established by resolution of the Board of Aldermen) for each occurrence in excess of three (3) during the twelve (12) month period commencing ~~April~~ July 1 of each year for failure to retrieve an Abandoned Shopping Cart after notification by the City. As used herein, an "occurrence" includes each Abandoned Shopping Cart removed by the City in accordance with this Chapter 4.

<u>First offense:</u>	<u>\$100</u>	<u>\$50 waiver fee</u>
<u>Second offense:</u>	<u>\$200</u>	<u>\$100 waiver fee</u>
<u>Third and subsequent offenses:</u>	<u>\$300</u>	<u>\$150 waiver fee</u>