

SCC NO. 1733

**AN ORDINANCE OF THE SACRAMENTO COUNTY CODE
AMENDING CHAPTER 4.63 AND REPEALING CHAPTER 9.76
RELATING TO SHOPPING CARTS**

The Board of Supervisors of the County of Sacramento, State of California,
ordains as follows:

SECTION 1. Chapter 4.63, Title 4, of the Sacramento County Code is amended
to read as follows:

Chapter 4.63 SHOPPING CART RETENTION PLAN

4.63.010 Purpose and Findings.

Abandoned shopping carts constitute a public nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the County of Sacramento. Abandoned shopping carts are hereby deemed to pose an immediate danger to health and safety. The accumulation of wrecked, dismantled and abandoned shopping carts on public or private property also tends to create conditions that reduce property values, promoting blight and deterioration in the County, and causes ecological damage to critical waterways. The intent of this chapter is to ensure that measures are taken by store owners to prevent the removal of shopping carts from store premises and parking lots, to make the removal of shopping carts a violation of this Code, and to facilitate the retrieval of abandoned carts as permitted by State law. Further, except where excluded, this chapter is intended to supplement existing State law regarding shopping carts as set forth in California Business & Professions Code, Section 22435, et seq.

4.63.015 Application.

The provisions of this chapter shall apply generally to all businesses throughout the unincorporated territory of the County of Sacramento utilizing any type of shopping cart as defined in section 4.63.025 inside or outside, wherein any of the conditions herein specified are found to exist.

4.63.020 Administration.

The Director is hereby authorized and directed to administer this chapter and exercise the authority conferred herein.

The Director may approve and adopt those regulations which are consistent with the purposes, intent, and express terms of this chapter as deemed necessary to implement such purposes, intent, and express terms. The Director shall also have the power to render interpretations of this chapter and its regulations in order to clarify the application of its provisions. Such interpretations shall be in conformity with the intent and purpose of this chapter.

4.63.025 Definitions.

For purposes of this chapter, the following definitions shall apply:

"Abandoned Cart" means any cart that has been removed in violation of Section 4.63.040, regardless of whether it has been left on either private or public property. This provision shall not apply to carts that are removed at the direction or request of the Owner for purposes of repair or maintenance.

"Cart" means a basket which is mounted on wheels, a flat surface or structure mounted on wheels, or a similar device, provided by a business establishment for use by a customer for the purpose of transporting goods of any kind, including, but not limited to, grocery and retail store shopping carts. Such use applies both inside and outside the business.

"Director" means the Director of the Sacramento County Community Development Department or designated representatives.

"Hearing Officer" means the person appointed by the County Executive to preside over and render judgments at hearings in accordance with this chapter. The Hearing Officer may be an employee of the County. However, they shall not have any interests in any property subject to any hearing at which they preside. The Hearing Officer may also be a person who is not a County employee, but who is retained pursuant to a contract to provide such services. Any such Hearing Officer shall be qualified by training or experience or shall be an attorney or an administrative law judge.

"Enforcement Personnel" means any law enforcement officer, code enforcement officer, or other designated County of Sacramento employee.

"Owner" means any person or entity, who in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes carts available to customers or the public. For purposes of this chapter, Owner shall also include the on-site or designated agent that provides the carts for use by its customers.

"Premises" means the entire area owned, occupied and/or utilized by the business establishment that provides carts for use by customers, including any parking lot or other property provided by the Owner for customer parking or use.

"Shopping Cart Retention Plan" or "Plan" means a plan meeting the requirements of Section 4.63.035 that has been approved by the Director.

4.63.30 Cart Identification Requirements.

Every cart owned or provided by any business establishment in the County of Sacramento must have a sign permanently affixed to it that contains the following information:

- A. The identity of the Owner of the cart or the name of the business establishment, or both;
- B. An address for the Owner or business establishment for cart return;
- C. A telephone number for reporting the location of the abandoned cart;
- D. Notification of the procedure to be utilized for authorized removal of the cart from the business premises; and
- E. Notification that the unauthorized removal or possession of the cart from the premises or parking area of the business establishment is a violation of State law and this Code.

4.63.35 Shopping Cart Retention Plan.

A. Plan contents. Every Owner shall prepare, submit, and implement a Shopping Cart Retention Plan to prevent customers from removing carts from the business premises and for retrieval of carts. The Plan shall be submitted on a form provided by the County and must, at a minimum, include the following elements:

1. Identification: The name of the business, address and phone number of the premises where the business is conducted, and the address and phone number of the cart Owner, if different;

2. Cart inventory: The approximate total number of carts maintained on the premises;

3. Notice to Customers: A procedure for providing notification to customers that removal of carts from the premises and parking lots is prohibited and is a violation of state and local law. In addition to the warnings on shopping carts, notification may also be placed on the company's website or on signs on the premises of the business that effectively apprise customers of the prohibition;

4. Physical Measures: A description of the specific physical measures that will be implemented to prevent cart removal from the business premises. These measures may include, but are not limited to, disabling devices on all carts, posting of a security guard or employee to deter and stop customers who attempt to remove carts from the business premises, storage of carts inside the building when the store is closed or if space is not available inside, cable and locks on the carts stored outside when the building is closed, requiring security deposits for use of all carts, or the rental or sale of carts that can be temporarily or permanently used for transport of purchases; and

5. Shopping Cart Retrieval: An effective daily procedure for retrieval and cleaning of abandoned carts located within a two and one half (2.5) mile radius of the business premises by the Owner's employees, or proof that the Owner has entered into a contract for cart retrieval services and that carts are cleaned before they are returned to circulation and use within the business.

B. Plan Submission. The Owner shall complete a Shopping Cart Retention Plan form and submit it to the Director. Proposed businesses shall have an approved Plan prior to commencing business. Each Plan, when submitted, shall include the payment of an application fee as established by the Board of Supervisors.

C. Plan Review. The Director shall review the proposed Shopping Cart Retention Plan within fifteen (15) days of Plan submission and approve, reject, or deny as follows:

1. The Director may approve the Plan as submitted by the Owner;

2. The Director may deny a Plan based on the following grounds:

a. Implementation of the Plan violates any provision of the building, zoning, health, safety, fire, police code or other provision of this code or any city, state, or federal law which substantially affects public health, welfare, or safety;

b. The Plan fails to include all the information required by this chapter;

c. The Plan fails to address any special or unique conditions due to the geographical location of the premises as they relate to cart retention and prevention efforts;

d. Implementation of the Plan violates a term or condition of a Plan or other requirement of this chapter;

e. The Owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the Plan, or in any amendment or report or other documents required for submission; or

f. Failure to submit the required application fee.

3. Plan resubmission. If the Plan is denied or rejected as incomplete, the Director shall indicate areas that are incomplete, and the Owner shall have fifteen (15) days to resubmit a complete and adequate Plan. The Director shall approve or deny the resubmitted Plan within fifteen (15) days of the date of resubmission. If the revised Plan is denied, the Owner may appeal the denial pursuant to Section 4.63.050 of this chapter.

D. Implementation. Upon approval of the Plan, the measures included in the Plan shall be implemented as soon as commercially feasible but in no event later than sixty (60) days after the Plan's approval, with the exception of cart containment systems and disabling devices on carts, which if included in the Plan shall be installed within a commercially feasible timeframe based on factors including, but not limited to, ownership rights and permits required.

E. Reevaluation. The Director shall notify the Owner in writing if operation of an approved Plan demonstrates the Plan's insufficiency or inadequacy in preventing removal of carts from the premises. Plan insufficiency or inadequacy will be determined based upon reports received from County or contracted Cart collectors, verified complaints received by the County, and/or inspections made by those tasked with enforcement of this chapter. If insufficiencies or inadequacies remain after fifteen (15) calendar days from the date Owner received the written notice of Plan denial and/or notice of violation for non-compliance, and if no appeal was filed, the Director may reevaluate the Plan, at which time the Director may require a new Plan. If a new Plan is required, the new Plan shall address the deficiencies noted through enforcement of the previous Plan and a new application Fee will be required. If a new Plan is submitted and approved, the proposed measures shall be implemented as soon as commercially feasible but in no event later than sixty (60) days after approval is received. The measures from the previously approved Plan shall be continued until the new Plan is approved and the new measures are implemented. If the Director requires a new Plan, the Owner shall have the same right to appeal as set forth in Section 4.63.050 of this chapter.

F. Inspection. The Director may conduct an inspection to determine compliance with an approved Plan. The Director may issue a violation notice if operation of the Plan demonstrates the Plan's insufficiency or inadequacy in preventing removal and/or retrieval of carts from the premises or reevaluate the Plan as indicated in subsection E. If based upon an inspection a Plan is determined to be non-compliant and/or insufficient, the Owner will be subject to an inspection fee.

4.63.40 Prohibitions.

A. It shall be unlawful to either temporarily or permanently remove a cart from the premises or parking area of a business establishment with the intent to temporarily or permanently deprive the Owner of possession of the cart, if such cart has permanently affixed to it a sign identifying it as required in 4.63.030, without the express

prior written approval of the Owner or on-duty manager of the business establishment. Written permission shall be valid for a period not to exceed 72 hours.

B. Except in cases where written permission is granted, if such cart has permanently affixed to it a sign identifying it as required in 4.63.030, it shall be unlawful to be in possession of, abandon, alter, convert, or tamper with a cart that has been removed from the premises or parking area of a business establishment, with the intent to temporarily or permanently deprive the Owner of possession of the cart, unless it is in the process of being immediately returned to the Owner or business establishment.

C. This section shall not apply to carts that are removed at the direction or request of the Owner for the purposes of repair or maintenance.

D. Failure to comply may subject the violator to civil, criminal, and/or administrative remedies or fines as provided by law.

4.63.45 Enforcement.

A. The provisions of this chapter shall be enforced by any law enforcement officer, the Community Development Department and/or Department of Transportation, or their designee. To the extent otherwise permitted by law, such personnel may enter onto any public or private property in the County to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof.

B. A violation of this chapter is unlawful, and is hereby declared a misdemeanor and a public nuisance. In addition to any other remedy allowed by law, and administrative penalties as provided herein, any person who violates a provision of this chapter may be subject to criminal or civil action.

C. Failure of an Owner to submit a Shopping Cart Retention Plan and take the necessary steps to obtain Plan approval and/or failure to implement an approved Plan in the manner set forth in this chapter and/or within the time frames specified in this chapter may be subject to administrative penalties as indicated herein.

D. Failure to submit and implement a Shopping Cart Retention Plan may result in revocation or denial of a business license.

E. A Violation Notice may be issued for violation of this chapter as follows:

1. The Director shall issue a violation notice directed to the business Owner. The notice shall contain:
 - a. The street address and such other description as is required to identify the business.
 - b. A statement specifying the conditions which constitute the violation.
 - c. A statement of the action required to be taken as determined by the Director.
 - d. Appeal rights informing the Owner of the right to appeal the violation notice upon a written request for an administrative hearing and payment of appeal fee pursuant to 4.63.050 of this chapter.
 - e. A statement advising the appellant, pursuant to Government Code section 25845, the County intends to seek recovery of attorneys' fees, and attorneys' fees may be recovered by the prevailing party.
 - f. A statement that Owner will be responsible for all inspection and enforcement costs incurred to obtain compliance.

2. The violation notice, and any amended or supplemental notice, shall be served by regular mail, upon the business Owner at the address(s) included in the Plan, or as otherwise known to the Director.

3. Proof of service of the violation notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made.

F. A violation of any provision of this chapter is subject to Administrative Penalties to be immediately imposed as follows:

1. One thousand dollars (\$1,000.00) if a Plan is not submitted within thirty (30) days after written notice is provided to Owner;

2. One thousand dollars (\$1,000.00) for each subsequent thirty (30) day period Owner fails to submit a Plan.

3. Five hundred dollars (\$500.00) for non-compliance with an approved Plan if such violation is not corrected within fourteen (14) days of mailing a violation notice.

4. For each cart retrieved by County or County contractor that the Owner does not retrieve within three (3) days of notification that the cart is abandoned, the Owner will be subject to a one hundred dollars (\$100.00) administrative penalty. Notice to be provided to Owner for cart retrieval purposes shall be sent to the Owner email and/or phone number provided in the Plan.

G. Administrative Penalty Procedures.

1. Citation Requirements.

a. Notice. The administrative penalty citation shall be directed to the Owner of the business in violation, and shall contain:

i. the date, approximate time, and location of the violation(s);

ii. the conditions constituting the violation(s) and the code section(s) violated;

iii. the amount of the penalty;

iv. an advisement of administrative review rights pursuant to this section and the address at which a written request for administrative review and the accompanying fee must be delivered;

v. a statement advising the citation recipient the County will seek recovery of administrative costs and attorneys' fees as authorized by the California Government Code and this Code;

vi. the name, signature, and contact information of the party issuing the citation.

b. Service. The citation, and any amended or supplemental citation, shall be served by personal delivery or certified mail, postage prepaid and return receipt requested, upon the Owner. Citations delivered by mail shall be addressed to the Owner at the address shown on the Plan, or at any other address(es) ascertained to be more accurate. A copy of the citation shall also be posted at the property in violation. Proof of service of the citation shall be retained by the Director until the violation(s) are corrected, abated, or the enforcement case is otherwise closed.

2. Failure to Seek Administrative Review. Failure of the Owner to file for administrative review pursuant to this section is a waiver of his or her right therein. The cited penalty shall be imposed and fully due upon (10) business days from citation service, unless administrative review is requested. Cost recovery is authorized under Section 4.63.055.

4.63.50 Appeal Hearing.

A Violation Notice, Plan denial, or Administrative Penalty may be appealed pursuant to this section.

A. Violation Notice and/or Plan Denial Appeal Hearing. Any Owner may appeal a violation notice or Plan denial by filing at the office of the Director a written appeal on a form provided by the Director, accompanied by the appeal fee as established by resolution of the Board. The appeal shall not be deemed filed until payment of the appeal fee has been received. A violation notice or Plan denial appeal form shall include the following:

1. The written appeal shall contain a brief statement in ordinary and concise language detailing the relief sought and the reasons why appellant believes the notice or denial should be reversed, modified or otherwise set aside.

2. To be timely, the appeal fee, together with the written appeal, shall be filed within ten (10) business days from the date of the service of the notice of violation or denial.

3. Upon receipt of any appeal and appeal fee, the Director shall issue within thirty (30) business days an appeal hearing notice. The notice shall contain:

- a. The street address and such other description as is required to identify the premises.

- b. An order to the appellant to appear before a hearing officer at a stated time, but in no event less than ten (10) calendar days after having mailed such notice.

4. Violation Notice and/or Plan Denial hearing procedures shall be as indicated in 4.63.050(B)(3) through (B)(5).

5. Decision. The decision of the County Hearing Officer shall be in writing and issued within ten (10) business days of the hearing. The decision shall contain findings of fact and a determination to uphold or rescind the violation notice and/or Plan denial. The decision shall be served upon the cited person by the Director in the same manner as a citation pursuant to this section.

6. The decision by the Hearing Officer shall be final and binding, and no further appeal shall be authorized to any other County Board, Commission, or court of law.

B. Administrative Penalty Appeal Hearing. The Owner may contest imposition of the administrative penalty by submitting to the Director at the address listed on the citation a written request for administrative review hearing and paying the appeal fee as set by the Board of Supervisors.

1. Time to Contest Citation. A request for administrative review hearing must be received within ten (10) business days from the date the citation was served.

2. Hearing Officer. Upon receipt of a timely and properly filed request for administrative review hearing, the Director shall schedule a public hearing before a County Hearing Officer appointed pursuant to California Government Code section 27720.

3. Notice of Public Hearing. Notice of the time, date, and location for the administrative review hearing shall be served in the same manner as a citation pursuant to this section. Such notice shall be served at least fifteen (15) calendar days prior to the hearing.

4. Hearing Procedure. At the time set for hearing, the County Hearing Officer shall proceed to hear the testimony and receive evidence from all parties. Formal rules of evidence shall not apply at the hearing. The proceedings may be recorded by a tape recorder. Any party may also provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. A party may be self-represented, or represented by anyone of their choice.

a. The County Hearing Officer shall administer an oath or affirmation.

b. The County Hearing Officer may issue subpoenas to compel the attendance of witnesses.

c. The County Hearing Officer may take official notice of any matter which would be subject to judicial notice by the courts of this state, or of any matter which may appear in the official records of this County or its departments.

d. The County Hearing Officer may inspect the property or item(s) involved in the hearing provided that notice of inspection is given prior to inspection, parties are given an opportunity to be present, a statement of material facts observed and conclusions drawn is included in the record, and any party may include in the record a statement rebutting or explaining the Hearing Officer's facts or conclusions.

5. Continuance. The County Hearing Officer may grant continuances from time to time upon request and for good cause, or upon his or her own motion. Notice of continuance shall be mailed by the Director to the person cited.

6. Decision. The decision of the County Hearing Officer for an Administrative Penalty Appeal shall be in writing and issued within ten (10) calendar days of the hearing. The decision shall contain findings of fact, a determination to uphold or rescind the issued citation, and advise that the time for judicial review of the decision is governed by the California Government Code Section 53069.4. The decision shall be served upon the cited person by the Director in the same manner as a citation pursuant to this section.

7. Finality. The decision of the County Hearing Officer shall be final upon service.

C. Judicial Review. The manner of contesting the decision of the Hearing Officer for an Administrative Penalty Appeal is governed by California Government Code section 53069.4. Service of a notice of appeal authorized by California Government Code section 53069.4 shall be served upon the Clerk of the Board of Supervisors.

D. Collection. Payment of an Administrative Penalty is due in full the later of: 1) the day after the time to contest the citation expires if no administrative review request is filed, or 2) ten (10) calendar days after service of a County Hearing Officer decision upholding the citation. The County may pursue all reasonable and legal means in collecting sums due.

4.63.055 Cost Recovery.

The County is entitled to recover enforcement costs, including but not limited to inspection fees, penalties, and administrative hearing costs, and any other such costs as authorized under this Chapter. Such costs shall be a personal obligation of the Owner and shall be recovered by all means available to the County.

4.63.060 Severability and Validity.

If any section, subsection, paragraph or sentence of this ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the County of Sacramento by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance.

SECTION 2. Chapter 9.76, Title 9, of the Sacramento County Code is repealed in its entirety.

SECTION 3. As required by section 4.63.035(B), The Shopping Cart Retention Plan application fee is established in the amount of \$296.00. Changes to this amount will be brought to the Board of Supervisors for approval.

SECTION 4. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on February 27, 2024, and on March 26, 2024, further reading was waived by the unanimous vote of the Supervisors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor Hume, seconded by Supervisor Desmond, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this 26th day of March 2024, by the following vote:

AYES: Supervisors Desmond, Hume, Frost, Serna, Kennedy

NOES: None

ABSENT: None

ABSTAIN: None

RECUSAL: None

(PER POLITICAL REFORM ACT (§ 18702.5.))



(SEAL)

ATTEST:

Florence Evans

Clerk, Board of Supervisors

2725230

Pat O'Rourke

Chair of the Board of Supervisors
of Sacramento County, California

FILED

BOARD OF SUPERVISORS

MAR 26 2024

BY

Florence Evans
Clerk of the Board

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chair of the Board of Supervisors, County of Sacramento on *Mar 26, 2024*

By:

James C. ...
Deputy Clerk, Board of Supervisors