



CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Patricia L. O'Hearn, City Clerk and Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 26292**", the original copy of which is attached hereto, was passed for publication of title on the **6th day of February, 2001**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **20th day of February, 2001**, by the following vote:

AYES: CHAVEZ, CORTESE, DANDO, DIQUISTO, LeZOTTE,
REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE

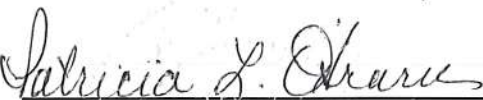
ABSENT: NONE

DISQ: NONE

VACANT: DISTRICT 5

Said ordinance is effective as of **March 23, 2001**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **26th day of February, 2001**.

(SEAL) 
PATRICIA L. O'HEARN
CITY CLERK AND EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 26292

**AN ORDINANCE OF THE CITY OF SAN JOSÉ
AMENDING TITLE 9 OF THE SAN JOSÉ MUNICIPAL
CODE TO ADD A NEW CHAPTER 9.60 REGARDING THE
PREVENTION OF ABANDONED CARTS**

WHEREAS, this Ordinance was found to be categorically exempt from environmental review, pursuant to the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 as amended;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

Title 9 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

**CHAPTER 9.60
PREVENTION OF ABANDONED CARTS
Part 1
Definitions**

9.60.010 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

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9.60.020 Abandoned Cart

Abandoned Cart means any Cart that has been removed, without written consent of the Owner, from the Owner's business Premises and is located on either public or private property.

9.60.030 Abandoned Cart Prevention Plan

Abandoned Cart Prevention Plan means a document submitted by the Owner of the Cart pursuant to Section 9.60 330 of this Chapter.

9.60.040 Agent

Agent means the person or persons designated in the Abandoned Cart Prevention Plan who the Owner of the Cart authorizes as the person(s) to perform or provide retrieval services on behalf of the Owner. The Agent may be the Owner if so designated in the City approved Abandoned Cart Prevention Plan.

9.60.050 Cart

Cart means a basket which is mounted on wheels or a similar device generally used in a retail or commercial establishment by a customer for the purpose of transporting goods of any kind.

9.60.060 Director

Director means the Director of Planning, Building and Code Enforcement for the City of San Jose, or such other director or officer designated by the City Manager to administer this Chapter.

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9.60.070 Owner

Owner means any person or entity, who in connection with the conduct of a business, owns, leases, possesses, or makes a Cart available to customers or the public. For purposes of this Chapter, Owner shall also include the Owner's designated Agent.

9.60.080 Premises

Premises means the entire area owned, occupied, and/ or utilized by an Owner which provides Carts for use by customers or other persons, including any parking lot or other property provided by or on behalf of the Owner for customer parking or use.

Part 2

Purpose

9.60.200 Findings And Purpose

- A. Abandoned Carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic. The accumulation of wrecked and dismantled Abandoned Carts on public property tends to create conditions that reduce property values, and promote blight and deterioration.
- B. The intent of this Chapter is to insure that measures are taken by Owners to prevent the removal of Carts from a business Premises, to make removal of Carts a violation of this Code, and to facilitate the retrieval of Abandoned Carts in a manner consistent with State law.

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9.60.210 Applicability

This Chapter shall apply to all Owners of a business establishment or other commercial services within the City of San Jose that provide twenty-six (26) or more Carts for customer use or the public.

Part 3 Regulations

9.60.300 Abandonment Prohibited

It shall be unlawful for any person to cause or permit any Cart to be abandoned on or upon any sidewalk, street or other public area, other than the Premises of the Owner of such Cart.

9.60.310 Cart Identification Required

- A. Every Cart owned or provided by any Owner must have a sign permanently affixed to the Cart that contains all of the following information:
 - 1. Identity of Owner, business establishment, or both.
 - 2. Notification to the public that the removal of the Cart from the Premises is a violation of State Law.
 - 3. The address or phone number of the Owner of the business establishment for Cart return.
- B. Any Cart found abandoned on public property that does not have the identification and information required by this Section may be removed from such public property and disposed of by the City in accordance with State law.

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12/11/00**9.60.320 Unauthorized Removal Prohibited**

It shall be unlawful for any person, either temporarily or permanently, to remove a Cart from a Premises or be in possession of a Cart that has been removed from a Premises which is properly marked in conformity with this Chapter without the written consent of the Owner. This Section shall not apply to Carts removed as authorized by the Owner for the purposes of repair, maintenance or disposal.

9.60.330 Mandatory Abandoned Cart Prevention Plan

Every Owner who provides twenty-six (26) or more Carts who allows or intends to allow the use of Carts shall develop, implement and comply with the terms and conditions of an Abandoned Cart Prevention Plan to prevent the unauthorized removal by any person of any Carts from the Owner's Premises and, if removed, to retrieve the Cart within twenty-four (24) hours of the removal or notice of the removal. The Abandoned Cart Prevention Plan shall include the following elements:

A. Name of Business / Owner.

The name of the Owner and the business name, the physical address where the business is conducted, name, address and phone number(s) of the on-site and off-site Owner if different.

B. Inventory of Carts.

A complete list of all Carts maintained on or in the Premises.

C. Community Outreach.

A description of a community outreach process under which the Owner shall cause notice to be provided to customers that the removal of Carts from the Premises is prohibited and is a violation of state and local law. This notice may include, but is not limited to, flyers distributed at the Premises, warnings on

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shopping bags, signs posted in prominent places near door and parking lot exits, direct mail, announcements using intercom systems at the Premises, web site or other means demonstrated to be effective to the reasonable satisfaction of the Director. Any and all posting of signs shall comply with the provisions of the San Jose Municipal Code, including, without limitation, Title 23.

D. Cart Identification.

Signs and Cart identification requirements which conform to State law.

E. Loss Prevention Measures.

A description of the specific measures that the Owner shall implement to prevent Cart removal from the Premises. These measures may include, but are not limited to, electronic or other disabling devices on the Carts so they can not be removed from the Premises, effective management practices, use of courtesy clerks to accompany customers and return the Carts to the store, use of security personnel to prevent removal, security deposit for use of Cart, or other demonstrable measures acceptable to the Director that are likely to prevent cart removal from the Premises.

F. Employee Training.

A description of an ongoing employee training program that shall be implemented by the Owner and that shall be designed to educate new and existing employees on the Abandoned Cart Prevention Plan and conditions contained therein no less frequently than annually.

G. Mandatory Cart Retrieval.

A plan for retrieval of abandoned Carts by the Owner within twenty-four (24) hours.

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12/11/00**9.60.340 Fees**

Every Owner who is required to submit an Abandoned Cart Prevention Plan or an application for a modification of an Abandoned Cart Prevention Plan pursuant to this Chapter shall submit with the Plan or Plan modification, a fee for the Director's review the Plan or Plan modification in the amount set forth in the Schedule of Fees established by resolution of the City Council.

9.60.350 Plan Approval or Denial and Penalties

- A. Each Owner shall submit an Abandoned Cart Prevention Plan in compliance with Section 9.60.330 to the Director on an annual basis. In implementing this Chapter, for the period from January 20, 2001 through December 31, 2001, the Director shall provide not less than sixty (60) days' written notice to each Owner of the date that the Owner's initial Abandoned Cart Prevention Plan is due. The Director may approve or deny the proposed Plan and notify the Owner of such decision within thirty (30) days of receipt. If approved, the Abandoned Cart Prevention Plan shall be implemented by the Owner no later than thirty (30) days from the date of approval. After December 31, 2001, Owner is obligated to comply with the provisions of this Chapter regardless of receipt of written notice from the Director.
- B. The Director may deny a Plan based upon any of the following grounds:
1. Implementation of the Plan violates any provision of the building, zoning, health, safety, fire, police or other provision of this Code or any County, State or Federal law which substantially affects public health, welfare, or safety;
 2. The Plan fails to include all of the information required by this Chapter;

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3. The Plan is insufficient or inadequate to prevent removal of Carts from the Premises;
 4. 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.
 5. Implementation of the Plan violates a term or condition of a Plan or other requirement of this Title;
 6. 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 information required to be made.
- C. If the Plan is rejected as incomplete or inadequate, the Director shall indicate areas of incompleteness or inadequacy, and the Owner shall have an additional thirty (30) days in which to resubmit a complete and adequate Plan.
- D. An Owner who fails to submit a complete Plan to the satisfaction of the Director, or fails to implement approved Plan measures or fails to comply with the approved Plan measures will be subject to enforcement of these requirements through any lawful means available to the City, including without limitation institution of the Administrative Remedies process pursuant to Chapter 1.14.
- E. The Director's decision to deny a Plan shall be final.

9.60.360 Plan Modification

At any time after the Director's approval of any Abandoned Cart Plan, the Owner may submit to the Director a modification of the previously approved plan to address a

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change in circumstances, address an unanticipated physical or economic impact of the Plan or modify an inadequate or ineffective Plan.

9.60.370 Exemption from Mandatory Plan

- A. Any Owner may request an exemption on an annual basis from the requirements of this Chapter if the Owner provides written documentation and demonstrates to the satisfaction of the Director that the Owner has a physical device or mechanism in place or a management practice currently implemented that prevents the unauthorized removal of Carts from the Owner's Premises and that none of the Owner's Carts have been found abandoned during the period of six (6) continuous months immediately preceding the date the application for an exemption is submitted to the Director.
- B. A written application for the exemption shall include all of the following:
 - 1. The name of the Owner and the name of the business, the physical address where the business is conducted, and the name, address and phone number of the on-site and off-site Owner.
 - 2. The method, management practice or physical device that will ensure that the Carts will not leave the Premises.
- C. Any exemption granted to an Owner shall be void upon the sale or transfer of ownership of a business.

9.60.380 Renewal of Exemption

Any Owner granted an exemption from the Abandoned Cart Prevention Plan shall file with the Director a written application for a one (1) year renewal of the exemption annually in accordance with the provisions of Chapter 9.60.370. The written application

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for a renewal of the exemption shall include the information required to be submitted in the initial application for the exemption in accordance with the provisions of Section 9.60.370.

9.60.390 Denial or Revocation of a Renewal of an Exemption

An application for a renewal of an exemption may be denied or revoked by the Director upon any of the following grounds:

- A. Any of the Owner's Carts is or has been abandoned on public property or in a right of way for longer than three (3) business days after notification by the City on three (3) occasions in any six (6) month period.
- B. The Owner has failed to comply with any of the provisions of this Chapter.
- C. The Owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the exemption, or in any amendment or report or other information required to be made.

Part 4

Hearing and Appeal Procedure for Renewal of Exemptions

9.60.400 Notice of Intended Decision

- A. Upon determining the existence of any of the grounds for denial or revocation of a renewal of an exemption in accordance with Section 9.60.390, the Director may issue to the Owner a notice of intended decision to deny or revoke the exemption.

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- B. The notice of intended decision shall state all the grounds upon which the denial or revocation of the renewal application for an exemption is based.
- C. The notice of intended decision shall advise the Owner that the denial or revocation shall become final unless the Owner files a written request for hearing before the Director within ten (10) calendar days of the date of service of the notice of intended decision to deny or revoke the renewal of the exemption.
- D. The notice of intended decision shall specify the effective date of the denial or revocation of such exemption.

9.60.410 Procedure for Hearing Before the Director

- A. The written request for a hearing before the Director must be received by the Director within ten (10) calendar days of the date of the notice of intended decision to deny or revoke the renewal of the exemption.
- B. Upon timely receipt of a written request for a hearing, the Director shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of a timely request for hearing.
- C. The Director shall serve a notice of hearing on the Owner at least ten (10) calendar days prior to the scheduled date of the hearing.
- D. At the hearing before the Director, the Owner shall be given the opportunity to present witnesses and relevant documentary evidence.
- E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Director deems reliable, relevant and not unduly repetitious may be considered.

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9.60.420 Decision of the Director

- A. Within twenty (20) calendar days after the hearing, the Director shall serve on the Owner a written decision sustaining, reversing or modifying the Director's intended decision.
- B. The decision by the Director after hearing shall become final unless the Owner files an appeal before the Appeals Hearing Board within the time period specified in Section 9.60.430.

9.60.430 Appeal to Appeals Hearing Board

- A. If an Owner is dissatisfied with the written decision of the Director, the Owner may file an appeal to the Appeals Hearing Board.
- B. The appeal must be in writing on a form provided by the Appeals Hearing Board and must be received by the secretary of the Appeals Hearing Board within fifteen (15) calendar days of the date of the Director's decision.
- C. The appeal hearing shall be conducted in accordance with the rules and regulations of the Appeals Hearing Board.

Part 5 Enforcement

9.60.500 Civil Enforcement

Every Owner shall comply with the provisions of this Chapter and every provision of the Owner's approved Abandoned Cart Prevention Plan.

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Any Owner who violates any provision of this Chapter or any provision of the Owner's approved Abandoned Cart Prevention Plan shall be subject to enforcement procedures for each violation through any lawful means available to the City, including without limitation institution of Administrative Remedies in accordance with Chapter 1.14 of Title 1 of this Code.

9.60.510 Retrieval Notification

The City shall notify the Owner of an Abandoned Cart as identified on the signage information permanently affixed to the Cart. The City notification shall be documented and provided either by telephone or by written notice. The notification shall require that the identified Cart(s) be retrieved pursuant to the conditions for retrieval as set forth in the Owner's Abandoned Cart Retrieval Plan.

PASSED FOR PUBLICATION OF TITLE this 6th day of February,
2001, by the following vote:

AYES: CHAVEZ, CORTESE, DANDO, DIQUISTO, LeZOTTE,
REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE


ABSENT: NONE

VACANT: DISTRICT 5



RON GONZALES
Mayor

ATTEST:



PATRICIA L. O' HEARN
City Clerk