

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE RELATING TO THE PREVENTION OF ABANDONED SHOPPING CARTS

City Attorney Impartial Analysis

California Business and Professions Code Sections 22435 through 22435.8 authorizes a city to retrieve off-premises shopping carts and laundry carts and fine the shopping cart owner if four or more shopping carts or laundry carts are not retrieved in a six-month period. Subdivision (d) of Business and Professions Code Section 22435.7 authorizes cities which impound shopping carts to recover the actual cost of the recovery service. California Business and Professions Code Sections 22435.10 through 22435.13 regulates shopping cart and laundry cart retrieval services.

This ordinance regulates the accumulation of wrecked, dismantled, and abandoned shopping carts on public or private property and operates to insure 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 the Salinas Municipal Code, and to facilitate the retrieval of abandoned shopping carts as permitted by State law.

BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Article VIII, titled Prevention of Abandoned Shopping Carts, is hereby added to Chapter 5 of the Salinas Municipal, and will read as follows:

Sec. 5-08.01. Findings and Purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the City of Salinas. 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 City. The intent of this Article is to insure the measures are taken by store owners to prevent the removal of shopping carts from the 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, this Article is intended to supplement existing State law regarding shopping carts as set forth in California Business and Professions Code Section 22435, et seq.

Sec. 5-08.02. Definitions.

(a) Abandoned Cart. Abandoned Cart means any cart that has been removed without written permission of the owner or on-duty manager from the premises of the business establishment, regardless of whether it has been left on either private or public property. Written permission shall be valid for a period not to exceed seventy-two (72) hours. This provision will not apply to carts that are removed for purposes of repair or maintenance.

(b) Cart. Cart means a basket which is 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 store shopping carts. This definition will exclude from enforcement under this Article those devices which do not have a “basket” mounted on wheels in which goods can be placed for transport.

(c) Enforcement Personnel. Enforcement Personnel means any police officer, code enforcement officer, or other designated City of Salinas employee designated by the Public Works Department.

(d) Owner. Owner means any person or entity, who in connection with the conduct of a business, owns, leases, possesses, uses, or otherwise makes any cart available to customers or the public. For purposes of this Article, owner will also include the owner’s on-site or designated agent that provides the carts for use by its customers.

(e) Premises. Premises means the entire area owned and 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.

Sec. 5-08.03. Enforcement of Article.

The provisions of this Article may be enforced by any enforcement personnel. To the extent otherwise permitted by law, said enforcement personnel may enter onto any public or private property in the City to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the City of Salinas pursuant to any provision of this Article may be performed by any enforcement personnel. Any enforcement personnel are authorized to issue an administrative citation upon any owner whom they have reasonable cause to believe has violated any provision of this Article.

Sec. 5-08.04. Applicability.

This Article applies to all owners of business establishments or other commercial service within the City of Salinas that provides shopping carts for customer use or for public use.

Sec. 5-08.05. Cart Identification Required.

Every cart owned or provided by any owner will have permanently affixed to the cart a sign that includes the owner’s name, address, and phone number required by California Business and Professions Code Section 22435.1. Failure to comply may subject the violator to any civil, criminal, or administrative remedies as provided by law.

Sec. 5-08.06. Unauthorized Removal Prohibited.

(a) It is unlawful to either temporarily or permanently remove a cart from the premises or parking area of a business establishment without the express prior written approval of the owner or on-duty manager of the business establishment. An owner may permit customer off-premises use of a cart for transportation of purchased items. The authorization must be in writing with date and time. This cart must be returned to the owner’s premises within seventy-two (72) hours.

(b) It is unlawful to be in possession of a cart that has been removed from the premises or the parking area of a business establishment unless it is in the process of being immediately returned to the owner or the business establishment.

(c) This section will not apply to carts that are removed for the purposes of repair or maintenance.

(d) Failure to comply may subject the violator to any civil, criminal, or administrative remedies as provided by law.

Sec. 5-08.07. Abandonment Prohibited.

It is 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.

Sec. 5-08.08. Cart Removal Warning Signs.

Owners will prominently display signs notifying the public that removal of carts from the premises is prohibited under California Business and Professions Code Section 22435 et seq. and this Article.

Sec. 5-08.09. Mandatory Locking of Carts After Hours.

Carts stored outdoors must be locked after business hours in a manner that prevents theft.

Sec. 5-08.10. Mandatory Retrieval Required Within 24-Hours of Notification by City.

The City will notify the owner of an abandoned cart when such cart is located in a place that can be accessed safely by the owner. Such notice may be by telephone, email or text message to the owner or owner's agent designated in the Abandoned Cart Prevention and Retrieval Plan. Within twenty-four (24) hours of City notification, the owner or the agent will cause the identified cart(s) to be retrieved.

Sec. 5-08.11. Mandatory Abandoned Cart Prevention Plan.

Every owner subject to this Article will develop, implement, and comply with the terms and the 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 the notice of the removal. The Abandoned Cart Prevention Plan must include the following elements:

(a) Name of Business/Owner/Agent. The name of the owner and the business name, the physical address where the business is conducted, and the name, address, and phone number(s) of the owner's on-site designated agent.

(b) Inventory of Carts. The total number of carts maintained on or at the premises.

(c) Physical Measures. 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 to deter and to stop customers who attempt to remove carts from the business premises, or bollards.

(d) Community Outreach. A description of a community outreach process under which the owner will 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 shopping bags, signs posted in prominent places near door and parking lot exists, direct mail, announcements using intercom systems at the premises, web site or other means demonstrated to be effective to the reasonable satisfaction of the Public Works Director or his/her designee. Any and all posting of signs will comply with the provisions of the Salinas Municipal Code.

(e) Cart Identification. Signs and cart identification requirements that conform to State law.

(f) Removal Prevention Measures. A description of the specific measures that the owner will 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 that cannot 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 Public Works Director, or his or her designee, that are likely to prevent cart removal from the premises.

(g) Employee Training. A description of an annual employee training program that will 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.

(h) Mandatory Cart Retrieval. A plan for retrieval of abandoned carts by the owner within twenty-four (24) hours. An owner or agent, who fails, three or more in any six-month period, to retrieve a cart within the required time will be required to submit a revised Abandoned Cart Prevention Plan for approval by the Public Works Director, or his or her designee. After approval of the revised Abandoned Cart Prevention Plan, and owner or any who then fails, three times in any subsequent six-month period, to retrieve a cart within the required twenty-four (24) hour period upon notification by the City, will be required to enter into a valid and enforceable contract with a shopping cart retrieval business which complies with State law.

Sec. 5-08.12. Abandoned Cart Prevention Plan Timelines and Approval Process.

(a) Existing Owners. The proposed Abandoned Cart Prevention Plan must be submitted for approval to the Public Works Director, or his or her designee, within thirty (30) days of receiving notice from the City that such a plan is required pursuant to this Article.

(b) New Businesses, New Construction, and Change in Ownership. All new construction projects that will accommodate businesses providing more than ten (10) carts will install disabling device equipment. If a new business begins conducting business in the City and provides carts to its customers, the new owner will notify the Public Works Director, or his or her designee, within thirty (30) days of opening the business to the public and submit a new prevention plan. If the existing business changes ownership, the new owner will notify the Public Works Director or his or her designee, within thirty (30) days of the change and submit a new prevention plan or agree to adopt the existing prevention plan on file with the City for that business. All businesses subject to this paragraph will submit a proposed prevention plan and obtain City approval prior to providing any shopping carts to customers of the retail establishment. For prevention plans which include contracting for retrieval services as a component of the plan, the contractor for service must be in place prior to approval of the plan.

(c) Approval. Within sixty (60) days of receipt of the prevention plan, the owner will be notified whether the prevention plan is approved. If the prevention plan is not approved, the notice will state its reasons and provide recommendations to the owner to ensure plan approval. The owner will submit a new prevention plan within fifteen (15) days of receiving this notice. Once a prevention plan is approved, the proposed measures will be implemented by no later than thirty (30) days after City approval given. If an evaluation report is submitted, the prevention measures will be continued until and unless the City indicates that a measure(s) needs to be modified. Unless otherwise agreed, any modifications to the plan imposed by the City shall be implemented within thirty (30) days after the City notifies the owner of the needed modifications.

(d) Revocation. If an owner has more than twenty (20) carts and if more than twenty-five percent (25%) of an owner's carts are retrieved by the City within a six (6) month period, the owner's prevention plan may be revoked upon notification by the City and the owner will be required to submit a new prevention plan to the Public Works Director, or his or her designee, within fifteen (15) days of receiving notice of the revocation. Any owner failing to implement the new prevention plan within thirty (30) days of approval, will be subject to penalties under this Article.

(e) Multiple Revocations. Upon the third prevention plan revocation within a four (4) year time period, the owner will be required to place disabling devices on all carts owned/leased/used by the business to prevent removal of carts from the business premises and parking lots, if such disabling services are not already in use. If disabling devices are already in use, owner will be required to show proof of proper maintenance and repairs ensuring the disabling devices on all carts are in proper working order. Any subsequent prevention plans submitted will include the implementation of a maintenance plan for all disabling devices.

Sec. 5-08.13. Penalties for Failing to Submit a Prevention Plan or Evaluation Report or to Implement Prevention Measures.

Any owner that fails to submit a prevention plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in

this Article will be required to place disabling devices on all carts owned/leased/used by the business to prevent removal of carts from the business premises and parking lots. Any owner that fails to submit an evaluation report or prevention plan as required by this Article or fails to place a disabling device on all carts, if applicable, will be subject to a \$1,000 civil penalty, plus an additional penalty of \$50.00 for each day of non-compliance.

Sec. 5-08.14. Maintenance Requirements for Cart Disabling Devices.

If an owner has carts equipped with disabling devices, either voluntarily or by order from the City, the owner will conduct regular maintenance to ensure the disabling devices are working properly. If at any time, the owner determines the disabling device installed on a cart is not working properly, the cart will be pulled from circulation until it is repaired. The owner will inspect, test, and repair all abandoned carts returned to the owner prior to making the returned carts available for use.

Sec. 5-08.15. Notification for Retrieval of Abandoned Carts.

Pursuant to Business and Professions Code Section 22435.7, the City will notify the owner of any abandoned carts owned or used by the business establishment that have been located within the City of Salinas, if the City intends to impound the cart(s) pursuant to Section 22435.7. The owner will have three (3) days from the date the notification is given, to retrieve the carts from the City.

Sec. 5-08.16. Administrative Costs and Fines.

Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) business days of receiving actual notice from the City, will pay the City's administrative costs for retrieving the cart(s) and providing the notification to the owner as may be established by resolution of the City Council. Any owner who fails to retrieve abandoned carts in accordance with this Article in excess of three times during a specified six-month period, will be subject to a \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded in a one-day period.

Sec. 5-08.17. Disposition of Carts After Thirty Days.

According to State law, any cart not reclaimed from the City within thirty (30) days after notification to the owner shall be sold or otherwise disposed of by the City. Any cart that fails to have the identification required by State law or this Article may be sold or otherwise immediately disposed of at the discretion of the City.

Sec. 5-08.18. Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 2. This Ordinance will take effect thirty (30) days from and after its adoption.

PASSED AND ADOPTED this _____ day of November 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney