



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Stephen M. Haase

**SUBJECT: ENFORCEMENT OF ABANDONED
SHOPPING CARTS** **DATE:** June 2, 2005

Approved	/s/	Date	06/02/05
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RECOMMENDATION

Direct staff to meet with stakeholders and develop a revised strategy to reduce the number of abandoned shopping carts and improve the effectiveness of the Abandoned Shopping Cart Program.

BACKGROUND

During the Economic and Neighborhood Development (END) CSA budget study session with the City Council on May 17, 2005, Vice Mayor Cindy Chavez posed several questions regarding the abandoned cart program.

In 2001, the Mayor and City Council adopted Resolution 26292, Prevention of Abandoned Carts, in an effort to address the nuisances and potential hazards to public health and safety due to abandoned shopping carts. Prior to the development and implementation of the program, the city was recovering as many as 1,400 abandoned carts each month from City streets, sidewalks, parks and creeks. In addition to the neighborhood blight and pedestrian and vehicular hazards caused by the carts, significant city resources were being diverted to address this issue. The City of San Jose's approach was to design a holistic program where the primary accountability for the cart remains with the owner of the cart.

This initiative was adopted as a Citywide Council priority in an effort to reduce the staff and service impacts associated with the removal of abandoned carts by the Department of Transportation. This Ordinance requires owners of businesses with twenty-six or more carts to submit an Abandoned Shopping Cart Prevention Plan to Code Enforcement, which describes the owner's plan to prevent the unauthorized removal of carts from the premises and a retrieval plan to pick-up carts within twenty-four hours when carts are found to be abandoned.

The Code Enforcement Inspector position assigned to the Abandoned Cart Program was eliminated in 2002-03 to allow the Department of Planning, Building and Code Enforcement to meet its General Fund reduction target. The shopping cart enforcement function was amortized to Service Area Inspectors. However, due to additional staff reductions and a concentration of remaining resources on cases with health and safety issues, moving this function to Area

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Inspectors has not been successful, and a steady increase has occurred in the monthly number of carts retrieved by the City. This trend is expected to continue upward toward pre-program abandonment levels given current resource levels.

ANALYSIS

Program Limitations Under State Law

State law prescribes a process for retrieval of shopping carts by cities and counties. Under this process cities and counties may impound a shopping cart provided that: 1) the cart is located outside the premises or parking area of the retail establishment; and 2) actual notice of the shopping cart's discovery and location has been given to the owner of the shopping cart. Cities and counties are entitled to recover the actual costs for performing the impounding services. They may also impose a fine against the owner of a shopping cart in an amount not to exceed \$50 for each failure to retrieve a shopping cart in excess of three during a six-month period. State law also prescribes the time periods in which the carts must be held before they can be disposed of.

Because of the restrictions on picking up and returning shopping carts, San Jose's Abandoned Shopping Cart Ordinance focused on prevention. Three guiding principals were considered in the development of the Abandoned Cart Ordinance. The Ordinance would 1) make cart owners accountable and encourage responsibility for prevention, 2) be compatible with State Law, and 3) be responsive to the needs of our citizens. The prevention plan approach provides an incentive for the installation and implementation of devices or best management practices that prevent carts from leaving the store site. Under the Ordinance, failure to retrieve carts that are taken off site within 24 hours is a violation of the prevention plan. With this approach, the City is able to cite stores for carts that have been off site for more then 24 hours rather than waiting 72 hours to address the issue which is required in some cases under state law.

Prevention and Enforcement

Abandoned carts are retrieved through proactive efforts or upon complaints received by the Call Center. The Call Center forwards complaints to the Department of Transportation (DOT) for retrieval. Generally complaints involving abandoned carts are responded to within three days, 90% of the time. The Call Center reports that 812 complaints have been submitted for the period of January through April 2005. This represents a 57% increase in complaints over the same period in 2004.

Shopping carts that are picked up by DOT are stored at one of the City yards and retrieved by the stores on a weekly basis. Since January 1, 2005, DOT has retrieved a total of 2,397 abandoned carts. Of these, 423 carts (18%) were recycled. The majority of these carts were recycled due to inadequate store identification, stores that are not required to submit prevention plans, or carts that were missing significant parts.

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There are approximately 150 stores that have completed Abandoned Cart Prevention Plans. Of these, 97% would be considered large retail stores such as Safeway, Target, Wal-Mart, Home Depot, Longs Drugs and Albertson's. In FY 2003-2004, the Abandoned Cart Prevention Plan Fee was raised uniformly to \$200 per store because the effort required for prevention plan review is not necessarily related to the number of carts and because a dedicated Inspector, whose workload would be related to the number of carts, was no longer part of the program. Prior to that date, stores with 26-99 carts paid a lesser fee. The fee increase was an attempt to recover a greater portion of the cost of the program.

CONCLUSION

Preventing shopping carts from being abandoned on vacant properties, in creeks, and on public right-of-ways is a community priority. Code Enforcement will reopen discussions with stores that utilize shopping carts to assess the strengths and weaknesses of the current program and develop alternative approaches to abating abandoned shopping carts for Council consideration.

COORDINATION

The preparation of this memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

/s/

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Planning, Building and Code Enforcement