

ORDINANCE NO. 2016-1360

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LAKE ELSINORE AMENDING AND
RESTATING TITLE 8 HEALTH AND SAFETY,
CHAPTER 8.38 SHOPPING CARTS IN ITS
ENTIRETY**

WHEREAS, there exists numerous abandoned shopping and laundry carts scattered across the City of Lake Elsinore ("City"); and,

WHEREAS, shopping carts are provided by grocery stores and many retail establishments for the convenience of customers while shopping on the premises of such businesses; and,

WHEREAS, Sections 22435–22435.8 of the Business and Professions Code provide for the impoundment, retrieval, and disposal of shopping carts that have been abandoned or removed from the owners premises without authorization; and,

WHEREAS, such carts contribute to blight, lower property values, and threaten the health and safety of the people; and,

WHEREAS, the City Council wishes to impose regulations against business owners to prevent the unlawful removal carts and for prompt retrieval of abandoned carts; and,

WHEREAS, the City Council wishes to impose sanctions against individuals who unlawfully take carts from business premises.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.38 of the Lake Elsinore Municipal Code is hereby amended and restated in its entirety to read as follows:

Chapter 8.38

SHOPPING CARTS

- 8.38.010 Purpose and Declaration of Public Nuisance**
- 8.38.020 Definitions**
- 8.38.030 Enforcement**
- 8.38.040 Prohibited Conduct**
- 8.38.050 Shopping Cart Abatement**

8.38.060	Mandatory Shopping Cart Containment and Retrieval Plan
8.38.070	Appeals
8.38.080	Cumulative Remedies
8.38.090	Violations

8.38.010 Purpose and Declaration of Public Nuisance.

A. The City Council hereby finds that the proliferation of wrecked, dismantled and abandoned shopping carts, or parts thereof, on public or private property are a visual blight, reduce property values, interfere with pedestrian and vehicular traffic, impede emergency services, and are injurious to the health, safety and general welfare. Therefore, wrecked, dismantled and abandoned shopping carts are declared to be public nuisances and may be abated pursuant to the provisions of this chapter or in any other manner provided by law.

B. The purpose of the regulations set forth in this chapter is to ensure that owners and operators of retail businesses that provide shopping carts take reasonable measures to prevent the removal of shopping carts and to provide for prompt retrieval of any removed or abandoned carts.

8.38.020 Definitions.

“Abandoned Cart” means any cart that has been removed from the premises of the business establishment and which is left unattended or discarded upon any public or private property other than the premises regardless of whether the cart was removed with permission from the Owner.

“City” means the City of Lake Elsinore.

“City Manager” means the City Manager or his or her designee.

“Owner” means any person or entity who, in connection with a retail establishment, owns, leases, possesses, uses, or otherwise provides shopping carts to customers, patrons, or the public. For purposes of this Chapter, the owner shall include on-site or designated agents.

"Premises" means the entire area owned and utilized by the retail establishment, including any parking lot.

“Removed Cart” means a cart which is removed from the premises of a business establishment by any person without the written permission or consent of the Owner of the cart.

Retail Establishment” means any business which provides or makes available shopping carts for the use of its customers regardless of whether such business is opened to the general public or is a private club or business.

“Shopping cart” or “cart” means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. Shopping cart also includes a cart used in a laundry or dry-cleaning retail establishment for purposes of transporting clothes and necessary cleaning materials.

8.38.030 Enforcement and Shopping Cart Abatement

A. The City Manager shall administer and enforce the provisions of this chapter. The City Manager may enter public property and private property, with consent of the owner or occupant or with a warrant authorizing entry, to examine shopping carts or parts thereof, to ascertain the identity of the owner of the carts, and to abate and remove shopping carts pursuant to this chapter. The City Manager may use contractors for cart retrieval purposes.

B. The City Manager may enforce the provisions of this chapter by use of administrative citations pursuant to LEMC 1.20 and shopping cart abatement pursuant to Business and Professions Code sections 22435–22435.8.

8.38.040 Prohibited Conduct

It is unlawful for any person to do any of the following acts:

A. To remove a shopping cart from the premises of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

B. To be in possession of any shopping cart that has been removed from the premises of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

C. To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

D. To leave or abandon a shopping cart at a location other than the premises of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

E. To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

F. To be in possession of any shopping cart while that cart is not located on the premises of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

G. Notwithstanding any other section in this chapter, it shall be unlawful and a public nuisance for any owner or retail establishment to allow one or more of that retail establishment's carts to be abandoned or remain unattended on any private property, city street, alley, sidewalk or other public right-of-way for any period of time.

8.38.050 Mandatory Shopping Cart Containment and Retrieval Plan

A. Every owner which provides more than ten (10) shopping carts shall develop, implement and maintain a plan to prevent the removal of shopping carts from the premises and to provide for the retrieval of removed and abandoned carts. The plan shall involve the following elements:

1. Every cart owned or provided by an owner shall have a permanently affixed sign as described in Business and Professions Code section 22435.1
2. Written notice shall be provided to customers, that removal of shopping carts from the premises is prohibited by state law. The plan shall identify the specific measures to be implemented to comply with this notice requirement.
3. Specific measures to prevent the removal of shopping carts from the premises. These measures may include, but are not limited to, the electronic or other disabling devices, physical barriers, security guards to deter the unauthorized removal of carts, or other effective measures that are satisfactory to the City.
4. All shopping carts located at the business premises shall be collected at the end of each business day and shall be collectively confined in a cart containment area until the commencement of the next business day. Businesses that are open twenty-four (24) hours a day shall collect and confine all shopping carts, other than those in current use by customers, in a cart containment area between the hours of that they are closed, each calendar day.
5. The owner shall establish and maintain a cart retrieval program. In addition, upon notification by city personnel, the owner shall cause the retrieval of the cart within 24 hours Monday through Friday, excluding Holidays and within 12 hours the first day after a Weekend or Holliday. The notification shall be documented and provided either by telephone or written notice. If the owner contracts with a cart retrieval service, the service must be approved by the City.
6. Employees of each retail establishment shall be trained on an ongoing basis concerning the requirements of this Chapter and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment.

7. Two or more retail establishments located within the same shopping or retail center or sharing a common parking area may collaborate and submit a single cart containment and retrieval plan.

8. Two or more retail establishments may collaborate and submit a single cart retrieval plan.

B. Cart Containment and Retrieval Plan Approval Process

1. A new or relocated retail establishment shall, at the time of applying for a business license or certificate of occupancy, submit a cart containment plan described in section (A). A retail establishment applying for a renewed license or certificate, but which did not previously submit a cart containment plan, shall submit such plan upon application for renewal. No plan will be accepted without payment of the fee.

2. Owners of existing retail establishments shall submit a cart containment plan described in section (A) when renewing their business license. No plan will be accepted without payment of the fee.

3. The Shopping Cart Containment Plan Review fee shall be \$285. No plan will be accepted without payment of the fee. No plan will be accepted without payment of the fee. The Director of Administrative Services is hereby authorized to adjust the fee every February 1st according to the average of the percent change in the Consumer Price Index for Urban Clerical and Wage Earners, as reported by the Bureau of Labor Statistics or successor agency from December of the current fiscal year over the preceding December

4. The City Manager shall review each submitted plan and within 30 days approve, deny, or request revision of the plan.

(a) If the plan is approved, the owner shall implement the plan within 30 days. Approval of the plan shall remain in effect as long as the business is in operation.

(b) If the plan is denied, the City Manager shall state in writing the reasons for the denial. The owner may appeal the denial pursuant to LEMC 8.38.060.

(c) If the plan must be modified, the City Manager shall state in writing the required modifications. The owner shall have fifteen (15) days to resubmit a modified plan for approval.

5. Plan Amendments. An owner may submit to the City Manager any amendments of a previously approved plan. Such amendments shall be reviewed in accordance with section (B) (4).

8.38.060 Appeals

Owners may appeal the denial of a proposed cart containment plan pursuant to the procedures under LEMC 1.20.060–1.20.080.

8.38.070 Cumulative Remedies

The remedies set forth in this chapter shall be cumulative and in addition to any and all other remedies, civil, equitable or criminal, afforded to the City under the law.

Section 2: CEQA. This Ordinance is exempt from the California Environmental Quality Act in accordance with Section 15061(b) (3) there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. If any provision, clause, sentence or paragraph of this Ordinance to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance and are hereby declared to be severable.

Section 4. This Ordinance shall take effect thirty (30) days after the date of its final passage. The City Clerk shall certify as to adoption of this Ordinance and cause this Ordinance to be published and posted in the manner required by law.

Section 5: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED at a meeting of the City Council of the City of Lake Elsinore, California, on the 14th day of June, 2016.

Brian Tisdale
Brian Tisdale, Mayor

ATTEST:

Susan M. Domen
Susan M. Domen, MMC
City Clerk

APPROVED AS TO FORM:

Barbara Leibold
Barbara Leibold
City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Susan M. Domen, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Ordinance No. 2016-1360 was adopted by the City Council of the City of Lake Elsinore, California, at the meeting of June 14, 2016, and that the same was adopted by the following vote:

AYES: Council Members Hickman, Johnson, Manos, Mayor Pro Tem Magee, and Mayor Tisdale
NOES: None
ABSENT: None
ABSTAIN: None

Susan M. Domen
Susan M. Domen, MMC
City Clerk