

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
REPEALING CHAPTER 8.30 (REGULATION OF
SHOPPING CARTS), AND ADOPTING A NEW
CHAPTER 8.30 PERTAINING TO THE
REGULATION OF SHOPPING CARTS IN THE
CITY**

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. REPEAL. Chapter 8.30 of the Merced Municipal Code is hereby repealed.

SECTION 2. ADOPTION. Chapter 8.30 is hereby added to the Merced Municipal Code, to read as follows:

“8.30.010. Purpose.

The accumulation of wrecked, dismantled, and abandoned shopping carts on public or private property tends to create conditions that reduce property values, promoting blight and deterioration in the city. The intent of this chapter is to ensure that measures are taken by store owners/operators to prevent the unauthorized removal of shopping carts from store premises and parking lots by making the removal of carts a violation of this code, and to facilitate the retrieval and disposition of abandoned carts found off the premises of retail establishments as permitted by state law. This chapter is intended to be consistent with supplement existing state law regarding shopping carts as set forth in California Business and Professions Code Section 22435, et seq.

8.30.020. Applicability.

This chapter applies to all businesses located in the City of Merced that provide carts for customer use, and to all carts on and off premises of businesses located within the City of Merced.

8.30.030. Declaration of a public nuisance.

The City Council finds and determines that any cart outside of the immediate business property or premises and control of the business owner is a public nuisance. Carts may contain trash/waste and other debris that can be potential hazards to the health and safety of the public. When wrecked, dismantled, or abandoned, carts accumulate on public or private property, creates conditions that are dangerous, environmentally harmful, and contribute to the deterioration of property values. Carts are generally

known to promote blight and deterioration, can obstruct free access to public and private sidewalks, bike paths, streets, parking lots, creeks, and interfere with pedestrian and vehicular traffic as well as emergency services.

8.30.040. Definitions.

Except as otherwise expressly set forth herein, the following words and terms used in this chapter shall have the following meanings:

A. "Abandoned shopping cart" shall mean 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 definition shall not apply to carts that are removed for purposes of repair or maintenance.

B. "Abandoned Cart Prevention Plan" shall mean a document required to be submitted by the responsible business owner or operator, pursuant to this chapter.

C. "Agent" shall mean the person or persons designated by the owner authorized to perform or provide retrieval services on behalf of the owner. The agent may be the owner, store manager or employee of owner, or a private cart retrieval company.

D. "Business license" shall mean that license for operation of a retail establishment required by the City.

E. "Cart" or "shopping cart" shall mean a basket which is mounted on wheels, or a similar device provided by a retail or commercial establishment for the use by a customer for the purpose of transporting goods of any kind and includes, without limitation, carts for use while shopping at retail establishments, and laundry carts.

F. "City" shall mean the City of Merced.

G. "Code" shall mean the City of Merced Municipal Code.

H. "Day" shall mean calendar day unless otherwise specified.

I. "Director" shall mean the employee(s) designated by the city manager to enforce or conduct the provisions of this chapter.

J. "Identified Cart" shall mean a shopping cart that has a permanently affixed sign that identifies, in accordance with California Business and Professions Code section 22435.1, the owner of the cart or the retailer, or both; and includes the information required in Section 8.30.050 of this chapter.

K. "Owner" shall mean any person or entity, who in connection with the conduct of a retail establishment or laundry establishment, owns, leases, rents, possesses, or uses carts, and makes any cart available to customers or the public. For purposes of this chapter, "owner" shall also include the owner's on-site or designated agent that provides the carts for use by its customers.

L. "Parking lot" shall mean property provided by a retail establishment for use by a customer for parking an automobile or other vehicle while visiting the retail establishment. In a multi-store complex or shopping center, "parking lot" includes the entire parking area used by or controlled by the complex or center.

M. "Person" shall mean a natural person, firm, association, organization, partnership, business, trust, corporation, limited liability company, or other entity.

N. "Premises" shall mean the entire area owned or leased and utilized by the retail establishment that provides carts for use by customers, including any parking lot or other property provided by the owner for customer parking.

O. "Retail establishment" shall mean, in relation to carts, any business located in the City of Merced which offers or provides carts for use by customers of such business, regardless of whether such business is advertised or operated as a retail or wholesale business, or laundromat or laundry business, and regardless of whether such business is open to the public, is a private club or business, or is a membership store.

P. "Unidentified cart" shall mean a cart that is not an identified cart, as defined above.

8.30.050. Required signs on cart.

Every cart owned or provided by any retail establishment in the city shall have a sign prominently and permanently affixed to it containing the following information:

A. The name of the owner of the cart or the name of the retail establishment, or both. If the owner operates more than one location in the City with carts, the sign shall identify the location

B. Notification that the unauthorized removal of the cart from the premises or parking lot of the retail establishment is a violation of State and city law, and that the cart is required to be returned to the retail establishment from which it was taken;

C. A local or toll-free telephone number to contact for cart retrieval; and

D. An address for returning the cart to the owner or business establishment.

8.30.060. Cart security.

All owners, regardless of the number of carts owned, shall ensure that all of owner's carts are secured from access by the public after close of business every day, and that any of the owner's carts located off the business property but in the vicinity of the business are retrieved.

8.30.070. Abandoned cart prevention plan required.

Every cart owner shall develop, implement, and comply with the terms and conditions of an abandoned cart prevention plan or "ACPP," as defined in this chapter, to prevent the unauthorized removal by any person of any cart from the owner's premises, and to promptly retrieve carts that have been removed. The ACPP shall be submitted to the director by each business owner on the schedule set forth in Section 8.30.080. Upon

any transfer of ownership for a cart owner, the new owner of a business is required to submit an application to Director of Development Services or designee with either a new plan, or adoption of the plan submitted by the previous owner. The Director may, but is not required to, prepare a template ACPD as guidance to business owners.

The ACPD shall include the following elements and a detailed description of how they will be implemented:

A. Name of Business/Owner. The name of the business, the physical address where the business is conducted, and the name, address, and phone number(s) of the on-site and offsite business owners if different.

B. Customer Outreach. A description of a customer 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 shopping bags, signs posted in prominent places near doors on the premises and parking lot exits, or other means demonstrated to effectively inform customers of the law. Any and all posting of signs shall comply with the provisions of the code.

C. Cart Identification. Signs and cart identification information which conform to this chapter and state law.

D. Loss Prevention Measures. A description of the physical containment system(s) 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 cannot be removed from the premises, use of security personnel to prevent removal, use of staff to collect carts from the premises on an hourly basis, requiring a security deposit for use of cart, or other demonstrable measures acceptable to the director that are likely to prevent cart removal from the premises.

E. Employee Training. The owner of the retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of the ACPD and the provision of law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment.

F. Mandatory Cart Retrieval Plan. The procedure by which the owner or qualified cart retrieval service will search, find, and return carts removed from the premises. The cart retrieval operation must demonstrate that the cart retrieval service shall actively locate abandoned carts within a one-mile radius of the business premises at least once per week. The qualified cart retrieval service shall not place any limits on daily loads or days per week to retrieve carts within the City, and that the cart retrieval service or cart owner will respond to complaints from the public or notifications from an enforcement officer in a manner which results in the retrieval of carts within three (3) business days of receiving the notification. Whomever is identified by the owner of a retail establishment as the party responsible for retrieval of the carts shall be made available for cart retrieval six (6) days a week, eight (8) hours a day or during the owner's business hours, whichever is shorter.

8.30.080. Time for submittal, Plan approval or denial, and penalties.

A. Cart owners shall submit a proposed ACPP to the city within ninety (90) days following the effective date of this chapter. In the event the owner business license expires prior to ninety (90) days from the effective date of this chapter, the owner shall submit the plan with its business license renewal application. Those affected retail establishments opening after the effective date of this chapter shall submit the plan concurrently with the business license application.

B. The director shall review the proposed ACPP and approve or deny the plan within thirty (30) days of its receipt. If the ACPP is approved, the cart owner/retail establishment shall implement the approved effective ACPP within thirty (30) days from the date of approval. If the plan is incomplete, the director shall notify the cart owner in writing to revise the plan and resubmit it within fifteen (15) days of director's notice. The director may deny a plan for a proposed ACPP based upon one or more of the following grounds:

1. Implementation of the plan violates any provision of this code or any county, state or federal law or regulation;
2. The plan fails to include all of the information required by this chapter;
3. The plan is insufficient or inadequate to prevent removal of shopping 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 removal prevention;
5. Implementation of the plan violates a term or condition of any agreement between the City and the retail establishment, or owner of the parking lot, or cart owner;
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. The director's denial of a plan shall be the final administrative decision unless appealed to the City Manager within ten (10) calendar days of the director's decision.

D. An owner who fails to submit a proposed ACPP, or whose proposal is denied, or whose proposal is approved but who then does not comply with the terms of the approved ACPP, shall be subject to enforcement of these requirements. Each day during which a retail establishment/cart owner has not complied with the provisions of this chapter shall constitute a separate violation.

8.30.090. Plan modification.

At any time after the director's approval of any ACPP, the owner may submit to the director an application for a modification of the previously approved plan to address a change in circumstances, address an unanticipated physical or economic impact of the plan, or modify an inadequate or ineffective plan.

8.30.100. Business owner changes.

In the event that the ownership or operator of a business changes, the new owner or operator will be subject to the terms of this chapter and will be required to comply with any and all provisions of this chapter, and any applicable ACPP.

8.30.110. Authority to impound.

Pursuant to California Business and Professions Code Section 22435.7, the City may impound any abandoned cart when the cart has a sign affixed. The requirements for notice, impoundment and recovery of the cart shall be governed by California Business and Professions Code sections 22435 through 22435.7 and section 8.30.120 of this code. The City may retrieve and immediately dispose of any abandoned unidentified carts.

8.30.120. Impoundment.

A. The director or their designee may impound an abandoned shopping cart located on public property outside the premises or parking lot of a retail establishment (or private property at the request and with the consent of the property owner) under any of the following conditions:

1. Where the location of the cart will impede emergency services.
2. When the shopping cart does not identify the owner of the cart.

3. When the City has contacted either the owner, the owner's agent, or the entity contracted by the owner under the abandoned cart prevention plan and notified it of the abandoned cart's location.

4. When the City has notified the above entities of the abandoned cart, its location and/or the cart has not been retrieved within the three (3) business days of receipt of the notice.

5. When the cart is in a public right-of-way, or alley.

B. Any cart removed from public or private property by the director or their designee shall be stored for thirty (30) days at a location designated by the director which is reasonably convenient for the owner of the cart and is open for at least six (6) hours of each business day.

C. In cases where a cart does not provide adequate or legible identification or markings to determine its owner, the city shall only be required to notify the cart owner if that owner has been identified.

D. A cart owner has thirty (30) days following the giving of notice by the City to retrieve any cart that has been impounded. If the cart has not been retrieved by its owner/representative within thirty (30) days of the giving of a notice, or if the cart's owner cannot be determined within thirty (30) days of being impounded, the cart may be sold or destroyed by the city, at the direction of the director. The City may employ agents or contractors to dispose of such carts.

E. The city shall provide notice of each impounded shopping cart as follows:

1. If the cart contains information identifying a specific entity or person as the owner or contact, the city shall give notice to that person. Otherwise, the City shall give notice to the entity or person that the city has reason to believe is the owner.

2. Where an empty shopping cart lacks sufficient markings to enable the City to determine the owner or owner's agent, the City may treat the empty shopping cart as an unidentified cart under this chapter.

3. The City will provide the notice required by this section by placing a telephone call during regular business hours to the owner or owner's designated representative and, through direct communication or voicemail message, or by email if an email address is provided, giving the information necessary for the owner to retrieve the cart.

F. Any cart removed from public or private property and stored pursuant to this section shall be released to the lawful cart owner, or to their representative designated in writing, if claimed within thirty (30) days after such removal and upon payment of a redemption fee. The fee for the removal and storage of any abandoned cart under this section shall be established by City Council resolution and shall cover the actual costs of removal, storage, and related administrative procedures. The fee established hereunder shall be a part of the City's normal fee schedule and readily accessible to the public.

G. In addition to any fee for which a cart owner is liable, the owner shall also be liable for a fine in an amount not to exceed fifty dollars (\$50) or the amount set forth in Business and Profession Code section 22435.7, whichever is greater for each occurrence in excess of three (3) during any six (6) month period for failure to retrieve a cart. As used herein, an "occurrence" includes all of owner's carts impounded in accordance with this chapter in a one-day period.

8.20.130. Option for immediate impoundment.

A. The City may impound a cart without complying with the three (3) business day advance-notice requirement if each of the following is met:

1. The cart owner is provided actual notice within twenty-four (24) hours following the impound and that notice informs the cart owner as to the location where the cart may be claimed.

2. Any cart so impounded shall be held at a location in compliance with Section 8.30.120.

3. Any cart reclaimed by the cart owner within three (3) business days following the date of actual notice as provided pursuant to this section, shall be released, and surrendered to the owner at no charge whatsoever, including the waiver of any redemption fees that would otherwise be applicable.

4. Any cart not reclaimed by the cart owner within three (3) business days following the date of actual notice as provided pursuant to this section, shall be subject to any applicable fee imposed commencing on the fourth (4th) business day following the date of notice but accruing from the date of retrieval and storage, and any applicable fine imposed. Any cart reclaimed by the owner within three (3) business days following the

date of actual notice as provided pursuant to this section, shall not be deemed an "occurrence."

B. Any cart not reclaimed by the cart owner within thirty (30) days of receipt following the date of actual notice as provided pursuant to this section, may be sold, or disposed of.

8.20.140. Unlawful acts.

A. Except as otherwise expressly provided in this section, it shall be unlawful and a misdemeanor offense for any cart owner to provide or offer, or permit to be provided or offered, any cart to a customer without a current and valid ACPD plan approved by the director as required by this chapter.

B. It shall be unlawful for any person other than the cart owner or the owner's authorized representative to do any of the following acts:

1. To temporarily or permanently remove a cart from the premises or parking lot of a retail establishment without the express prior written approval of the owner or on-duty manager of the retail establishment. Written permission shall be valid for a period not to exceed seventy-two (72) hours.

2. To leave or abandon a cart upon any public or private property other than the premises of the retail establishment or its parking lot.

3. To be in possession of a cart that has been removed from the premises or parking lot area of a retail establishment unless it is in the process of being immediately returned to the owner or retail establishment.

4. To tamper with any cart, or remove any part or portion thereof, or to remove, obliterate, or alter any identification, including but not limited to any serial numbers, or to possess any cart that has been altered, converted, or tampered with or whose identification has been removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart without the prior written consent of the cart owner.

C. This section shall not apply to carts that are removed for the purposes of repair or maintenance which has been authorized by the owner.

8.20.150. Notice of violation on identified and unidentified carts.

The director shall provide notice to any known owner of an abandoned cart by email, first-class mail at the address indicated on the cart or the cart owner's last known address, and/or telephone. The notice shall include the following information: (i) date and location of removal of the cart from public or private property; (ii) procedure for recovering such cart; (iii) location where the impounded cart may be recovered and hours of operation; (iv) last possible date such cart may be recovered; and (v) any fees and charges due. If the cart owner is unknown and not clearly identified on the cart, the cart shall be designated "unidentified." The director, for each unidentified cart, shall maintain a record containing the information above and a brief description of the cart.

8.20.160. Final disposition of unclaimed carts.

Not less than thirty (30) days after the date notice is given to the owner, or after the cart is designated "unidentified" by the City, any such cart not claimed may be disposed of. Any proceeds derived from such or disposal shall be used to reimburse the city's costs of removal, storage, and related administrative procedures. Net proceeds derived from such sale or disposal shall be deposited in the general fund of the city.

8.20.170. Enforcement.

Every cart owner who violates any provision of such owner's ACPP, and every person who violates any provision of this chapter, shall be subject to enforcement procedures for each violation by any lawful means available to the city, including, but not limited to, those set forth in California Business and Professions Code Sections 22435.3 and 22435.5, and the administrative penalties permitted by this code."

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 6. PUBLICATION. The City Clerk is directed to cause this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2024, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2024, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:

D. SCOTT MCBRIDE, CITY CLERK

BY: _____

Assistant/ Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

CRAIG J. CORNWELL, CITY ATTORNEY

Craig Cornwell 10/15/2024
City Attorney Date