

ORDINANCE NO. 2106

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA, ADDING
CHAPTER 8.30, "REGULATION OF SHOPPING
CARTS," TO THE MERCED MUNICIPAL CODE**

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

SECTION 1. ADDITION TO CODE. Title 8, "Health and Safety," of the Merced Municipal Code is hereby amended by the addition of Chapter 8.30, "Regulation of Shopping Carts," to read as follows:

"CHAPTER 8.30

REGULATION OF SHOPPING CARTS

Sections:

8.30.010	Purpose.
8.30.020	Definitions.
8.30.030	Enforcement Authority.
8.30.040	Prohibition Against Removing, Possessing and Altering Carts.
8.30.050	Prohibition Against Abandoning Carts.
8.30.060	Penalty.
8.30.070	Cart Identification Required.
8.30.080	Penalty for Failure to Affix Required Signs.
8.30.090	Mandatory Removal Prevention and Retrieval Plan.
8.30.100	Penalty for Failure to Prepare and Implement Written Plan.
8.30.110	Evaluation Report.
8.30.120	Penalties for Failing to Submit an Evaluation Report.
8.30.130	Administrative Hearing.
8.30.140	Impoundment of Abandoned Carts.
8.30.150	Retrieval Services.
8.30.160	Prosecution for Theft Not Precluded.

8.30.010 Purpose.

A. Abandoned shopping carts are unsightly, interfere with pedestrian and vehicular traffic, accumulate over time on public and private property causing blight and similar conditions resulting in reduction of property values and deterioration of the City's neighborhoods, are detrimental to the public health, safety, and welfare and constitute a public nuisance.

B. The purpose of this Chapter is to promote the public health, safety, and welfare by establishing that it is a violation of this Code to improperly remove any shopping cart from the premises of the owner of the cart. In addition, this Chapter provides requirements for storeowners to take action to reduce the removal of shopping carts from the owner's premises and to facilitate the retrieval of shopping carts removed from the owner's premises.

8.30.020. Definitions.

For purposes of this Chapter, the following shall have the following meanings:

A. 'Abandoned shopping cart' means any cart that has been removed from the premises of the owner and is no longer in the possession or under the physical control of the person who removed such cart. A cart abandoned by a person other than the owner shall not constitute a relinquishment of ownership of the cart by the owner.

B. 'Cart' means a basket or platform which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind. This includes, but is not limited to, laundry, grocery, or shopping carts.

C. 'Director' means the Director of Parks and Community Services of the City of Merced or the Director's designee.

D. 'In the business of shopping cart or laundry cart retrieval' means to search for, gather, and restore possession to the owner, or an agent thereof, for compensation or in expectation of compensation, of shopping carts or laundry carts located outside the premises or parking area of a retail establishment.

E. 'Laundry cart' means a basket which is mounted on wheels and used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

F. 'Owner' means any person, business establishment or entity who owns, possesses, or has the power to make a shopping cart available to customers. For the purpose of this Chapter, owner includes, but is not limited to, the storeowner, manager, on-site manager, on-duty manager, or other designated agent of a business establishment providing shopping carts for customer use.

G. 'Parking area' means a parking lot or other property provided by a business establishment for use by a customer for parking an automobile or other vehicle.

H. 'Person' means any person, corporation, partnership, association, joint stock company, limited liability company, limited liability partnership, and other entity capable of being sued.

I. 'Plan' means a written document describing in detail the measures an owner intends to implement to prevent cart removal and to retrieve abandoned carts.

J. 'Premises' means the entire area owned, rented, leased, or utilized by a business establishment that provides shopping carts for customer use, including parking areas.

K. 'Street' means any street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert, cross walk, sidewalk, park, parking lot, parking area, and place used by the general public.

8.30.030 Enforcement Authority.

A. This Chapter shall be administered and enforced by the Director with the assistance of the Police Chief, Fire Chief and their designated agents and Code Enforcement Officers. The Director is hereby authorized and directed to promulgate and implement rules, regulations, and procedures necessary or appropriate for enforcement of this Chapter. The Director, Police Chief, Fire Chief and their designated agents and Code Enforcement Officers are authorized as follows:

1. To enter upon and inspect any public and private property or premises to ascertain whether the provisions of this Chapter or applicable State laws are being obeyed. As used herein, 'public property' includes the outdoor common area of any building, business premises, apartment building or complex, or other premises or portion thereof which is adjacent to public property, open to the public, and which contains a shopping cart or shopping carts visible at street or ground level from the adjacent public property. All inspections, entries, and examinations shall be done in a reasonable manner. If an owner, tenant, occupant, or agent or other responsible party refuses to grant the City permission to enter or inspect,

the City may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure. Nothing contained in this Section shall be deemed a limitation upon the Director to enter private property pursuant to permission from the owner or occupant thereof or pursuant to a duly issued inspection warrant or other court order.

2. To examine a shopping cart or parts thereof, or to obtain information as to the identity of the owner of any shopping cart, or to retrieve shopping carts in accordance with the provisions of this Chapter.
3. To determine whether a violation of this Chapter exists and to take appropriate action to gain compliance with the provisions of this Chapter and applicable State laws.
4. To issue administrative citations and to impose civil penalties for any violation of this Chapter.

B. The Police Chief, City Police Officers, and designated City employees, who shall be designated by separate Resolution pursuant to the provisions of California Penal Code Section 836.5, shall have the authority to issue criminal citations for violations of this Chapter. The City Attorney and the District Attorney shall have the authority to file criminal complaints to enforce this Chapter.

8.30.040 Prohibition Against Removing, Possessing, and Altering Carts.

It is unlawful for any person except the owner of a cart or the owner's agent to do any of the following acts:

- A. To remove a cart from the premises or parking area of a business establishment without the express, written consent of the owner; or,
- B. To be in possession of any cart while that cart is not located on the premises or parking lot of the owner of the cart without the express written consent of the owner. Written permission to remove a shopping cart shall be valid for a period not to exceed seventy-two (72) consecutive hours; or,
- C. To be in possession of any shopping cart with serial numbers removed, obliterated or altered; or,
- D. To alter, convert, or tamper with a cart, or to remove any part or portion thereof or to remove, obliterate, or alter serial numbers on a cart.

8.30.050 Prohibition Against Abandoning Carts.

It is unlawful for any person to leave, abandon, or store any cart upon any sidewalk, street, or other public place, or upon private property exposed to public view, at a location other than the premises of the owner.

8.30.060 Penalty.

Any person who violates Section 8.30.040 or Section 8.30.050 shall be guilty of a misdemeanor and subject to punishment in accordance with Section 1.12.020 *et. seq* of this Code. An administrative fine may also be imposed not to exceed the amount allowable for a criminal fine. Nothing in this Chapter shall prevent the City from pursuing criminal, civil, administrative, or any other legal remedy to address violations of this Chapter.

8.30.070 Cart Identification Required.

A. Every owner who, in connection with the conduct of a business, including, but not limited to a food dispensing business, retail business, or laundry business, owns or makes any cart available to the public, shall permanently affix a durable metal or plastic sign to such cart containing the following information:

1. The name of the owner of the cart or the name of the retailer that provides the cart, or both; and,
2. A valid, current telephone number or address for returning the cart if removed from the premises or parking area to the owner or retailer; and,
3. The procedure to be used for authorized removal of a shopping cart from the owner's premises if allowed; and,
4. Notice that the unauthorized removal of a shopping cart from the premises or parking area of the retail establishment, or the unauthorized possession of a shopping cart is a violation of State law.

B. A cart with a sign attached pursuant to subsection A of this Section that does not include a current valid telephone number shall bear some form of additional identification which includes a legible, valid, current telephone number of the owner or provider of the cart.

C. Carts provided by individual stores or retailers that are owned by or affiliated with the same company and share the same name (chain stores) shall bear

some form of identification which identifies the specific store that the cart is assigned to.

- D. A cart that does not have a sign attached as required by subsection A of this Section is presumed to be abandoned if it has been left standing unattended on any public property or private property other than the owner's or the owner's agent. The City may impound, sell, or otherwise dispose of such a cart immediately upon discovery of the cart.

8.30.080 Penalty for Failure to Affix Required Signs.

Any owner who maintains or permits the use of shopping carts in violation of the provisions of Section 8.30.070 shall be guilty of an infraction and subject to punishment in accordance with Section 1.12.030 *et. seq* of this Code.

8.30.090 Removal Prevention and Retrieval; Mandatory Plan.

- A. Every owner who provides or intends to provide carts to be used by customers shall do the following:
1. Provide customers with written notice within thirty (30) days of the adoption of this Chapter, or for businesses opening after the adoption of this Chapter within thirty (30) days of the opening thereof, that removal of carts from the owner's business premises is prohibited and is a violation of State and local law. This notification shall be provided for at least two (2) to seven (7) days on days reasonably calculated by the owner to reach the most customers and may be provided in the form of flyers, warnings on shopping bags, or any form of written

notification that will effectively notify customers of the prohibition; and,

2. In accordance with rules promulgated by the Director upon the advise of the Police Department, post prominently and conspicuously at all locations required by such rules, a notice in substantially the following form:

‘REMOVAL OF SHOPPING CARTS (OR LAUNDRY CARTS, IF APPLICABLE,) FROM THESE PREMISES IS PROHIBITED BY LAW (MMC §8.30.040) AND WILL SUBJECT THE VIOLATOR TO A FINE OF UP TO \$1000.00 OR SIX MONTHS IN JAIL OR BOTH THE FINE AND THE JAIL TERM.’

3. Implement specific measures to retrieve carts that are removed from the owner's premises. Such measures may include, but are not limited to, employment of personnel or contractors to retrieve shopping carts on a regular basis or whenever necessary so long as retrieval of carts occurs within 72 hours after the owner is notified that a cart belonging to the owner is off of the owner's premises.

B. If it is determined by the Director that an excessive number of abandoned carts belong to a particular owner, the owner shall be required to contract with a cart retrieval service that retrieves carts at least five days a week; and submit to the Director and implement a removal prevention and retrieval plan pursuant to subsection C of this Section. The Director shall notify the owner in writing when such requirements shall be imposed. For purposes of this subsection and subsection

D of this Section, the number of abandoned shopping carts belonging to a particular owner shall be considered excessive if:

1. The owner fails three (3) times within a 6 (six) month period to retrieve a cart within three (3) business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the City of the shopping cart's discovery and location.

C. If required by the Director to submit a removal prevention and retrieval plan, the owner shall submit a written plan describing in detail the measures the owner intends to implement to prevent cart removal and to retrieve abandoned carts. The plan shall describe notification methods as described in subsection A, paragraphs 1 and 2 of this Section; and the name, address, and working hours of the retrieval service that the owner has contracted with. In addition, the plan shall also describe specific physical removal prevention measures the owner intends to implement if the owner is required to implement such pursuant to subsection D of this Section. The owner shall submit the plan within thirty (30) days after notification by the Director that submission of a plan is required and shall implement the plan immediately upon its completion. The removal prevention and retrieval measures shall continue until the City accepts or requires modification.

D. If it is determined by the Director, that within one year of the implementation of a plan by an owner, as described in subsection C of this Section, that an excessive number of abandoned carts belong to the owner, the Director may require the owner to implement at least one (1) specific physical measure to prevent cart removal from the business premises. If an owner is required to implement a physical measure, the measures

the owner may implement include, but are not limited to, the following:

1. Installation of disabling devices on all carts that prevent the use of the carts off of the premises;
 2. Employment of personnel or security guards to advise and deter customers from removing carts from the premises;
 3. Requiring a security deposit for use of all carts;
 4. Restricting the use of carts outside the building of the business unless in the company of an employee;
 5. Installation of obstacles to prevent the removal of carts provided such measure does not violate any other law, including, but not limited to, the Americans with Disabilities Act.
 6. Installation of surveillance equipment on the premises.
- E. The City may require additional measures to be implemented if it determines that the plan is not reasonably likely to prevent the removal of shopping carts from the premises or retrieval measures are insufficient.

8.30.100 Penalty for Failure to Prepare and Implement Written Plan.

- A. Any owner who fails to submit a plan within thirty (30) days of notification by the Director that a plan is required; or who fails to implement the measures

established in a plan or modifications to a plan as required by the City, shall be guilty of an infraction and subject to punishment in accordance with Section 1.12.030 *et. seq* of this Code.

B. In addition to the penalties provided for in subsection A of this Section, if an owner is found guilty by a court of competent jurisdiction of an infraction for violation of subsection A above three (3) or more times within a twelve (12) month period, the Director is hereby authorized to require such owner to install on all shopping carts disabling devices which prevent their removal from an owner's premises. Any owner who fails to place a disabling device on all carts when required is guilty of a misdemeanor and subject to punishment in accordance with Section 1.12.020 *et. seq* of this Code.

8.30.110 Evaluation Report.

A. Every owner who has been required to submit a removal prevention and retrieval plan pursuant to Section 8.30.090 shall submit an annual report. The annual report shall be submitted to the Director by July 1st of each year, and shall evaluate the measures that were used and approved in the prior year. The report shall include, but not be limited to, the following:

1. The measures actually implemented to prevent removal of carts from the premises; and,
2. The number of times the City, a resident, or any one else reported carts off the premise of the owner as well as the number of carts returned by the retrieval service.

B. The Director may require the owner to provide additional information if deemed necessary.

C. After timely submitting the annual report, an owner who's report demonstrates compliance with the provisions of this Chapter shall be relieved of further reporting obligations by the Director. If compliance with this Chapter is not demonstrated by the annual report or such report is not timely submitted, the Director shall extend the reporting obligations for at least one additional year.

8.30.120 Penalties for Failing to Submit an Evaluation Report.

Any owner that fails to timely submit an evaluation report as required by Section 8.30.110 is guilty of an infraction and subject to punishment in accordance with Section 1.12.030 *et. seq* of this Code.

8.30.130 Administrative Hearing.

If a dispute arises between the owner and the City regarding the administrative enforcement of any requirement of this Chapter by the Director, the owner may request an administrative hearing in order to resolve this dispute.

A. The request for hearing shall be made in writing to the Director. As soon as practicable after receiving the request for hearing, the Director shall request the City Manager or his or her designee to appoint a hearing officer. The City Manager or his or her designee may act as the hearing officer.

- 1. In the event the owner objects to the designated hearing officer within five (5) business days of the date of mailing of the same to the owner by the City, the owner**

and the Director shall meet and confer to develop a mutually acceptable hearing officer. Any owner objecting to the designation of the hearing officer shall do so in writing addressed and delivered to the City Clerk which is dated and signed by the owner and setting forth the basis of the objection. Any costs associated with a non-City designated hearing officer shall be the responsibility of the owner.

B. The Director shall schedule a date, time, and place for the hearing and provide notice of the hearing in accordance with subsection C of this Section.

C. Written notice of the date, time, and place of the hearing shall be served at least ten (10) calendar days prior to the hearing. Notice of the hearing shall be sent to the owner by first class mail at the address provided by the owner. The hearing shall be set no sooner than twenty (20) days following the request for hearing. The administrative hearing shall be held within ninety (90) calendar days following the receipt of a request for an administrative hearing. One continuance of the hearing, not to exceed twenty-one (21) days, may be granted upon written request to the Director.

D. The administrative hearing shall be conducted in accordance with written procedures established by the City Manager and approved by the City Attorney. The hearing shall provide an independent, objective, fair, and impartial review of the dispute. The hearing officer shall hear and consider all relevant evidence, objections, or protests, and shall receive testimony from the owner or any authorized representative of the owner and any witnesses. The Director or the Director's designee may, but shall not be required to, participate in an administrative hearing. All documents relating to the dispute shall be submitted as evidence. Depending on

the hearing officer's determination whether the disputed decision, order, requirement, or other action of the Director was reasonable, the hearing officer shall either uphold the Director's decision, order, requirement, or other action, or grant relief to the owner by reducing or nullifying any administrative fine or by canceling an order or action required by the Director. The hearing officer's decision or order shall be deemed the final administrative order or decision of the City. The administrative hearing procedures provided by this Section shall not apply to any criminal enforcement of this Chapter.

E. The hearing officer shall issue a written decision which shall be served personally upon, or by first class mail to, the owner or the authorized representative of the owner.

8.30.140 Impoundment of Abandoned Carts.

A. Pursuant to the provisions of Section 22435.7 of the Business and Professions Code, a cart that has a sign affixed to it in accordance with Section 22435.1 of the Business and Professions Code may be impounded by the City provided both of the following conditions have been satisfied:

1. The shopping cart is located outside the premises or parking area of a retail establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center.
2. Except as provided in subsection H, the shopping cart is not retrieved within three (3) business days from the date the owner of the shopping cart, or his or her agent,

receives actual notice from the City of the shopping cart's discovery and location.

B. In instances where the location of a shopping cart will impede emergency services the City is authorized to immediately retrieve the shopping cart from public or private property.

C. When the City impounds a shopping cart under the authority provided in subsections A and B, the City is authorized to recover its actual costs for providing this service.

D. Any shopping cart that is impounded by the City pursuant to subsections A and B shall be held at a location that is both:

1. Reasonably convenient to the owner of the shopping cart.
2. Open for business at least six (6) hours of each business day.

E. The City shall fine the owner of a shopping cart in an amount not to exceed fifty dollars (\$50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this Section. An occurrence includes all shopping carts impounded in accordance with this Section in a one-day period.

F. The City may sell or otherwise dispose of any shopping cart not reclaimed from the City within thirty (30) days of receipt of a notice of violation by the owner of the shopping cart.

G. Notwithstanding paragraph 2 of subsection A of this Section, the City may impound a shopping cart that otherwise meets the criteria set forth in paragraph 1 of

subsection A without complying with the three (3) day advance notice requirement provided that:

1. The owner of the shopping cart, or his or her agent, is provided actual notice within twenty-four (24) hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.
2. Any shopping cart so impounded shall be held at a location in compliance with subsection D of this Section.
3. Any shopping cart reclaimed by the owner or his or her agent, within three (3) business days following the date of actual notice as provided pursuant to paragraph 1 of this subsection, shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subsections C or E of this Section. Any cart reclaimed within the three (3) business day period shall not be deemed an occurrence for purposes of subsection E of this Section.
4. Any shopping cart not reclaimed by the owner or his or her agent, within three (3) business days following the date of actual notice as provided pursuant to paragraph 1 of this subsection, shall be subject to any applicable fee or fine imposed pursuant to subsections C or E of this Section commencing on the fourth (4th) business day following the date of the notice.

5. Any shopping cart not reclaimed by the owner or his or her agent, within thirty (30) days of receipt following the date of actual notice as provided pursuant to paragraph 1 of this subsection, may be sold or disposed of in accordance with subsection F of this Section.

8.30.150 Retrieval Services.

A. Any person who engages in the business of shopping cart or laundry cart retrieval, as defined in this Chapter, in the City shall have a City Business License and shall retain records showing written authorization from the cart owner, or an agent thereof, to retrieve the cart or carts and to be in possession of the cart or carts retrieved.

B. A copy of the record showing written authorization shall be maintained in each vehicle used for shopping cart or laundry cart retrieval.

C. Each vehicle employed for the retrieval of shopping carts or laundry carts shall display a sign that clearly identifies the retrieval service.

D. Any person who violates the provisions of this Section is guilty of a misdemeanor and subject to punishment in accordance with Section 1.12.020 *et. seq* of this Code.

8.30.160 Prosecution for Theft Not Precluded.

The provisions of this Chapter are not intended to preclude the application of any other laws relating to prosecution for theft.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. 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 4. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 18th day of November, 2002, and was passed and adopted at a regular meeting of said City Council held on the 2nd day of December, 2002, by the following called vote:

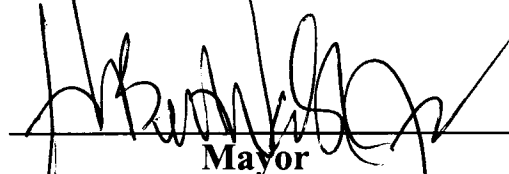
AYES: **Council Members:** CORTEZ, SPRIGGS, OSORIO, SANDERS, WALSH

NOES: **Council Members:** NONE

ABSTAIN: **Council Members:** NONE

ABSENT: **Council Members:** THURSTON, RIORDAN

APPROVED:



Mayor

ATTEST:
JAMES G. MARSHALL, CITY CLERK

BY: *Deborah C. Penner*
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Gregory J. Diaz
City Attorney

