

ORDINANCE NO. 2023-763

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA,
CALIFORNIA AMENDING TITLE 8 – HEALTH AND SAFETY OF THE FORTUNA
MUNICIPAL CODE BY CHAPTER 8.26 – ABANDONED SHOPPING CARTS AND
DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

WHEREAS, the City of Fortuna, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City has a substantial interest in promoting the public health, safety, and welfare of its residents, visitors, and businesses, and the aesthetic qualities of the City; and

WHEREAS, abandoned or unattended shopping carts off the premises of retail establishments can interfere with pedestrian and vehicle traffic and the use of public streets, sidewalks, public areas, and public rights-of-way; can constitute a hazard to streams, riparian areas, and other natural areas; can contribute substantially to litter, clutter, and visual blight; and can reduce property values; and

WHEREAS, pursuant to its broad police powers, the City Council desires to adopt regulations to ensure that measures are taken by the owners of shopping carts to prevent the removal of the shopping carts from the owner's premises, to make removal of the cart a violation of the Fortuna Municipal Code, and to facilitate the retrieval of abandoned shopping carts in a manner consistent with State law; and

WHEREAS, the City Council has considered the staff report, supporting documents, public testimony, and all appropriate information that has been submitted with this Ordinance; and

WHEREAS, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FORTUNA DOES
ORDAIN AS FOLLOWS:**

SECTION 1. Findings.

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The presence of abandoned or unattended carts, or parts thereof, on private or public property is found to create a condition tending to reduce the value of private property, to create blight and deterioration, interfere with pedestrian and vehicular traffic, to be injurious to health, safety, and general welfare, and contributes to landfill waste. The presence of abandoned or unattended carts, or parts thereof, on private or public property, except as expressly hereinafter permitted, is declared a public nuisance, which may be abated as such in accordance with the provision of the Fortuna Municipal Code.
3. Pursuant to the California Environmental Quality Act (CEQA), it can be seen with certainty that there is no possibility that the proposed Fortuna Municipal Code Amendment regarding the security of shopping carts will have any effect on the environment (General Rule

Exemption CEQA Guidelines Sec. 15061(b)(3)) and the proposed ordinance would be exempt per CEQA Section 15301 Existing Facilities, as there would be negligible or no expansion of use; CEQA Section 15308 Actions by Regulatory Agencies for the Protection of the Environment, as the proposed ordinance is intended to assure the maintenance and protection of the environment; and 15311 Accessory Structures, regarding potential placement on-premise signage needed for public notification associated with the proposed ordinance.

SECTION 2. Fortuna Municipal Code Amendment. Chapter 8.26 – Abandoned Shopping Carts is hereby added to Title 8 – Health and Safety of the Fortuna Municipal Code as set forth in *Exhibit “A,”* attached hereto and incorporated herein by reference. Without modifying the substance, following approval of this Ordinance, the City Clerk shall, if necessary, cause the Municipal Code amendment adopted by this Ordinance to be consistent in form and style with Title 8 of the Fortuna Municipal Code.

SECTION 3. Effective Date. This Ordinance shall become effective on the 31st day after its adoption by the City Council. The Clerk shall cause this Ordinance to be published in the manner required by Government Code Section 36933.

SECTION 4. Severability. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

INTRODUCED and FIRST READING CONDUCTED at a regular meeting of the City Council of the City of Fortuna, California, on this 7th day of August 2023 by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

Tami Trent, Mayor

ATTEST:

Siana L. Emmons, City Clerk

SECOND READING CONDUCTED, PASSED, and ADOPTED at a regular meeting of the City Council of the City of Fortuna, California, on this ____ day of _____, 2023 by the following vote:

AYES:
NAYS:

ABSENT:
ABSTAIN:

Tami Trent, Mayor

ATTEST:

Siana L. Emmons, City Clerk

Exhibit "A"

**Title 8
HEALTH AND SAFETY**

**Chapter 8.26
ABANDONED SHOPPING CARTS**

8.26.010 Short Title.

This Ordinance shall be known as the "Abandoned Shopping Cart Ordinance."

8.26.020 Authority and Purpose.

This chapter is adopted pursuant to Business and Professions Code Sections 22435 through 22435.8 and the City's general police powers for the purpose of regulating and prohibiting the removal of shopping carts from the premises of retail establishments, including designated parking areas, without the authorization or consent of the shopping cart's owner, and to regulate the retrieval and disposition of abandoned or unattended shopping carts that are found off the premises of retail establishments.

8.26.030 Applicability.

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

8.26.040 Administration.

The Director is authorized to administer this chapter, which includes, without limitation, the ability to promulgate administrative policies and procedures to interpret, implement and enforce this chapter.

8.26.050 Definitions.

"Abandoned or unattended shopping cart" means any shopping cart, which is left unattended, discarded or abandoned upon any public property other than the premises from which the shopping cart was removed, without the authorization or consent of the cart's owner.

"Abandoned shopping cart prevention and retrieval plan," shall mean a document required to be submitted by the responsible business owner, pursuant to this chapter.

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

"Director" shall mean the City Manager or the Director of Community Development for the City of Fortuna, or such other employee, as designated by the City Manager, to administer the appropriate sections of this chapter.

"Occurrence" means the retrieval or impoundment by the City pursuant to this chapter of all shopping carts of an owner in a one-day period.

"Owner" means a person who owns or provides shopping carts for use by customers in connection with the operation of a business.

"Person" includes, without limitation, individuals, corporations, partnerships, and all other legal entities, and officers, employees, and authorized agents of an owner.

"Premises" means the entire area owned and utilized by a retail establishment that provides shopping carts for use by customers, including any parking lot or other off-street area provided by an owner, or shared with other retail establishments, for use by customers for parking automobiles or other vehicles.

"Public property" means 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.

"Retail establishment," with regard to shopping carts, means any business located in the City of Fortuna which offers or provides shopping carts for the use by customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, is a private club or business, or is a membership store.

"Shopping cart" means a basket mounted on wheels or a similar device generally used by a customer for the purpose of transporting goods of any kind within a retail establishment or designated parking or loading area of that business establishment.

8.26.060 Required Signs and Identification.

A. Cart identification and removal warning signs required.

Pursuant to Section 22435.1 of the Business and Professions Code, every shopping cart owned or provided by an owner shall have a sign permanently affixed to the shopping cart that includes the following information:

1. The owner's name, business address and phone number.

2. Notice of the procedure to be utilized for authorized removal of the shopping cart from the premises.
3. Notice that unauthorized removal of the shopping cart from the premises or parking area of a retail establishment, or the unauthorized possession of the shopping cart, is a violation of state law and this chapter.

8.26.070. Prohibitions.

A. Unauthorized removal unlawful.

It shall be unlawful for any person, either temporarily or permanently, to remove a shopping cart from a business premises or be in possession of a shopping cart with a permanently affixed sign as provided in Section 8.26.060 that has been removed from a premises without written consent of the owner authorized by this chapter. This section shall not apply to shopping carts removed by the owner for the purposes of maintenance, repair or disposal.

An owner may permit customer off-premises use of a shopping cart for transportation of purchased items. The authorization must be in writing with date(s) and time(s) of authorized use. Any shopping cart taken off premises must be returned to the owner's premises within seventy-two (72) hours.

B. Abandonment prohibited.

It shall be unlawful and a public nuisance for any person to cause or permit any shopping cart to be abandoned or remain unattended on or upon any sidewalk, street, alley or other public area, other than the premises of the owner of such shopping cart.

8.26.080 Cart Container and Retrieval by Owners.

A. Mandatory Secure Containment of Shopping Carts After Hours.

Every shopping cart owner must lock or otherwise securely contain all shopping carts of the owner after business hours in a manner that prevents theft or removal from the premises. All shopping carts located on the premises of a retail establishment, other than an establishment open for business twenty-four hours per day, must be collected at the end of each business day by the owner, employees, or authorized agents of the retail establishment and be collectively confined in a secured manner in a designated cart confinement area on the premises until the commencement of the next business day.

All shopping carts located on the premises of any retail establishment open for business twenty-four hours per day, other than carts then currently in use by a customer, must be collected by the owner, employees, or authorized agents of the retail establishment and returned to a designated cart confinement area on the premises at least twice per calendar day between the hours of twelve p.m. (noon) and twelve a.m. (midnight) on each day the retail establishment is open for business.

This section does not apply to:

1. Shopping carts located within an enclosed building.
2. Shopping carts removed from the premises of a retail establishment for purposes of repair or maintenance that are in the possession or custody of the party to whom removal has been authorized in writing by the shopping cart owner.
3. Shopping carts being transported by the owner, or an officer, employee, or authorized agent of the owner, to or from a business location of the owner.

B. Mandatory Retrieval of Carts.

All abandoned shopping carts of a retail establishment that are found off the premises of the retail establishment must be retrieved as soon as practicable by the owner, or an authorized agent of the owner, including a cart retrieval service retained by the owner. The City shall notify the owner of an abandoned shopping cart when such shopping cart is located in a place that can be accessed safely by the owner. Such notice may be given by telephone, email or text message to the owner or owner's agent designated in the abandoned shopping cart prevention and retrieval plan, if an approved plan is in place, and shall include the cart's location. Within three (3) business days from the date the owner of the cart is provided with notice by the City that an abandoned shopping cart of the owner has been located, the owner or agent shall cause the identified shopping cart(s) to be retrieved.

C. Retrieval Services.

Persons retained to perform shopping cart retrieval services must carry written authorization from the owner to be presented upon request by the Director or designee. Vehicles used by retrieval services must bear conspicuous signs identifying the name of the cart retrieval service.

8.26.090 Impoundment and Retrieval of Abandoned Shopping Carts.

A. The Director or designee may immediately retrieve and impound any shopping cart, in accordance with the provisions outlined in Business and Professions Code Section 22435.7.

B. Impoundment Following Three-Day Notice.

A shopping cart that has a sign affixed to it in accordance with the provisions of this chapter and Business and Professions Code Section 22435.1 may be impounded by the City provided both of the following conditions are met:

1. The shopping cart is located outside the premises or parking area of a retail establishment; and
2. Except as provided in subsection "C" of this Section of this chapter, 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.

C. Impoundment Without Three-Day Notice.

1. The City may retrieve and impound any abandoned shopping cart without first giving three-days' notice provided:
 - a. The Director or designee provides actual notice to the owner, or his or her agent, of the impoundment of the shopping cart within twenty-four (24) hours following the impound;
 - b. The notice informs the owner, or his or her agent, of the location where the shopping cart may be claimed;
 - c. Any shopping cart reclaimed by the owner, or his or her agent, within three (3) business days after the date of actual notice to the owner, or his or her agent, of the impound, must be released and surrendered to the owner, or his or her agent, at no charge, including the waiver of any impound and storage fees or fines which otherwise would be applicable; and
 - d. The shopping cart is held at a location that is both:
 - i. Reasonably convenient to the owner of the shopping cart; and
 - ii. Open for business at least six (6) hours of each business day.

D. Immediate Retrieval and Impoundment by City for Impeding Emergency Services.

The Director or their designee may immediately retrieve and impound any shopping cart from public or private property if the location of the shopping cart impedes emergency services.

E. Any cart reclaimed by the owner or their agent within three (3) business days from the date the owner of the shopping cart, or their agent, is given actual notice by the City of the shopping cart's discovery and location, or impoundment, shall not be deemed an occurrence for purposes of this chapter.

F. The owner of any shopping cart that is not reclaimed within three (3) business days after the date the owner has been given actual notice by the City of the shopping cart's discovery and location, or impoundment, is subject to prosecution or the imposition of administrative costs, fees, fines, interest and other penalties applicable under this chapter commencing four (4) business days after the date of notice.

8.26.100 Abandoned Shopping Cart Prevention and Retrieval Plan.

A. Abandoned Shopping Cart Prevention and Retrieval Plan Required.

Every owner who provides or intends to provide the use of shopping carts for customers shall develop, implement and comply with the terms and conditions of an approved abandoned shopping

cart prevention and retrieval plan to prevent the unauthorized removal of shopping carts from a premises and, if removed, to retrieve the shopping cart within three (3) business days after knowing of the cart's removal from the premises or after receiving notice from the City that the shopping cart has been abandoned. To be effective, an abandoned shopping cart prevention and retrieval plan must be approved by the Director. To be eligible for approval, an abandoned shopping cart prevention and retrieval plan shall include the following elements:

1. Name. The name of the owner and the business name, the physical address where the business is conducted, name, address and phone number(s) of the on-site and off-site owner, if different.
2. Inventory of Carts. A complete list of all shopping carts maintained on or in the premises.
3. Cart Identification. Signs and shopping cart identification requirements which conform to state law. Owners shall attach an example of the proposed shopping cart ownership identification sign which shall conform to California Business and Professions Code Section 22345.1.
4. Languages. The information required above must be provided in English and Spanish or in such other language the Director may reasonably require.
5. Loss Prevention Measures. A description of the specific measures that the owner shall implement to prevent shopping cart removal from the owner's premises. These measures may include, but are not limited to, electronic or other disabling devices on the shopping carts so they cannot be removed from the premises, effective management practices, use of courtesy clerks to accompany customers and return the shopping carts to the store, use of security personnel to prevent removal, security deposit for use of shopping cart, or other demonstrable measures acceptable to the Director that are likely to prevent shopping cart removal from the premises. Cart owners shall conduct regular maintenance to ensure disabling devices and/or security deposit systems are working properly. If at any time, a cart owner determines the disabling device installed on a cart is not working properly, the cart shall be pulled from circulation until it is repaired. The cart owner shall inspect, test, and repair all abandoned carts returned to the owner prior to making the returned carts available for use.
6. Employee Training. A description of an ongoing employee training program that shall be implemented by the owner and that shall be designed to educate new and existing employees on the abandoned shopping cart prevention plan and conditions contained therein at least annually.
7. Mandatory Cart Retrieval. A plan for retrieval of abandoned shopping carts by the owner within three (3) business days after knowing of a cart's removal from the owner's premises or after receiving notice from the City that the shopping cart has been abandoned.

B. Failure to Submit Plan.

The plan must be submitted to the City within sixty (60) days after the ordinance that implements this chapter becomes effective or alternatively, if a business opens after the date the ordinance that implements this chapter becomes effective, then within thirty (30) days after a business that uses

carts commences operations. Any owner who fails to provide the abandoned shopping cart prevention and retrieval plan shall be required to pay the City one hundred dollars (\$100) for each calendar month the plan is not provided, as a penalty for not complying with this Section 8.26.100.

8.26.110 Recovery of Fines and Costs by City.

A. Pursuant to Business and Professions Code Section 22435. 7(f), any owner that fails to retrieve the owner's shopping cart or shopping carts within three (3) business days from the date of being given notice of the cart's or carts' discovery and location, or impoundment, by the City, is guilty of a violation of this chapter and may be punished with an administrative fine of fifty dollars (\$50) for each occurrence in excess of three (3) during the six-month period starting January 1 and ending on June 30 or the six-month period starting July 1 and ending December 31 of each calendar year.

B. In addition to the fines imposed above, the owner shall pay the City's actual costs for retrieving and storing the owner's shopping cart or carts except when the owner, or their authorized agent, reclaims their cart or carts within three (3) business days from being given notice of the cart's or carts' discovery and location, or impoundment, by the City, in which case, all fines, costs and fees shall be waived.

8.26.120 Disposal of Abandoned Shopping Carts.

The City may sell or otherwise dispose of any shopping cart:

1. That is not reclaimed from the City within thirty (30) days of receipt by the owner, or the owner's agent, of actual notice from the City of the cart's discovery and location, or impoundment.
2. If the owner of the cart cannot be determined.
3. If the cart is rendered unusable (e.g., mangled, destroyed).

8.26.130 Violation – Penalties.

Any person who violates any provision of this chapter is guilty of an infraction and is subject to punishment as provided in Chapter 1.08 (General Penalty) or as provided under Chapter 1.09 (Administrative Citations). Any violation of this chapter is further declared a public nuisance.