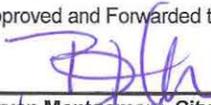




Agenda Date: 06/28/2016  
Agenda Item: 5.5

## STAFF REPORT

Approved and Forwarded to the City Council:

  
Bryan Montgomery, City Manager

**Date:** June 28, 2016

**To:** Bryan H. Montgomery, City Manager

**From:** Troy Edgell, Code Enforcement Manager

**Subject:** Replacement of OMC 4.18—Shopping Cart Retrieval and Prevention of Shopping Cart Removal

### Background and Analysis

Resident complaints of abandoned shopping carts have increased dramatically and Code Enforcement investigations reveal the complaints are valid. As a result of this upsurge in occurrences and follow-up investigations, it has been determined the current municipal code (4.18) is not effective in encouraging owners of shopping carts to actively seek out and retrieve abandoned, off-site shopping carts. As currently written, the retailer bears no costs if the City collects the abandoned carts and then notifies the retailer they are available for retrieval. Essentially the City is acting as the Cart Retrieval Service.

To address this concern and prepare for the growth of future retail services in Oakley, the attached Ordinance has been drafted to bring Oakley's shopping cart policy up to date taking into account new anti-theft technology being used, and often required for new retail establishments, and incorporating incentives that encourage the retailer to take a more proactive role in employing their Abandoned Cart Prevention Plan.

The new Ordinance addresses these concerns by making the following changes:

1. Requires owners of shopping carts retrieved by the City to reimburse the City for the actual costs to retrieve and store the cart.
2. Exempts owners who install a Cart Self-Locking (Disabling) System from the requirement to submit an annual Abandoned Cart Retrieval Plan, penalties associated with non-submission, and administrative costs and fines associated with the retrieval and impound of the abandoned cart.
3. Requires all owners (retailers) possessing more than twenty-five (25) carts and beginning operations after adoption of this ordinance to install a self-locking cart containment system prior to opening for business.

It is anticipated adoption of this Ordinance will immediately reduce the amount of carts abandoned throughout Oakley and eventually incentivize shopping cart owners to

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aggressively implement their Abandoned Cart Prevention Plan or invest in a cart self-locking system.

**Fiscal Impact**

It is anticipated adoption of the ordinance will have no measurable fiscal impact.

**Recommendation**

Staff recommends the Council adopt the ordinance.

**Attachments**

1. Draft Ordinance 4.18

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 18 OF TITLE 4 OF THE OAKLEY MUNICIPAL CODE, DEALING WITH SHOPPING CARTS**

The City Council of the City of Oakley does ordain as follows:

Section 1. Chapter 18 of Title 4 of the Oakley Municipal Code is hereby rescinded and repealed.

Section 2. Chapter 18 of Title 4 of the Oakley Municipal Code is hereby re-enacted to read as follows:

**CHAPTER 18 SHOPPING CARTS**

**4.18.002 Findings and Purpose.**

- a. In enacting this ordinance, the City hereby finds that abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic with the City of Oakley. The accumulation of wrecked, abandoned, and dismantled shopping carts on public or private property also tends to create conditions that reduce property values and promote blight and deterioration.
- b. The purpose of this chapter is to ensure that measures are taken by store owners to prevent the removal of shopping carts from store premises and parking lots and to facilitate the retrieval of abandoned shopping carts as permitted by State law. This chapter implements the provisions of California Business and Professions Code Section 22435, et seq.

**4.18.004 Applicability.**

This chapter applies to:

- a. Each business owner in the City if the business provides shopping carts for customer use at any one business location; and
- b. Any person in possession of an off-site shopping cart.

**4.18.006 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the following meanings:

- a. "Abandoned Cart" means any cart that has been removed, without written consent of the owner, from the owner's business premises or parking area of the retail establishment of which the cart owner's

business premises are located and is located on either public or private property. The owner's business premises may include a multi-store shopping center with shared areas of parking and public access.

b. "Abandoned Cart Prevention Plan" shall mean a document submitted by the owner pursuant to the article that provides a plan for how the owner will prevent carts from becoming abandoned and, if accepted by the Director as adequate, an implied promise by the owner to comply with the plan.

c. "Cart or Shopping Cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for transporting goods of any kind, including, but not limited to, grocery store shopping carts.

d. "Director" means the Community Development Director or designee.

e. "Off-Site" means any area outside of the Owner Premises.

f. "Owner" means any person, firm, partnership, corporation, association, or other entity who owns, possesses, or makes a shopping cart available for the use of the owner's customers or the public in connection with the management and operation of the owner's business. For purposes of this chapter, "owner" shall also include the owner's on-site business manager or designated agent that provides shopping carts for use by owner's customers or the public.

g. "Premises" means the entire area owned, utilized or under the control of the business establishment that provides shopping carts for use by customers, including any parking area or other off-street area provided by or for use by a customer of said business establishment.

h. "Unidentifiable shopping cart" means any shopping cart that does not have a shopping cart identification sign as provided in Section 4.18.010.

#### **4.18.008 Exemption**

Any owner that has a cart self-locking (disabling) cart containment system installed is exempt from Sections 4.18.010 (c) (d) and 4.18.016.

#### **4.18.010 Mandatory Cart Owner Requirements.**

All owners of carts shall comply with the requirements of this section.

a. **Cart Identification Required.** Every owner of shopping carts, as defined by this article, shall mark or cause the cart to be marked and identified conspicuously with: the name, address, and telephone number

of the owner; a notice that provides that the removal of the cart from the premises of the owner is a violation of State law.

b. Daily Cart Retrieval. All owners, regardless of the number of carts owned, shall ensure that all carts are secured from public access after close of business

c. Abandoned Cart Prevention Plan. Every owner who provides more than twenty-five (25) carts to their customers shall develop, implement, and comply with the terms and conditions of an Abandoned Cart Prevention Plan to prevent the unauthorized removal by any person of any carts from the owner's premises and, if removed, to retrieve the cart within seventy-two (72) hours of the removal or notice of the removal. The Abandoned Cart Prevention Plan shall be submitted on a renewable annual basis and shall include the following:

1) Name of Business/Owner. 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.

3) Notice to the public that the unauthorized removal of the shopping cart from the premises of the business establishment, or the unauthorized possession of the shopping cart, is a violation of State law;

4) Notice to the public of the procedure for authorized removal of the shopping cart from the premises.

5) Required signs on property. Signs shall be placed in pertinent places near door that warn customers that cart removal is prohibited and constitute a violation of state and local law.

5) Physical Loss Prevention Measures. A description of the specific measures 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, effective management practices, use of courtesy clerks to accompany customers and return the carts to the store, use of security personnel to prevent removal, security deposit for use of cart, or other demonstrable measures acceptable to the Director that are likely to prevent cart removal from the premises.

6) Mandatory Cart Retrieval Plan. A plan for retrieval of abandoned carts within 72 hours of being notified the cart is on private property or within 72 hours of being notified the City has recovered the cart. This plan must include either a plan for the owner's employees to retrieve the carts or for the

owner to have entered into a contract for cart retrieval services that is approved by the City. The plan for retrieval shall include providing the to the City, the name and phone number of the party who will be responsible for the retrieval of the carts which the city may publish. Whoever is identified by the owner 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.

a. Multiple Businesses. Two or more businesses may collaborate and submit a single plan.

d. Penalties for Failing to Submit an Abandoned Cart Prevention Plan. Any owner that fails to submit a plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in this Chapter is a violation and the City may pursue any available remedy provided under the Code for a code violation, including the issuance of an administrative citation.

e. Any new owner opening a business with twenty-five (25) or more carts after adoption of this ordinance is required to install and maintain a self-locking (disabling) cart containment system prior to commencing operations.

#### **4.18.012 Unauthorized Removal or Possession of a Shopping Cart.**

It is unlawful for any person to do any of the following, if a shopping cart has a permanently affixed sign pursuant to Section 4.18.010:

- a. To remove a shopping cart from the premises of a business establishment with the intent to temporarily or permanently deprive the owner of its possession.
- b. 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 shopping cart.
- c. 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 shopping cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- d. To be in possession of any shopping cart while that shopping cart is not located on the premises of the owner's business establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the shopping cart.

These provisions do not apply to the owner of a shopping cart, to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart to be in

possession of the shopping cart or to remove the shopping cart from the premises of the owner's business establishment or to do any of the acts specified in this section.

#### **4.18.014 City Retrieval of Carts**

The City may retrieve an abandoned cart from public property (or private property with the consent of the property owner) in the following circumstances:

- a. Where the location of the shopping cart will impede emergency services, when the abandoned cart does not identify the owner of the cart as required in Section 4.18.010, when the City has contacted either the owner, the owner's agent, or the entity contracted with by the owner under the Abandoned Cart Prevention Plan and actually notified them of the abandoned cart and the cart has not been retrieved within seventy-two (72) hours, and when the cart is in a public right of way.
- b. Alternative to Section 4.18.014 (a). Alternatively, the City may immediately abate, remove and impound an off-site shopping cart that has a sign affixed to it as set forth in Section 4.18.008 if the City provides the owner or whoever is identified by the owner as the party responsible for retrieval of the carts with actual notice within twenty-four (24) hours following the impound and informs the owner or responsible party of the location where the off-site shopping cart may be claimed. Notice may be made telephonically, in-person, if applicable email (Cart Retrieval Service Vendor as identified in the Cart Retrieval Plan), or via U.S.P.S. Notification made telephonically, via web-based submission, or in-person will be documented by the City employee noting the time, date, and point of contact notified. The owner of the off-site cart is allowed three (3) business days to retrieve the cart without penalty. If notification is made by U.S.P.S. then the owner is permitted 10 business days to claim the off-site shopping cart without penalty.

#### **4.18.016 Impound, Retrieval, Administrative Costs and Fines**

- a. If the City retrieves a cart, the City shall hold the cart at a location that is reasonably convenient to the owner of the shopping cart and is open for at least six (6) hours on a business day. The City shall notify the owner or the responsible party as identified in Section 4.18.010 of the cart(s) location, how the cart may be retrieved, that failure to retrieve the cart may result in the cart's sale or destruction, that the owner will be responsible for the City's costs, and that the City may fine owners fifty dollars (\$50) after the City has picked up the owner's cart more than three (3) times in a calendar year. If the cart does not provide adequate identification or markings to determine its owner, the City shall only be required to notify the cart owner if the City obtains actual knowledge of the owner's identity.

- b. If a cart is not retrieved by its owner within thirty (30) days after the owner has received notice of the cart being impounded, or if the cart's owner cannot be determined, within thirty (30) days after the cart has been impounded, the cart may be sold or destroyed by the City or its agents and/or contractors.
- c. The Director may issue an administrative citation of fifty dollars (\$50) per cart to any owner who fails to retrieve off-site shopping carts in accordance with this chapter on three (3) or more occasions in a calendar year. An occurrence includes all off-site shopping carts owned by owner that are impounded by the City within a one-day period.
- d. Administrative Costs. No cart shall be released to its owner under the procedures in this section unless the owner pays a fee for the City's actual costs to retrieve and store the cart. The City's costs to retrieve and store may be provided for in the Overhead and Inter-Fund Charges Schedule.

Section 3. This ordinance shall take effect and be in full force and effect thirty (30) days from and after its date of passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENTIONS:

ABSENT:

APPROVED:

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Kevin Romick, Mayor

ATTEST:

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Libby Vreonis, City Clerk

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Date