

ORDINANCE NO. 1341

AN ORDINANCE OF THE CITY OF DALY CITY ADDING CHAPTER 8.58 TO THE  
DALY CITY MUNICIPAL CODE, REGARDING SHOPPING CART MANAGEMENT,  
REMOVAL, IMPOUND, RETRIEVAL AND DISPOSAL

The City Council of the City of Daly City DOES ORDAIN as follows:

Section 1: Chapter 8.58 of Title 8 of the Daly City Municipal Code is hereby added in to read as follows:

**Chapter 8.58**  
**SHOPPING CART REGULATIONS**

Sections:

- 8.58.010 Findings, Purpose and Applicability
- 8.58.020 Definitions
- 8.58.030 Required Signs on Carts
- 8.58.040 Mandatory Signage on Premises
- 8.58.050 Securing Shopping Carts
- 8.58.060 Removal or Possession of Abandoned Shopping Carts Prohibited
- 8.58.070 Authority to Impound
- 8.58.080 Impoundment
- 8.58.090 Emergency Impoundment
- 8.58.100 Limitation of Liability
- 8.58.110 Shopping Cart Removal Prevention Plan
- 8.58.120 Timelines and Approval Process for Shopping Cart Removal Prevention Plan
- 8.58.130 Annual Plan Evaluation Report
- 8.58.140 Penalties for Failing to Submit a Shopping Cart Removal Prevention Plan -- Failure to Implement Prevention Measures
- 8.58.150 Exemptions
- 8.58.160 Consortium Development
- 8.58.170 Business License Required
- 8.58.180 Records Required of Retrieval Service
- 8.58.190 Standards for Consortium Retrieval Services
- 8.58.200 Signs Required of Retrieval Service
- 8.58.210 Administrative Fines
- 8.58.220 Penalty -- Enforcement
- 8.58.230 Appeals

**8.58.010 Findings, Purpose and Applicability**

Abandoned shopping carts create potential hazards to the health and safety of the public and interfere with pedestrian and vehicular traffic within the City. Wrecked, dismantled and abandoned shopping carts on public or private property can create conditions that reduce property values, and promote blight and deterioration in the City. For these reasons, the City finds and determines that abandoned shopping carts constitute a public nuisance.

In order to avoid the creation of such a nuisance, this chapter makes the removal of shopping carts from the premises of a business establishment a violation of this code. In addition, this chapter ensures that storeowners will take action to reduce the removal of shopping carts from a business establishment's premises and will require the storeowners to aggressively retrieve those shopping carts removed from the business establishment's premises in violation of this chapter.

### **8.58.020 Definitions**

As used in this chapter, the terms listed in this section shall have the following meanings as specified:

"Abandoned shopping cart" means any shopping cart that has been removed without written permission of the storeowner from the premises of the business establishment and has been left unattended on either private or public property. Written permission to remove a shopping cart from a storeowner's premises shall be valid for a period not to exceed seventy-two (72) hours.

"Business establishment" means the premises upon which a storeowner provides shopping carts to customers for the transport of goods to their vehicles.

"Consortium" means a group of two (2) or more storeowners who consort to hire a single shopping cart retrieval business to retrieve their shopping carts found off their premises in the City of Daly City.

"Occurrence" means the impoundment, notice of impound and storage of a shopping cart for more than three (3) days by the City.

"Premises" means the entire area owned and utilized by the business establishment that provides shopping carts for use by customers, including any parking lot or other property provided by the owner for customer parking, excluding the public right-of-way and adjacent property owned by others over which the storeowner has no right of entry.

"Shopping cart" means a basket mounted on wheels which are provided by a business establishment for use by a customer for the purpose of transporting goods of any kind from the business establishment to the customer's vehicle or other means of transportation on the business establishment's premises.

"Shopping cart retrieval service" means a business that searches for, retrieves and restores abandoned shopping carts to the possession of the rightful storeowner for compensation or in expectation of compensation.

"Storeowner" means any person or entity that, in connection with the conduct of a business, owns, possesses or makes shopping carts available to customers for use on the premises of the storeowner's business establishment. For purposes of this chapter, storeowner shall also include the storeowner's on-site manager or designated agent who provides shopping carts for use by customers of the business establishment.

### **8.58.030 Required Signs on Shopping Carts**

In accordance with California Business and Professions Code section 22435.1, every shopping cart owned or provided for the use of customers by any business in the City must have a sign permanently affixed to it that contains the following information:

- a. The name of the owner of the shopping cart or the name of the business establishment where the shopping cart is in lawful use, or both;
- b. Notification to the public of the procedure to be used for authorized removal of the shopping cart from the premises;
- c. Notification to the public that the unauthorized removal of the shopping cart from the premises or the unauthorized possession of the shopping cart off premises is a violation of state and city laws;
- d. A telephone number to contact to report the location of an abandoned shopping cart; or an address where the shopping cart can be returned to the business establishment.

#### **8.58.040 Mandatory Signage on Premises**

Every business that owns or provides carts for the use of its customers within the City of Daly City shall post conspicuous signs at or near each entrance to its parking lot and the public entrance doors to its store notifying its customers that removal of carts from the premises is prohibited without written authorization.

#### **8.58.050 Securing Shopping Carts**

Every business that owns or provides shopping carts for the use of its customers shall ensure that all carts on its premises are secured in such a manner that a member of the public may not remove any carts from the premises during the hours that the business is closed.

#### **8.58.060 Removal or Possession of Abandoned Shopping Carts Prohibited**

- a. It shall be unlawful to either temporarily or permanently remove a shopping cart from the premises of a business establishment without the express prior written approval of the storeowner.
- b. It shall be unlawful to be in possession of a shopping cart that has been removed from the premises of a business establishment unless it is in the process of being immediately returned to the business establishment.
- c. It shall be unlawful to leave or abandon a shopping cart at a location other than the premises of the business establishment that owns the subject cart with the intent to temporarily or permanently deprive the storeowner of possession of the shopping cart.

#### **8.58.070 Authority to Impound**

a. Pursuant to California Business and Professions Code Section 22435.7, the City may impound any abandoned shopping cart when the shopping cart has a sign affixed as required by DCMC 8.58.030. The requirements for notice, impoundment and recovery of the shopping

cart shall be governed by California Business and Professions Code sections 22435 through 22435.7, as set forth in DCMC 8.58.080.

b. Notwithstanding Section 8.45.080(d), the City may retrieve and immediately dispose of any abandoned shopping carts that lack the signs required by DCMC 8.58.030.

#### **8.58.080 Impoundment**

a. The City may impound an abandoned shopping cart located on public property outside the premises or parking area of a retail establishment (or private property where the property owner has requested that the shopping cart be removed) in the following circumstances:

(1) Where the location of the shopping cart will impede emergency services.  
(2) When the shopping cart does not identify the owner of the cart as required by DCMC 8.58.030.

(3) When the City has contacted either the owner, the owner's agent, or the entity contracted by the owner under the Shopping Cart Removal Prevention Plan and actually notified them of the abandoned cart and its location and the cart has not been retrieved within seventy-two (72) hours. For purposes of this section, the parking area of a retail establishment located in a multi-store complex or shopping center shall include the entire parking area used by the complex or center.

b. If the City impounds a cart, the City shall hold the cart at a location that is reasonably convenient to the owner of the shopping cart and open for at least six (6) hours of each business day.

c. Where the City has not already provided notice to the owner that an abandoned cart needs to be retrieved, the City shall notify the owner that the City has impounded their cart and provide information as to 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 after the City has picked up the owner's cart more than three (3) times. In the case of a cart that 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.

d. 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.

e. The City shall provide notice of each impounded shopping cart as follows: If the shopping 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. Where an empty shopping cart has a sign indicating that it belongs to a particular company or retailer with more than one location in the City, but the cart contains no indication as to which location it belongs to, the City shall make reasonable efforts to locate and notify the owner or agent. In the case of a retailer with multiple locations in the City, the City may satisfy this requirement by providing notice to the retailer's

headquarters office, if located in the City of Daly City, or to the retailer's area or regional office. Retailers may submit to the City the name of one contact person or office to be the designated agent for notice by mail or telephone under this Article. 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 abandoned property.

f. The City can comply with the notice requirements imposed by this section by placing a telephone call during regular business hours to the owner or owner's designated representative. Where no such person is designated, the City shall call the owner at a number listed in the AT&T phone directory for either San Francisco County or San Mateo County.

g. 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 shall be set by Resolution of the City Council.

#### **8.58.090 Emergency Impoundment**

Notwithstanding any other provision of this Article, pursuant to subdivision (c) of Business and Professions Code, Section 22435.7, the City may immediately retrieve any shopping cart that is located in such manner as to create an impediment to emergency services. In such cases, the City shall notify the owner in accordance with Section 8.58.080.

#### **8.58.100 Limitation of Liability**

By adopting this Article, the City of Daly City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

#### **8.58.110 Shopping Cart Removal Prevention Plan**

Every storeowner providing shopping carts to its customers shall develop and implement a specific written plan to prevent customers from removing shopping carts from the premises. The plan must include the following elements:

a. Notice to Customers- Written notification shall be provided to customers that removal of shopping carts from the premises is prohibited and a violation of state law and the City of Daly City Municipal Code. This notice may be provided in the form of flyers, warnings on shopping bags and shopping carts, or any other form of written notification that will effectively notify customers of the law.

b. Signs- Signs shall be placed in appropriate places near door exits and near parking lot exits warning customers that shopping cart removal is prohibited and constitutes a violation of state law and the City of Daly City Municipal Code.

c. Physical Measures- Specific physical measures shall be implemented by storeowners to prevent shopping cart removal from the premises. Examples of physical measures that may be implemented are: installing disabling devices on all shopping carts; posting of a

security guard to prevent customers from removing shopping carts from the premises; security deposits required for use of all shopping carts; the rental or sale of shopping carts that can be temporarily or permanently used for transport of purchases, or any combination of the above as necessary to effectively prevent shopping cart removal from the premises.

**8.58.120 Timelines and Approval Process for Shopping Cart Removal Prevention Plan**

a. Every business establishment shall submit a proposed plan for preventing shopping cart removal for approval to the Economic and Community Development Department within sixty (60) days after adoption of the ordinance codified in this chapter and by July 1st of each year thereafter. Any business establishment which opens after the adoption of the ordinance codified in this chapter will submit a shopping cart removal prevention plan to the Economic and Community Development Department for approval within sixty (60) days of the approval date on their City business license application. Any storeowner who fails to submit a shopping cart removal prevention plan in accordance with this section shall be subject to a five hundred dollar (\$500) civil penalty.

b. A storeowner has thirty (30) days from the date of City approval of the plan to implement its shopping cart removal prevention plan. If the proposed plan is the same as the previous years, prevention measures shall continue to be implemented unless the City indicates the plan needs to be modified. Unless otherwise agreed, modifications to a plan required by the City shall be implemented by the storeowner within thirty (30) days of notification.

c. The timelines set forth in this section may be extended by the City, and any such extension shall be agreed to in writing.

**8.58.130 Annual Plan Evaluation Report**

a. A storeowner must submit an annual plan evaluation report to the Economic and Community Development Department of the City. The report shall include, but is not limited to, an assessment of the effectiveness of the measures used to prevent the removal of shopping carts from the premises; an inventory of shopping carts owned or used by the business establishment and the number of shopping carts replaced by the establishment due to repair, loss, theft or abandonment. Any storeowner who fails to submit an annual plan evaluation report in accordance with this section by July 1st of each year shall be subject to a one thousand five hundred dollar (\$1,500) civil penalty. If a prevention plan was in place the previous year, the annual plan evaluation report shall identify the measures used and assess the effectiveness of the measures used in the prior year.

b. If a storeowner has been fined by the City for more than three (3) occurrences in any six (6) month period pursuant to DCMC 8.58.210, the City may determine that the storeowner's shopping cart removal prevention plan is inadequate and require that additional removal prevention measures be added to the plan and implemented by the storeowner in the next plan period.

**8.58.140 Penalties for Failing to Submit a Shopping Cart Removal Prevention Plan – Failure to Implement Prevention Measures**

In addition to the civil penalties set forth in this chapter, any storeowner who fails to submit a plan, implement the proposed plan, implement any required modifications to the plan as

required by the city or submit annual plan evaluations within the time frames specified in this chapter shall be required to place disabling devices on all shopping carts owned, leased or used by the business establishment to prevent removal of shopping carts from the premises. Any such storeowner who fails to place a disabling device on all shopping carts shall be subject to a one thousand dollar (\$1,000.) civil penalty, plus an additional penalty of fifty dollars (\$50) for each day of noncompliance.

#### **8.58.150 Exemptions**

a. Any storeowner who has a contract with the City to provide for retrieval of abandoned carts or participates in the development and ongoing implementation of a shopping cart retrieval consortium with other storeowners in the City in accordance with this Chapter shall be exempt from the provisions of Sections 8.58.110 through 8.58.140.

b. Any storeowner with less than 10 shopping carts is exempt from Section 8.58.110 through 8.58.140.

#### **8.58.160 Consortium Development**

Two (2) or more storeowners may form a shopping cart retrieval consortium by continuously contracting with a single shopping cart retrieval service to retrieve and return the abandoned shopping carts of the consortium members found off the premises of the storeowners' business establishments. Storeowners who form a consortium shall submit a fully executed copy of the contract for retrieval services to the Economic Community Development Department of the City for review. The contract shall be deemed adequate if no comment is made by the City within thirty (30) days.

#### **8.58.170 Business License Required**

Any person engaging in abandoned shopping cart retrieval shall first obtain a business license from the City.

#### **8.58.180 Records Required of Retrieval Service**

Any person who engages in the business of shopping cart retrieval shall retain records showing written authorization from the storeowners to retrieve abandoned shopping carts and to be in possession of the shopping carts retrieved. A copy of the records showing written authorization shall be maintained in each vehicle used for abandoned shopping cart retrieval.

#### **8.58.190 Standards for Consortium Retrieval Services**

Storeowners who form a retrieval consortium shall enter into a contract for services with the shopping cart retrieval service which provides that:

a. The shopping cart retrieval service shall provide daily retrieval service throughout the City.

b. The storeowners and retrieval service shall periodically consult with the City to determine the traditional locations where abandoned shopping carts are found off premises, and shall survey those sites on a daily basis and retrieve all shopping carts found.

c. The contract shall provide financial incentives to the retrieval service to properly survey the entire City on a daily basis to aggressively retrieve abandoned shopping carts.

d. The consortium shall ensure that the City has on file at all times a copy of the current, effective retrieval contract. In the event that a consortium allows the contract for retrieval services to lapse, and effective retrieval services are no longer provided, then the storeowners shall no longer be exempt from and will be required to comply with the provisions of DCMC 8.58.110 through 8.58.140, inclusive, within sixty (60) days.

e. If the City determines that the efforts of the consortium to retrieve abandoned shopping carts is not effective, then the consortium members will review the contract for services for performance of the retrieval service with the City and undertake measures to improve the retrieval process. If, within sixty (60) days, the retrieval process cannot be measurably improved, then the City may require the storeowners to comply with DCMC 8.58.100 through 8.58.140, inclusive, of this chapter.

#### **8.58.200 Signs Required of Retrieval Service**

Each vehicle employed for the retrieval of abandoned shopping carts shall display a sign that clearly identifies the business name of the retrieval service.

#### **8.58.210 Administrative Fines**

Pursuant to Business and Professions Code Section 22435.7, an Owner who fails to retrieve abandoned carts in accordance with this Chapter in excess of three (3) times during a specified six-month period, shall be subject to a fifty (\$50) dollar for each occurrence.

#### **8.58.220 Penalty-Enforcement**

a. The City Attorney has the authority to prosecute any violation of this chapter as a misdemeanor or as an infraction wherein each infraction be punished by a fine not exceeding one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one (1) year and five hundred dollars (\$500) for each additional violation within one (1) year.

#### **8.58.230 Appeals**

An owner is entitled to appeal a decision to impose fines and/or costs or to implement cart control measures to the Administrative Appeal Board. The Administrative Appeal Board shall hear and consider all relevant evidence and render a decision following the hearing. The Administrative Appeals Committee shall be final.

Section 2. **Severability:** If any section, subsection or sentence of this Ordinance is found by a court of competent jurisdiction to be invalid or unlawful, the City Council finds and declares that the remainder of this ordinance would be and is enforceable and would have been adopted notwithstanding the finding of invalidity as to any section, subsection or sentence.

Section 3. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as

provided by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a), and that it is also exempt under the definition of "project" in Section 15378(b)(3) in that it concern general policy and procedure making.

Section 4. Effective Date; Publication and Posting: This Ordinance shall be in full force and effect thirty (30) days from and after its passage. This Ordinance shall be published according to law. At the time of publication of each summary, the City Clerk shall post in the Office of the City Clerk a copy of the full text of this Ordinance in compliance with Government Code Section 36933(c)(1).

Introduced this 27th day of October, 2008.

Passed and adopted as an Ordinance of the City of Daly City at a regular meeting of the City Council of the City of Daly City held on the 10th day of November, 2008, by the following vote:

AYES, Councilmembers Christensen, Gomez, Guingona

Torres, Klatt

NOES, Councilmembers None

Absent, Councilmembers: None

*Mania E. Coite*

CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

CAROL L. KLATT

MAYOR OF THE CITY OF DALY CITY