



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Chris Burton

SUBJECT: ABANDONED SHOPPING
CART FEE PROGRAM

DATE: May 30, 2024

Approved

Date: 5/30/24

RECOMMENDATION

Direct the City Manager to return to the City Council later in 2024-2025 with potential modifications to the Abandoned Shopping Cart regulatory program as discussed in this memorandum.

BACKGROUND

City Council's approval of the Mayor's March Budget Message for Fiscal Year 2024-2025 included direction for the City Manager to engage with large retailers that fall under Municipal Code 9.60 and, in collaboration with the City Attorney, return to Council with recommendations and draft language for an expanded Abandoned Shopping Cart ordinance to enable the City to collect abandoned shopping carts at a faster rate, return them to their owners, and ensure full cost recovery via an increase in the existing fee associated with this ordinance. This Manager's Budget Addendum provides initial information in response to this direction and outlines potential mechanisms to address abandoned shopping carts that the City Council may consider as part of a future action.

The Abandoned Shopping Cart Program

The purpose of Code Enforcement's Abandoned Shopping Cart Program (ASC) is to ensure that store owners with 26 shopping carts or more are knowledgeable of and take measures to prevent the removal of carts from the business premises and retrieve carts when removed and abandoned in a manner consistent with the municipal code and state law. Stores within the ASC can vary from locally owned businesses to large corporations with anywhere from 26 to hundreds of carts. The ordinance places the obligation on store owners to develop an Abandoned Cart Prevention Plan (Plan) that illustrates how carts will be maintained on-site, including loss prevention measures, a retrieval plan, employee awareness training, and customer outreach. Code Enforcement is responsible for reviewing and approving the Plan each year, conducting an

annual compliance inspection of the property, notifying the store of abandoned carts for pick up when found, and conducting enforcement, such as issuing citations, for violations of the Abandoned Shopping Cart ordinance. The fee-funded ASC is currently staffed with one full-time employee and is supported by the Abandoned Cart Program fee. The 2024-2025 Proposed Fees and Charges Report increases this fee from \$1,893 annually to \$2,126 annually, increasing cost recovery from 86% to 95%. While the Abandoned Cart Program fee covers the cost of the regulatory program, it does not cover the cost of the retrieval of individual abandoned shopping carts by City staff.

Other City Department Efforts

The Parks, Recreation, and Neighborhood Services Department’s (PRNS) BeautifySJ Program and the Transportation Department (DOT) also address abandoned carts. Carts found during regular duties or as part of BeautifySJ’s abatement events, encampment services, or RAPID (Illegal Dumping) program response are retrieved by City staff and secured and stored at a City yard until the carts are either retrieved by the store owner or meet the requirements for disposal. Table 1 provides a snapshot of the ASC dashboard including number of carts retrieved, primarily by BeautifySJ¹, during the current and prior fiscal year. It is important to note that most of the carts picked up by BeautifySJ are damaged or otherwise unsalvageable and disposed of.

Table 1: Abandoned Shopping Cart Program Dashboard Fiscal Year 2022-2023 and 2023-2024

	2022-2023	2023-3024 (as of 3/31/24)
# Businesses in ASC Program	134	134
Total # inspections conducted: annual and re-inspections	249	157
# Carts identified for store pick-up	367	373
# Carts retrieved by BeautifySJ	1,011	831
# Citations issued	108	63

Cart Retrieval Companies

Some stores contract with a private retrieval company to retrieve carts on their behalf. Cart retrieval agreements vary by store and typically include a monthly service fee, or fee-per-cart returned model. By collecting and storing abandoned carts at a City yard, the City effectively subsidizes store cart retrieval by collecting and storing carts until pick up without charge; however, the City collects only a fraction of all retrieved carts.

Enforcement

Under the California Business and Professions Code Section 22435.7, the City cannot fine more than \$50 per occurrence and can only begin fine issuance after three occurrences within a 6-month period. Furthermore, the City can only impound the cart if not retrieved within three days of notice and can dispose of a cart post-impound if not retrieved by the owner within 30 days.

¹ DOT reports that its staff currently retrieve approximately 10 carts per month.

Any shopping cart picked up within three days must be released at no charge to the store owner². In addition, the Municipal Code provides requirements that must be followed to impound private property.

ANALYSIS

Review of Alternative Approaches to Mitigating Abandoned Shopping Carts

In preparation for this memorandum, staff conducted a review of past and current practices, and engaged in conversations with other jurisdictions to understand the range of options to pursue in the coming months, which are briefly summarized below.

Add New Staff Dedicated to Collecting Abandoned Shopping Carts

A number of jurisdictions find that the most straightforward approach to lessen the blight impact of abandoned shopping carts is to dedicate all or a portion of staff to patrolling for, collecting, and returning the carts. Prior to the pandemic, as part of its blight reduction portfolio, the City employed this method – a Maintenance Worker within DOT was frequently dedicated to patrolling for abandoned carts. With the onset of the pandemic, all of the blight response function was reorganized and transferred to BeautifySJ; while this greatly expanded the City’s capacity to respond to increased levels of blight, the dedicated focus to abandoned shopping carts was not continued. Adding a Maintenance Worker and vehicle rental costs to solely focus on abandoned carts would cost approximately \$200,000 annually.

Assessing a Fee for Existing City Staff Time

As described above, while not their sole focus, City staff currently collect abandoned carts when they address illegal dumping. Carts are returned to a City yard, and those that are in reasonable shape are available for return to their respective owners. While assessing a fee for staff time is possible, the amount could be relatively significant on a per cart basis (the hourly rate for Maintenance Worker II in PRNS – excluding overhead – is approximately \$154 per hour) and act as a disincentive to accept returned carts, unless payment of the fee is made mandatory. Further, the City does not currently have the staffing and administrative structure in place to return carts from the City yard to the owner and then collect the fee for each cart.

Assessing a Fee through a Contractor

Another option is to develop a fee program whereby the contractor retrieves the carts and collects a fee on behalf of the City when they are returned to the owner. As an example, the City of Milpitas employs this approach – the contractor charges a fee of \$12 per cart, with most of the fee offsetting the contractor’s expenses and a small portion is remitted to the City for administrative oversight. Retailers are encouraged to subscribe to this

² This State regulation supersedes the City’s Schedule of Fines, which would otherwise allow for stores with abandoned carts retrieved by the City to be issued a fine of \$50, \$100, or \$250 based on whether it is the first, second, or third violation within the year.

service as part of Milpitas' compliance and abatement program; if they are not subscribed, additional requirements for compliance are included in the retailer's abatement plan, and the retrieval cost is \$36 per cart performed by City of Milpitas staff. Since many large retailers in San José already subscribe to a cart retrieval service, this type of model is likely the most feasible and cost-effective option to pursue.

Next Steps – Engagement, Ordinance Amendments, and Fee Program Development

While staff has previously considered potential ASC Ordinance amendments and program changes prior to the direction included in the City Council-approved Mayor's March Budget Message for Fiscal Year 2024-2025, potential changes have not been initiated by staff, due to capacity constraints associated with other urgent priorities and City Council direction, including the FAST program, the new Tow Contract implementation, Code Enforcement Case Management System software implementation, Tobacco Retail License Ordinance amendments, Nitrous Oxide Ordinance development, and Administrative Remedies Ordinance amendment to increase the max penalty to \$500,000. In the context of these other competing priorities over the course of the next year, staff will seek to:

- Complete an internal assessment of the best option to move forward an expedited fee program to better recover the City's costs of abandoned shopping carts and act as a mechanism that encourages retailers to ensure more carts are kept onsite or are actively retrieved. This internal assessment would also include interdepartmental coordination and legal review.
- Outreach to impacted retailers for their input and feedback on potential approaches. Of the 134 current retailers within the program, approximately 70% of them have a cart inventory ranging from 100 to 400, 20% of the retailers carry an inventory between 26 and 100 or above 400, and 10% of the retailers have a cart inventory of approximately 26 carts. Only a few retailers, such as Costco and Walmart, carry 700+ carts. A broader outreach approach will ensure impacts of the proposed ordinance changes will be accurately evaluated and the intent adequately met.
- Based on the internal assessment and outreach, prepare ordinance updates, develop the appropriate fee costing methodology, create an implementation plan, and engage in procurement activities, as necessary, should a contractor(s) be incorporated into the new fee program.

Given limited staff capacity and other competing priorities within Code Enforcement, it is anticipated that the development of the new fee program and fee may not be fully completed until the end of the fiscal year, with the revised fee potentially incorporated into the 2025-2026 Proposed Fees and Chares Report. City Council direction to prioritize this work above other initiatives, such as those described above, would be required to accelerate further.

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May 30, 2024

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COORDINATION

This memorandum has been coordinated with Parks, Recreation and Neighborhood Services Department, the Transportation Department, the City Attorney's Office, and the City Manager's Budget Office.

/s/

CHRIS BURTON

Director of Planning, Building and
Code Enforcement

For questions regarding this memorandum, please contact Rachel Roberts, Deputy Director, at Rachel.Roberts@sanjoseca.gov.