

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LONG BEACH AMENDING THE LONG BEACH MUNICIPAL
CODE BY AMENDING AND RESTATING IN ITS ENTIRETY
CHAPTER 8.61 RELATING TO ADMINISTRATIVE CITATIONS

WHEREAS, the City Council of the City of Long Beach finds that shopping
carts are an eyesore, a potential hazard, and a nuisance; and

WHEREAS, the City Council of the City of Long Beach intends that the
owners of shopping carts should be held responsible for containing their shopping carts
on their respective business premises;

WHEREAS, the City Council of the City of Long Beach finds that use of an
administrative citation program and the establishment of appropriate fines are intended to
act as a reasonable deterrent in preventing violations of Chapter 8.61.

NOW THEREFORE, the City Council of the City of Long Beach ordains
as follows:

Section 1. The Long Beach Municipal Code Chapter 8.61 entitled
"Shopping Carts" is amended and restated in its entirety to read as follows:

Section 1. The Long Beach Municipal Code Chapter 8.61 entitled "Shopping Carts" is
amended and restated in its entirety to read:

Chapter 8.61
SHOPPING CARTS

8.61.010 Definitions.

For purposes of this chapter only, and unless the context clearly requires a
different meaning, the words, terms and phrases set forth in this Section are defined as
follows:

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1 A. "Business premises" means the interior of a cart owner's
2 commercial establishment, adjacent walkways, any loading area, and the parking
3 area, as defined herein.

4 B. "Cart identification sign" means a sign or engraved surface
5 which is permanently affixed to a shopping cart containing all of the information
6 specified in section 8.61.050 of this chapter.

7 C. "Cart owner" means the owner or operator of a commercial
8 establishment which provides carts for use by its customers for the purpose of
9 transporting goods of any kind.

10 D. "Cart removal warning" means a placard, sign or painted text
11 which meets the requirements of section 8.61.030 of this chapter.

12 E. "Enforcement officer" means any officer or employee of the city
13 designated with the authority to enforce the applicable provisions of the Long
14 Beach municipal code.

15 F. "Enforcement agency" means the city department in which the
16 enforcement officer is employed.

17 G. "Individual cart identification number" means a number unique
18 to each cart owned or provided by a cart owner.

19 H. "On-site cart containment program" means one or more of the
20 following measures:

21 1. Disabling devices on all shopping carts which prevent
22 them from being removed from the business premises by locking the wheels or
23 otherwise preventing the movement of the carts.

24 2. An on-site security guard to deter customers who attempt
25 to remove carts from the business premises.

26 3. Bollards and chains around the business premises to
27 prevent cart removal, if permitted by the Fire Marshal.

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4. Obtaining a security deposit from customers for the on-site use of shopping carts.

5. The rental or sale of utility carts that can be temporarily or permanently used for the transport of goods

6. Any other measure approved by the Director of Planning and Building as a means to contain carts on premises.

I. "Parking area" means a parking lot or other property provided by a commercial establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center, "parking area" includes the entire parking area used by or controlled by the complex or center.

J. "Physical containment system" means one of the following, as approved by the Director of Planning and Building:

1. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.

2. Any other system of equipment approved by the Director of Planning and Building which physically contains shopping carts on premises.

K. "Qualified cart retrieval service" means a commercial service, operated by a third party and paid by a cart owner to retrieve and return shopping carts. The Director of Planning and Building shall develop minimal service standards by which a cart retrieval service may be designated as a qualified cart retrieval service and maintain a list of all such services.

L. "Shopping cart" means a basket which is mounted on wheels or a similar device provided by the operator of a commercial establishment for the use of customers for the purpose of transporting goods of any kind. A cart sold by a commercial establishment to a retail customer for that customer's personal use is not a shopping cart for the purposes of this chapter.

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1 8.61.020 Cart containment system--required; exception.

2 A. Every cart owner shall operate and maintain an on-site cart
3 containment program. A cart owner may be exempted from this requirement if he
4 or she provides proof of contracting with a qualified cart retrieval service and
5 submits an operations plan which demonstrates to the satisfaction of the Director of
6 Planning and Building that the qualified cart retrieval service will both actively locate
7 shopping carts within a one-mile radius of the cart owner's business premises and
8 respond to complaints from the public in a manner which results in the retrieval of
9 shopping carts within twenty-four (24) hours after receiving complaint(s).

10 B. Each cart owner must contain all shopping carts on the business
11 premises at all times.

12 C. Any instance in which a shopping cart owned or provided by a
13 cart owner is found off of the business premises shall be considered a violation by
14 the cart owner of section 8.61.020 subsection (B).

15 1. Each twenty-four (24) hour period that the cart remains off
16 the business premises shall be considered a separate violation of section 8.61.020
17 subsection (B).

18 2. A civil fine shall be assessed by means of an administrative
19 citation issued by an enforcement officer and shall be payable directly to the city of
20 Long Beach.

21 3. Fines shall be assessed at one hundred dollars (\$100) for
22 each violation.

23 4. Following the issuance of more than ten section 8.61.020
24 subsection (B) administrative citations to the same cart owner within a thirty (30)
25 day period, in addition to administrative penalty set forth in this chapter,
26 subsequent violations by that cart owner shall be referred by the enforcement
27 agency for criminal prosecution pursuant to section 1.32.010 subsection (E) of
28 the municipal code.

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8.61.030 Cart removal warnings.

A. Every cart owner shall post and maintain cart removal warnings which meet all of the following minimum specifications:

1. Meet or exceed 18 inches in width and 24 inches in height.
2. Using block lettering not less than one-half inch in width and two (2) inches in height, contain a statement in two or more languages to the effect that unauthorized removal of a shopping cart from the business premises, or possession of a shopping cart in a location other than on the business premises, is a violation of state law and City ordinance.
3. List a local or toll-free telephone number for cart retrieval.
4. Be affixed to an interior wall of the building or otherwise permanently and prominently displayed within two (2) feet of all customer entrances and exits.

B. Cart removal warnings on the exterior of the building are not considered "signs" for the purpose of calculating maximum allowable signage under title 21 of the municipal code.

8.61.040 Employee training--cart removal prevention.

Each cart owner shall conduct ongoing employee training to educate new and existing employees about procedures to prevent cart removal, including the operation of the cart containment system.

8.61.050 Cart identification signs for shopping carts.

A. Each shopping cart owned or used within the City shall have, permanently affixed and easily visible, a cart identification sign or engraved surface which includes all of the following information: the name of the cart owner, the telephone number of the cart owner and/or commercial establishment to which the cart belongs, the individual cart identification number, a valid toll-free phone number for cart retrieval, the procedure (if any) to be followed to obtain permission to remove the cart from the business premises, and a notice to the public that

1 unauthorized removal of the cart from the business premises is a violation of state
2 law and City ordinance.

3 B. It shall be the responsibility of each cart owner to comply with
4 subsection (A) of this section, and to continuously maintain, or cause to be
5 maintained, the cart identification sign so that all of the required information is
6 accurate and clearly legible.

7 8.61.060 Cart removal from business premises--written permission required.

8 No person shall be deemed to be authorized to remove a cart unless he or
9 she possesses written authorization from the cart owner. This section shall not
10 apply the possession of a shopping cart removed from the business premises at
11 the direction of the cart owner for the purposes of repair or maintenance.

12 8.61.070 Physical containment system.

13 A. A cart owner shall be required to install a physical containment
14 system to the satisfaction of the Director of Planning and Building when the cart
15 owner establishes a facility consisting of more than five thousand square feet of
16 new construction.

17 B. A cart owner may be required to install a physical containment
18 system to the satisfaction of the Director of Planning and Building and the city
19 prosecutor following the issuance of more than ten section 8.61.020 subsection
20 (B) administrative citations in a thirty (30) day period.

21 8.61.080 Regulatory fee authorized.

22 A regulatory fee shall be established to enforce this regulation and to
23 fairly apportion the cost of mitigating the negative effects of off-site shopping carts.
24 A business which installs a physical containment system to the satisfaction of the
25 Director of Planning and Building, or which does not provide any shopping carts to
26 its customers, shall be exempted from this fee.

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1 8.61.090 Service procedures.

2 An administrative citation subject to this chapter shall be issued on a form
3 approved by the city manager or his/her designee, and may be served upon any
4 cart owner by an enforcement officer in the following manner:

5 A. Service of citation by mail.

6 1. The administrative citation or duplicate thereof shall be
7 mailed to the cart owner(s); and

8 2. A proof of service of the notice shall be made by declaration
9 of the enforcement officer effecting the service.

10 8.61.100 Contents of notice.

11 Each administrative citation issued pursuant to this chapter shall contain
12 the following information:

13 A. The date of service of the citation and the date, time, address or
14 description of the location where the violation(s) was observed;

15 B. The code section(s) and condition(s) violated and a description
16 of the violation(s);

17 C. A photographic image depicting the cart at the location of the
18 violation(s);

19 D. The amount of the fine for the violation(s);

20 E. An explanation of how the fine shall be paid and the fine payment
21 due date;

22 F. Notice of the right to appeal the citation, the time within which the
23 citation may be appealed and the place to obtain a Request for Hearing form to
24 appeal the administrative citation; and

25 G. The name and signature of the enforcement officer.

26 8.61.110 Satisfaction of administrative citation.

27 Upon service of an administrative citation issued pursuant to this
28 chapter, the cart owner shall do the following:

1 A. Pay the fine no later than thirty (30) days from the date of
2 issuance of the citation as specified on the administrative citation. Payment of a
3 fine shall not bar further enforcement action by the city. Late charges shall be
4 imposed for fine payments made after the fine payment due date. The late charge
5 shall be calculated at a rate of 25% of the fine, and will be imposed in addition to
6 any outstanding fine.

7 B. Failure of the cart owner(s) to pay the civil fine and any accrued
8 late penalties in a timely manner may result in the imposition of a special
9 assessment and/or lien against the real property on the business premises,
10 and/or filing of an action with the Small Claims Court for recovery of the fine and
11 any late penalty. The only issue to be adjudicated by the Small Claims Court
12 shall be whether or not the fines and possible late fees were paid. A cart owner
13 may only obtain judicial review of the validity of the citation by first requesting and
14 participating in an administrative appeal hearing before a hearing officer. In the
15 Small Claims Court action, the city may also recover its costs, according to proof.

16 C. The City may also refuse to issue, extend, or renew to any cart
17 owner who has unpaid delinquent fines, interest, penalties, liens, or assessments,
18 any city permit, license, entitlement, or other city approval pertaining to the
19 business premises that is the subject of the fine and administrative citation.

20 D. Any permit, license, entitlement, or land use approval issued by the
21 city may be subject to suspension or revocation of the permit, license, entitlement,
22 or land use approval in accordance with the procedures set forth in the respective
23 Long Beach Municipal Code if any unpaid fine, interest or penalties remain
24 delinquent for a period of more than thirty (30) days.

25 8.61.120 Appeal of administrative citation.

26 A. Any recipient of an administrative citation issued pursuant to this
27 chapter may appeal said citation by completing a written Request for Hearing form
28 from the enforcement agency designated on the citation, and returning it to said

1 city agency within thirty (30) calendar days from the date the administrative
2 citation was served or deemed to have been served, together with a deposit in the
3 total amount of the fine.

4 B. A failure to file a timely appeal of the administrative citation shall
5 be deemed a waiver of the right to appeal and to seek judicial review.

6 C. The administrative appeal hearing shall be set for a date not sooner
7 than fifteen (15) calendar, and not more than sixty (60) calendar days from the
8 date the request for hearing is completed and submitted in accordance with the
9 provisions of this Chapter. The cart owner requesting the hearing shall be notified
10 in writing of the time and place set for the hearing at least ten (10) calendar days
11 prior to the date of the hearing.

12 D. The hearing provided for in this chapter shall be conducted by a
13 hearing officer or hearing body appointed by the city manager or his/her
14 authorized designee.

15 E. The hearing officer/body shall only consider evidence that is relevant
16 to whether the appellant is the bona fide cart owner, and whether appellant created,
17 committed, or maintained the violation(s). Courtroom rules of evidence shall not
18 apply. Relevant hearsay evidence and written reports may be admitted whether or
19 not the speaker or author is present to testify, if the hearing officer/body determines
20 that such evidence is reliable. Admission of evidence and the conduct of the
21 hearing shall be controlled by the hearing officer/body in accordance with the
22 fundamentals of due process. The hearing officer/body may set reasonable limits
23 on the length of the hearing, and shall allow the appellant at least as much time to
24 present his/her case as is allowed to the city.

25 F. The appellant contesting the administrative citation shall be given the
26 opportunity to testify and present witnesses and evidence concerning the citation.
27 The city's case shall be presented by any person designated by the city manager.
28 The appellant and city may be represented by counsel.

1 G. The failure of the appellant to appear at the hearing shall
2 constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

3 H. The administrative citation and any additional documents
4 prepared by the city in connection with the violation(s) may be submitted and shall
5 constitute prima facie evidence of the respective facts contained in those
6 documents.

7 I. If the enforcement officer or his/her designee submits any additional
8 documents concerning the administrative citation to the hearing officer for
9 consideration at the hearing, then, whenever possible, a copy of such document(s)
10 shall be served by mail on the appellant at least five (5) calendar days prior to the
11 date of the hearing.

12 J. The hearing officer/body may continue the hearing or request
13 additional information from the enforcement officer, his/her designee or the
14 appellant prior to issuing a written decision.

15 K. After considering all of the testimony and evidence submitted at
16 the hearing, the hearing officer/body shall issue a written decision within fifteen
17 (15) business days of the hearing. The decision of the hearing officer shall be
18 final.

19 L. If the hearing officer/body denies the appeal, then the deposit
20 shall be retained by the city.

21 M. If the hearing officer/body grants the appeal, then the city shall
22 refund the deposit within thirty (30) business days from the date of the final written
23 decision.

24 N. The hearing officer/body shall serve the appellant and city with a
25 copy of the written decision.

26 **8.61.130 Dismissal of citation.**

27 The enforcement officer, with the approval of the director of the respective
28 enforcement agency, may dismiss an administrative citation issued pursuant to

1 this chapter at any time if it is determined to have been issued in error, in which
2 event any deposit will be refunded.

3 8.61.140 Right to judicial review.

4 A. Either the city or the appellant aggrieved by a decision of a
5 hearing officer/body on an administrative citation issued pursuant to this chapter,
6 may obtain review of the decision by filing a Petition for Review with the Los
7 Angeles Superior Court in accordance with the time lines and provisions as set
8 forth in California Government Code Section 53069.4(b). Said procedure shall be
9 available for all judicial review under this Chapter, notwithstanding that the term or
10 condition being enforced pursuant to this Chapter may not be a matter covered by
11 Section 53069.4(a). Judicial review of a citation shall not be available unless all
12 administrative remedies have been exhausted as provided in this Chapter.

13 8.61.150 Recovery of abatement costs.

14 The administrative citation process described in this Chapter does not
15 preclude the city from recovering any other code violation or nuisance abatement
16 costs incurred by the city in performing its code enforcement efforts.

17 8.61.160 City powers not limited by this chapter.

18 Nothing in this section is intended to limit the ability of the city to
19 remove or dispose of any cart to which a cart identification sign is not attached, or
20 to remove or dispose of any cart which impedes the provision of emergency
21 services, or which is an immediate threat to public health and safety, to the full
22 extent permitted by state law.

23 8.61.170 Additional non-administrative penalty.

24 The procedures established in this Chapter shall be in addition to any
25 criminal, civil or other legal remedy established by law for violation of the sections
26 defined in this chapter of the Municipal Code.

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Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council of the City of Long Beach and cause it to be posted in three conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2007, by the following votes:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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