

ORDINANCE NO. 24-2021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING AND REPLACING ELK GROVE MUNICIPAL CODE CHAPTER 9.10 RELATED TO LAUNDRY AND SHOPPING CARTS (CEQA EXEMPT)

WHEREAS, the City Council finds that the abandonment of laundry and shopping carts throughout the City is a source of visual blight, reduces aesthetics, and constitutes a nuisance; and

WHEREAS, the City Council finds the abandonment of laundry and shopping carts on both private and public property, including streets and other rights-of-way, to be a source of visual blight and can lead to the impediment of traffic, and creates a threat to the public health, safety and welfare, and is a public nuisance; and

WHEREAS, the City Council finds it is necessary to require retailers who offer to provide laundry and shopping carts to their customers establish a responsible laundry and shopping cart retrieval plan which reduces the negative impact of abandoned carts within the City and protects public health, safety and welfare; and

WHEREAS, California Business and Professions Code Section 22435.8 grants a local jurisdiction the authority to adopt an ordinance regulating and/or prohibiting the removal of laundry and shopping carts from the premises or parking areas of retail establishments except to the extent any provision of such ordinance expressly conflicts with any provision of state law.

NOW, THEREFORE, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to repeal and replace Elk Grove Municipal Code (EGMC) Chapter 9.10 (Unauthorized Use of Shopping Carts) to require retailers who provide laundry and shopping carts to their customers to establish a responsible cart retrieval plan to reduce the negative impact of abandoned shopping carts within the City.

Section 2:

Elk Grove Municipal Code Chapter 9.10 is hereby repealed and replaced as shown in Exhibit A, attached hereto and incorporated herein by reference.

Section 3: California Environmental Quality Act (CEQA)

Finding: The enactment of this ordinance does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), will not have a significant effect on the environment, and is exempt from CEQA. (Pub. Res. Code section 21065; CEQA Guidelines sections 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), 15308, 15378(a).)

Evidence: CEQA requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines section

15378(a).) Additionally, activities are exempt from CEQA under the common sense exemption where it can be seen with certainty that the “there is no possibility that the activity in question may have a significant effect on the environment. . . .” (CEQA Guidelines section 15061(b)(3).) Finally, activities to assure the maintenance, restoration, enhancement, or protection of the environment are exempt from CEQA under CEQA Guidelines section 15308.

The proposed amendments to EGMC Chapter 9.10 would impose regulations and standards for retailers offering the use of a laundry and shopping carts to customers to help assure that the shopping carts are maintained in working order at the premises of the business, and that the carts are not taken to, or abandoned at, improper location throughout the City. The code continues to prohibit the unauthorized use and removal of shopping carts from a retailer’s premises. These regulatory activities should improve the aesthetic within the City, and they should also reduce carbon emissions by reducing vehicle travel related to cart retrieval and reduce traffic hazards.

The proposed ordinance does not change any property from one zone to another, change land use, nor impose any new land use regulations. And, it does not approve or result in any development activity. The proposed ordinance will not cause a significant impact on the environment or result in any physical change to the environment. Therefore, the proposed amendments to EGMC Chapter 9.10 does not constitute the approval of a project under CEQA and are exempt from CEQA. (Pub. Res. Code section 21065; CEQA Guidelines sections 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), 15308, 15378(a).)

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

Section 6: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by

said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7: Effective Date and Publication

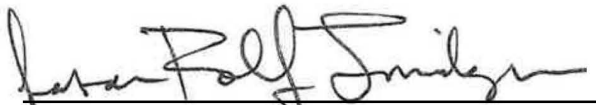
This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: **24-2021**
INTRODUCED: September 8, 2021
ADOPTED: September 22, 2021
EFFECTIVE: October 22, 2021




BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: September 23, 2021

EXHIBIT A

Chapter 9.10

LAUNDRY CARTS AND SHOPPING CARTS

Sections:

- 9.10.010 Findings and Purpose.
- 9.10.020 Applicability.
- 9.10.030 Definitions.
- 9.10.040 Prohibitions.
- 9.10.050 Cart identification signs.
- 9.10.060 Unauthorized removal or possession of a cart.
- 9.10.070 Exception.
- 9.10.080 Mandatory plan to prevent cart removal.
- 9.10.090 Prevention plan timeline and approval process.
- 9.10.100 Plan modification.
- 9.10.110 Revocation of plan.
- 9.10.120 Authority to impound.
- 9.10.130 Disposal of abandoned carts.
- 9.10.140 Enforcement.

9.10.010 Findings and purpose.

Abandoned carts constitute a nuisance, create potential hazards to the public health and safety, and interfere with pedestrian and vehicular traffic within the City. Wrecked, dismantled, and/or abandoned carts on public or private property create conditions that could reduce property values and promote blight and deterioration within the City's neighborhoods. The purpose of this chapter is to ensure measures are taken by cart owners to prevent the removal of shopping and laundry carts from store premises. This chapter is based in part on California Business and Professions Code section 22435, et seq.

9.10.020 Applicability.

This chapter applies to:

- A. Each business owner in the City if the business provides shopping and/or laundry carts for customer use at any business location; and
- B. Any person in possession of an off-site cart in violation of this chapter.
- C. Any person in possession of a cart at a business location when such cart is being used in violation of this chapter.

9.10.030 Definitions.

- A. "Abandoned cart" means any shopping cart or laundry cart removed from an owner's premises without the written consent of the owner, not in the possession of any person, and located on either public or private property.
- B. "Cart" means a laundry cart and/or shopping cart as defined in this chapter.
- C. "City Manager" means the City Manager of the City of Elk Grove, or their designee.
- D. "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or dry-cleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.
- E. "Off-site cart" means a laundry cart and/or shopping cart as defined in this chapter which has been removed from the business premises where it belongs without the written consent of the owner or retailer.
- F. "Owner" or "retailer" means a person or entity who, in connection with the conduct of a business, makes carts available to the public.
- G. "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.
- H. "Premises" means the entire area owned, leased, under the control of, and/or otherwise subject to a property interest vested in a business owner, including, but not limited to, any parking lot or other property provided by or on behalf of the owner for customer parking or use.
- I. "Shopping cart" means a basket which is mounted on wheels or a similar device that is provided by an owner to a customer for the purpose of transporting goods of any kind.

9.10.040 Prohibitions.

It is unlawful and a violation of this chapter for an owner and/or retailer who provides carts to:

- A. Fail to permanently affix an identifying sign to each cart meeting the requirements set forth in section 9.10.050 of this chapter;
- B. Fail to submit and/or comply with a cart removal prevention plan in accordance with EGMC sections 9.10.080 and 9.10.090;
- C. To allow a cart to be removed from the owner or retailer's premises in violation of EGMC section 9.10.060.

9.10.050 Cart identification signs.

Owners or retailers providing carts shall have a sign permanently affixed to each cart. The sign shall include all the following information:

- A. The identity of the owner of the cart or the retailer, or both;

- B. A valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer;
- C. Notification to the public that the unauthorized removal of the cart from the premises or parking area of the retail and/or owner's establishment, or the unauthorized possession of the cart, is a violation of state law and City ordinance; and
- D. Notification to the public of the procedure to be utilized for authorized removal of the cart from the premises.

9.10.060 Unauthorized removal or possession of a cart.

It is unlawful for any person to do any of the following, provided that a cart has a permanently affixed sign meeting the requirements of EGMC section 9.10.050:

- A. To remove a cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- B. To be in possession of any cart that has been removed from, and/or is not located on, the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- C. To be in possession of any cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- D. To leave or abandon a cart at a location other than the premises or parking area of the retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.
- E. To alter, convert, or tamper with a cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

9.10.070 Exception.

No violation of this chapter shall occur when a cart has been removed from the business premises of the owner or retailer with written consent of the business owner or retailer.

9.10.080 Mandatory plan to prevent cart removal.

Upon issuance of a notice of violation of this chapter against an owner or retailer, such owner or retailer providing carts shall submit a cart removal prevention plan to the City Manager and obtain the City Manager's approval of the plan. Once the cart removal prevention plan is approved, the owner and/or retailer shall immediately implement the plan.

The cart removal prevention plan shall include all of the following:

A. Identifying Information. Name and/or job title, address and telephone number of the owner and/or retailer who is responsible for the cart(s), and the name and/or job title and telephone number of the on-site manager or designated agent.

B. Cart number/Identification Plan. The number of on-site carts, and the owner and/or retailer's plan to permanently affix signs on carts to comply with EGMC section 9.10.050.

C. Public Notices. A description of a customer education process by which the owner and/or retailer will inform customers that the removal and/or off-site possession of carts is a violation of state laws and this chapter. This education process may include information signs posted in prominent places on the premises and parking area, flyers, warnings on shopping bags, direct mail, in-store announcements, or any other form of written notification demonstrated to be effective.

D. Required Signs on Property. A description of the signs which shall be placed in prominent places on the premises and parking area that warn individuals that cart removal is prohibited and constitutes a violation of state law and the City's municipal code.

E. Employee Training. A description of on-going employee training programs to educate existing and new employees about the cart removal prevention plan.

F. Loss Prevention Measures. A description of the measures that the owner and/or retailer will implement to prevent the removal of carts from the premises and/or parking area. These measures may include, but are not limited to, devices on carts that automatically disable them if they are removed from the premises, installation of obstacles to prevent the removal of carts, contracted specialized security personnel, collection of security deposits for use of all carts, or the rental or sale of utility carts that can be temporarily or permanently used to transport purchases.

G. Retrieval Measures. The owner and/or retailer's plan for retrieving carts that are removed from the premises and/or parking area; such plan shall include, but is not limited to, a routine patrol of the area for abandoned carts at least once weekly, and the ability to retrieve abandoned carts within 24 hours of notice from the City. Such measures may include, but are not limited to, utilization of personnel or contractors to retrieve abandoned carts. The City may require the routine patrol for, and retrieval of, abandoned carts to occur on a more frequent basis when the volume of abandoned carts attributable to owner and/or retailer require additional retrieval measures.

9.10.090 Prevention plan timeline and approval process.

A proposed cart removal prevention plan shall be submitted to the City Manager for approval within 30 days of receiving a notice of violation under this chapter from the City. Every plan submitted shall be subject to the City Manager's approval.

If a plan is rejected as incomplete or inadequate, or if additional information is needed, the City shall notify the owner and/or retailer of the deficiency in writing. The owner shall have 15 days to correct the deficiency and re-submit the proposed cart removal prevention plan to the City.

The City may reject or deny a cart removal prevention plan on any of the following grounds:

- A. The plan fails to include the information required under EGMC section 9.10.080;
- B. The City determines the cart removal prevention plan is insufficient to prevent removal of carts;
- C. Implementation of the plan violates this chapter or state or federal law; and/or
- D. The owner and/or retailer makes a materially false statement in the plan submission.

9.10.100 Plan modification.

The owner and/or retailer may submit a modification of any previously-approved cart removal prevention plan to address changed circumstances or to modify ineffective provisions. The City Manager shall review and consider the modification in the same manner set forth in EGMC 9.10.080 and 9.10.090.

9.10.110 Revocation of plan.

The City may revoke an existing cart removal prevention plan and require a new cart removal prevention plan if:

- A. Abandoned carts belong to the owner and/or retailer are found by the City on three or more occasions within a six-month period;
- B. The owner and/or retailer has failed to comply with a provision of this chapter;
- C. The owner has made a materially false statement or fails to disclose materially relevant information in the cart removal prevention plan submitted to the City.

9.10.120 Authority to impound.

A. A cart that has a sign affixed to it in accordance with EGMC section 9.10.050 may be impounded by the City provided both of the following conditions have been satisfied:

1. The cart is located outside the premises or parking area of the owner's and/or retailer's establishment. The parking area of a retail establishment located in a multistore complex or shopping center shall include the entire parking area used by the complex or center; and
2. Except as provided in EGMC section 9.10.120.B, the cart is not retrieved within three business days from the date the retailer and/or owner of the cart, or their agent, receives actual notice from the City of the cart's discovery and location.

B. Notwithstanding EGMC section 9.10.120.A.2, the City may impound a cart that otherwise meets the criteria set forth in EGMC section 9.10.120.A.1 without complying with the three-business day advance notice requirement provided that:

1. The retailer and/or owner of the cart, or their agent, is provided actual notice within 24 hours following the impound and that notice informs the retailer and/or owner, or their agent, as to the location where the cart may be claimed.

2. Any cart so impounded shall be held at a location in compliance with EGMC section 9.10.120.D.

3. Any cart reclaimed by the retailer and/or owner, or their agent, within three business days following the date of actual notice as provided pursuant to EGMC 9.10.120.9.10.120.B.1, shall be released and surrendered to the retailer and/or owner, or their agent, at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to this chapter.

4. Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of EGMC section 9.10.140.

C. In instances where the location of a cart will impede emergency services, the City may immediately retrieve and impound the cart from public or private property.

D. Any cart that is impounded by the City pursuant to this section shall be held at a location that is both: (1) reasonably convenient to the retailer or owner of the cart; and (2) open for business at least six hours of each business day. The City shall not be liable to any party for any damage to an impounded cart.

E. If the City retrieves and impounds a cart under the authority provided in this section, the City may recover its actual costs for providing this service.

9.10.130 Disposal of abandoned carts.

Any cart not reclaimed from the City within 30 days of receipt of a notice of violation by the retailer and/or owner of the cart may be sold or otherwise disposed of by the City.

9.10.140 Enforcement.

A. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City.

B. Any person who violates EGMC section 9.10.060 shall be guilty of an infraction pursuant to EGMC Chapter 1.04 and/or shall be subject to a fine imposed by administrative citation pursuant to Chapter 1.12 in an amount established by resolution of the City Council.

C. In addition to imposition of fines, and any other remedy available to the City, the City may require an owner or retailer who fails to comply with the provisions of this chapter to install a locking wheel system on all carts owned by the owner on ten occurrences within a one-year period. For purposes of this section, an "occurrence" means and includes all carts that are impounded by the City in a one-day period.

D. The remedies set forth in this chapter shall be cumulative and in addition to any and all other remedies, civil, equitable, or criminal, afforded to the City under the law.

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 24-2021

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on September 8, 2021, and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 22, 2021, by the following vote:

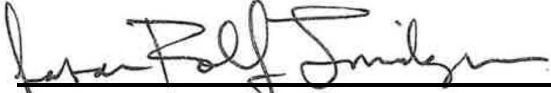
AYES: **COUNCILMEMBERS:** *Singh-Allen, Nguyen, Hume, Spease, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



Jason Lindgren, City Clerk
City of Elk Grove, California