

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY ADDING CHAPTER 13.160, "SHOPPING CARTS" OF TITLE 13, "CODE ENFORCEMENT AND REMEDIES" OF THE CATHEDRAL CITY MUNICIPAL CODE

WHEREAS, there exists numerous abandoned shopping and laundry carts scattered across the City of Cathedral City ("City"); and

WHEREAS, such carts contribute to blight, lower property values, and threaten the health and safety of the people; and

WHEREAS, the City Council wishes to impose regulations against business owners to prevent the unlawful removal carts and for prompt retrieval of abandoned carts; and

WHEREAS, the City Council wants to ensure impoundment of abandoned carts found within the City; and

WHEREAS, the City Council wishes to impose sanctions against individuals who unlawfully take carts from business premises.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. ADDING CHAPTER 13.160, "SHOPPING CARTS" TO THE CATHEDRAL CITY MUNICIPAL CODE

Cathedral City Municipal Code Section 13.160 shall be added to read as follows:

Chapter 13.160 Shopping Carts

13.160.010 Purpose and Declaration of Public Nuisance

- A. The city council hereby finds that the proliferation of wrecked, dismantled and abandoned shopping carts, or parts thereof, on public or private property are a visual blight, reduce property values, interfere with pedestrian and vehicular traffic, impede emergency services, and are**

injurious to the health, safety and general welfare. Therefore, wrecked, dismantled and abandoned shopping carts are declared to be public nuisances and may be abated pursuant to the provisions of this Chapter or in any other manner provided by law.

B. The purpose of the regulations set forth in this Chapter is to ensure that owners and operators of retail businesses that provide shopping carts take reasonable measures to prevent the removal of shopping carts and to provide for prompt retrieval of any removed or abandoned carts.

13.160.020 Definitions

A. "Retail Establishment" means any business which provides or makes available shopping carts for the use of its customers regardless of whether such business is opened to the general public or is a private club or business.

B. "Premises" means the entire area owned and utilized by the retail establishment, including any parking lot.

C. "Owner" means any person or entity who, in connection with a retail establishment, owns, leases, possesses, uses, or otherwise provides shopping carts to customers, patrons, or the public. For purposes of this Chapter, the owner shall include on-site or designated agents.

D. "Shopping cart" or "cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind. Shopping cart also includes a cart used in a laundry or dry-cleaning retail establishment for purposes of transporting clothes and necessary cleaning materials.

E. "Removed Cart" means a cart which is removed from the premises of a business establishment by any person without the written permission or consent of the Owner of the cart.

F. "Abandoned Cart" means any cart that has been removed from the premises of the business establishment and which is left unattended or discarded upon any public or private property other than the premises regardless of whether the cart was removed with permission from the Owner.

G. "City" means the City of Cathedral City.

13.160.030 Enforcement

A. The City Manager or his designee shall administer and enforce the provisions of this Chapter. The City Manager or his designees may enter public property and private property, with consent of the owner or occupant or with a warrant authorizing entry, to examine shopping carts or parts thereof, to ascertain the identity of the owner of the carts, and to abate and remove shopping carts pursuant to this Chapter. The City Manager or his designee may use contractors for cart retrieval purposes.

B. The City Manager or his designee may enforce the provisions of this chapter by use of administrative citations pursuant to Chapter 13.58 and 13.60.

13.160.040 Prohibited Conduct

It is unlawful for any person to do any of the following acts:

A. To remove a shopping cart from the premises 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 shopping cart that has been removed from the premises 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 shopping 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 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 cart.

E. 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 cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

F. To be in possession of any shopping cart while that cart is not located on the premises of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

G. Notwithstanding any other section in this Chapter, it shall be unlawful and a public nuisance for any owner or retail establishment to allow one or more of that retail establishment's carts to be abandoned or remain unattended on any private property, city street, alley, sidewalk or other public right-of-way for any period of time.

13.160.050 Shopping Cart Abatement

A. Impoundment of Shopping Carts with Signs Affixed.

1. Pursuant to Business and Professions Code Section 22435.7(b), the City Manager or his designee may provide actual notice to the owner of any abandoned or removed carts that has been located within the City. The notification shall be documented and provided by telephone or written notice. If three business days after such notice is given the cart has not been retrieved by the owner or his or her agent, the cart may be impounded. The City may recover the actual costs of retrieving the cart and fines against the owner. A cart impounded pursuant to this subsection that is not reclaimed within 30 days of the owner's receipt of the notice provided for herein shall be sold or otherwise disposed of by the City.

2. Pursuant to Business and Professions Code Section 22435.7(i), the City Manager or his designee may immediately impound any abandoned or removed shopping cart located within the City, and give the owner of the cart actual notice that the cart has been impounded within 24 hours of the impoundment. The notification shall be documented and provided by telephone or written notice. Any shopping cart impounded pursuant to this subsection that is reclaimed within three business days following the date of actual notice to the owner shall be released and surrendered to the owner or his or her agent at no charge whatsoever. Any cart reclaimed within the three business day period shall not be deemed an occurrence for the purposes of subsection (A)(3). Where an owner fails to reclaim a cart, the City may recover the actual costs of retrieving the cart and fines against the owner commencing on the fourth business day following the date of the notice. Any cart not reclaimed within 30 days of the actual notice provided to the owner of the cart shall be sold or otherwise disposed of by the City

3. Fines. Pursuant to Business and Professions Code Section 22435.7(f), a fine in the amount of \$50.00 is hereby imposed upon each owner of a shopping cart for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with section 13.160.050(A). An

occurrence includes all shopping carts impounded in accordance with this chapter in a one-day period. This subsection does not apply to and does not limit or prohibit any other fee, fine or penalty that the City may charge for violation of this Chapter.

B. Impoundment of Shopping Carts without Affixed Signs. An abandoned or removed shopping cart that does not have an affixed sign identifying the owner may be impounded immediately. Carts impounded pursuant to this subsection may be disposed of immediately. The City does not waive its right to recover any fines and fees under these circumstances.

C. Record Keeping. The City Manager or designee shall keep records identifying the date, time and location from where the shopping cart was impounded.

D. Emergency Removal. Notwithstanding any provisions of this Chapter, shopping carts may be impounded immediately from public or private property where such shopping carts impede emergency services.

13.160.060 Mandatory Shopping Cart Containment and Retrieval Plan

A. Every owner which provides more than ten (10) shopping carts shall develop, implement and maintain a plan to prevent the removal of shopping carts from the premises and to provide for the retrieval of removed and abandoned carts. The plan shall involve the following elements:

1. Every cart owned or provided by an owner shall have a permanently affixed sign which identifies the owner, notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

2. Written notice shall be provided to customers, in both English and Spanish, that removal of shopping carts from the premises is prohibited by state law. The plan shall identify the specific measures to be implemented to comply with this notice requirement. In addition, conspicuous signs shall be placed and maintained on the premises near all customer entrances and exits throughout the premises, including the cart storage areas, warning customers that removal of shopping carts from the premises is prohibited by state law.

3. Specific measures to prevent the removal of shopping carts from the premises. These measures may include, but are not limited to, the electronic or other disabling devices, physical barriers, security guards to deter the unauthorized removal of carts, or other effective measures that are satisfactory to the City.

4. All shopping carts located at the business premises shall be collected at the end of each business day and shall be collectively confined in a cart containment area until the commencement of the next business day. Businesses that are open twenty-four (24) hours a day shall collect and confine all shopping carts, other than those in current use by customers, in a cart containment area between the hours of 9:00 p.m. and 12:00 a.m. each calendar day.

5. The owner shall establish and maintain a cart retrieval program. In addition, upon notification by city personnel, the owner shall cause the retrieval of the cart within 24 hours. The notification shall be documented and provided either by telephone or written notice. If the owner contracts with a cart retrieval service, the service must be approved by the City.

6. Employees of each retail establishment shall be trained on an ongoing basis concerning the requirements of this Chapter and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment.

7. Two or more retail establishments located within the same shopping or retail center or sharing a common parking area may collaborate and submit a single cart containment and retrieval plan.

B. Cart Containment Plan Approval Process

1. New or Relocated Businesses. A new or relocated retail establishment shall, at the time of applying for a business license or certificate of occupancy, submit a cart containment plan described in section (A). A retail establishment applying for a renewed license or certificate, but which did not previously submit a cart containment plan, shall submit such plan upon application for renewal. The fee amount for submitting a plan may be set by resolution of the City Council. No plan will be accepted without payment of the fee.

2. Existing businesses. Owners of existing retail establishments shall, within 60 days of adoption of this ordinance, submit the cart containment plan described in section (A). The fee amount for submitting this plan may be set by resolution of the

City Council. No plan will be accepted without payment of the fee.

3. Plan Review. The City Manager or his designee shall review each submitted plan and within thirty (30) days approve, deny, or revise the plan.

(a) If the plan is approved, the owner shall implement the plan within thirty (30) days.

(b) If the plan is denied, the City Manager or his designee shall state in writing the reasons for the denial. The owner may appeal the denial pursuant to section 13.160.060.

(c) If the plan must be modified, the City Manager or his designee shall state in writing the required modifications. The owner shall have fifteen (15) days to resubmit a modified plan for approval.

4. Plan Amendments. An owner may submit to the City Manager or his designee any amendments of a previously approved plan. Such amendments shall be reviewed in accordance with section (B) (3).

C. Penalties. The failure of an owner to establish or maintain a cart containment plan shall be subject to a civil fine of up to \$1,000, plus an additional penalty of \$50.00 for each day of noncompliance.

13.160.060 Appeals

Owners may appeal the denial of a proposed cart containment plan pursuant to the procedures under Chapter 13.150. Proposed cart containment plans shall be treated the same as permits and licenses for purposes of appeal.

13.160.070 Violations

A. Violation of any provision of this chapter is a misdemeanor, and each day a violation is continued shall constitute a new and separate misdemeanor.

B. Violation of any provision of this Chapter shall constitute a public nuisance and may be abated according to the provisions of this Chapter or by any other means provided by law.

13.160.080 Cumulative Remedies

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.

Section 3. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 4. ENVIRONMENTAL FINDINGS

The City Council finds that adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14 California Code of Regulations section 15061, subsection (b)(3), because there is nothing in this chapter or its implementation that could foreseeably have any impact on the environment.

Section 5. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 6. AMENDING OF BAIL SCHEDULE

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after its second reading by the City Council.

Section 8. CITY ATTORNEY REVIEW

The City Attorney prepared and framed this ordinance pursuant to Section 1.04.010 of the Municipal Code and finds that the City Council has the authority to adopt this ordinance, that the ordinance is constitutionally valid and that the ordinance is consistent with the general powers and purposes of the City as set forth in Section 1.04.031 of the Municipal Code.

Section 9. EXECUTION AND CERTIFICATION

The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2014 by the following vote:

Ayes:
Noes:
Abstain:
Absent:

Stan Henry, Mayor

ATTEST:

Gary F. Howell, City Clerk

APPROVED AS TO FORM:

Charles R. Green, City Attorney