

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BUENA PARK,  
CALIFORNIA, ADDING CHAPTER 5.56 TO TITLE 5 OF  
THE BUENA PARK MUNICIPAL CODE RELATING TO  
SHOPPING CART CONTAINMENT AND RETRIEVAL.

THE CITY COUNCIL OF THE CITY OF BUENA PARK DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. That new Chapter 5.56 be, and the same is hereby, added to Title 5 of the Buena Park Municipal Code to read as follows:

**“Chapter 5.56**

**SHOPPING CART CONTAINMENT AND RETRIEVAL BY OWNERS**

**5.56.010 PURPOSE. DECLARATION OF NUISANCE.**

Many retail establishments provide shopping carts for the convenience of customers while shopping on the premises of such businesses. However, shopping carts removed from the premises of such businesses and left abandoned on public or private property throughout the City constitute a public nuisance and a potential hazard to the health and safety of the public. The proliferation of lost, stolen or abandoned shopping carts on public and private property causes blighting conditions in the community, results in the obstruction of free access to public and private sidewalks, streets, parking lots and other ways, interferes with pedestrian and vehicular traffic on public and private streets, and impedes emergency services. For the aforesaid reasons, such lost, stolen or abandoned shopping carts are hereby declared to be a public nuisance which shall be subject to abatement in the manner set forth in this chapter or in any other manner provided by law. The purpose of this chapter is to set forth regulations to ensure that reasonable measures are taken by the owners and operators of businesses which provide shopping carts for the convenience of customers to either prevent the removal of shopping carts from business premises and parking lots, or provide for the prompt retrieval of lost, stolen or abandoned shopping carts, to complement and supplement provisions of state law, and to adopt local regulations to the extent not otherwise preempted by state statute.

**5.56.020 DEFINITIONS.**

Except as otherwise expressly set forth herein, the following words and terms as used in this chapter shall have the following meanings:

‘City’ means the City of Buena Park, California.

‘Community Development Director’ means the Community Development Director of the City.

‘Enforcement personnel’ means any police officer or code enforcement officer employed by the City of Buena Park.

‘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.

‘Lost, stolen or abandoned shopping cart’ means a shopping cart which is either (i) removed from the premises of a retail establishment by any person without the written permission or consent of the owner of the shopping cart or the retailer otherwise entitled to possession of such cart, or (ii) left unattended, discarded or abandoned upon any public or private property other than the premises of the retail establishment from which the shopping cart was removed, regardless of whether such shopping cart was removed from the premises with the permission of the owner. For purposes of this chapter, any shopping cart located on any public or private property other than the premises of the retail establishment from which such shopping cart was removed shall be presumed lost, stolen or abandoned, even if in the possession of any person, unless such person in possession thereof either (i) is the owner, or an employee or authorized agent of the owner, entitled to possession of said shopping cart, (ii) is an officer, employee or agent of a cart retrieval service hired by the owner to retrieve such carts, (iii) is an enforcement officer retrieving, storing or disposing of said cart pursuant to the provisions of Chapter 5.56 of this code.

‘Owner’ means any owner, manager, or operator of any retail establishment.

‘Parking area’ means a parking lot or other property provided by a retail establishment for the use of customers of said retail establishment for parking of customer vehicles. 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 multi-store complex or shopping center.

‘Planning Commission’ means the Planning Commission of the City.

‘Premises’ means any building, property or other area upon which any retail establishment business is conducted or operated in the City of Buena Park, including the parking area provided for customers of such retail establishment.

‘Retail establishment’ means any business located in the City of Buena Park which offers or provides shopping carts for the use of the customers of such business regardless of whether such business is advertised or operated as a retail or wholesale business, and regardless of whether such business is open to the general public, or is a private club or business, or is a membership store.

‘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. The term ‘shopping cart’ or ‘cart’ includes a laundry cart.

**5.56.030 CART CONTAINMENT PLAN.**

Except as otherwise provided in this chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the City to prevent customers from removing shopping carts from the premises of such business without authorization of the owner (the ‘Cart Containment Plan’). The Cart Containment Plan, at a minimum, shall include the following elements:

A. **Signs affixed to carts.** Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer or both; notifies the public that the unauthorized removal of the cart from the premises of the business, 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 to the owner or retailer.

B. **Notice to customers.** 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. Such notice may be provided in the form of flyers distributed on the premises, warnings printed on shopping bags, direct mail, website notices or any other means demonstrated to be effective. The Cart Containment 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 and throughout the premises, including the parking area, warning customers that removal of shopping carts from the premises is prohibited by state law.

C. **Physical measures.** Specific physical measures shall be implemented and maintained by the owner to prevent, deter or impede the removal of shopping carts from the premises. Such physical measures shall be specifically identified in the Cart Containment Plan and may include, but are not limited to, the following: disabling devices installed and maintained on carts, maintaining one or more security guards assigned the responsibility to deter or stop customers from removing shopping carts from the premises, preventing any shopping carts to be taken outside the confines of building exits unless accompanied by an employee of the business, bollards and chains in locations between the business exits and the parking area which effectively prevent transporting shopping carts into the parking area or off the premises, requiring security deposits by customers for cart use, or rental or sale of carts to customers.

D. **Employee training.** The owner of the retail establishment shall implement and maintain a periodic training program for its new and existing employees designed to educate such employees concerning the requirements of the Cart Containment Plan and the provisions of state law prohibiting the unauthorized removal of shopping carts from the premises of the retail establishment. The Cart Containment Plan shall expressly describe the employee training program.

E. **Collaboration with other businesses.** 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 Plan.

F. **Exemptions.** The requirements of this Section 5.56.030 shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment complies with the requirements of Section 5.56.040 of this chapter.

**5.56.040 CART RETRIEVAL PLAN.**

Except as otherwise provided in this chapter, every owner who provides shopping carts to customers for use on the premises of any retail establishment shall develop, implement and comply with the provisions of a written plan approved by the City to provide for the retrieval of lost, stolen or abandoned shopping carts which have been removed from the premises of the retail establishment (the 'Cart Retrieval Plan'). The Cart Retrieval Plan, at a minimum, shall include the following elements:

A. **Signs affixed to carts.** Every shopping cart made available for use by customers shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer or both; notifies the public that the unauthorized removal of the cart from the premises of the business, 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 to the owner or retailer.

B. **Retrieval Personnel.** The owner shall provide personnel for purposes of the retrieval of lost, stolen or abandoned shopping carts. Such personnel may be either employees of the business or

one or more independent contractors hired by the owner to provide shopping cart retrieval services, or a combination of both. The Cart Retrieval Plan shall either (i) identify the number of employees who will be assigned such cart retrieval duties, the number of total hours per week that each assigned employee will perform such services (in addition to any on-premises retrieval duties to which such employee may be assigned), and the training each of such personnel has received or will receive concerning the retrieval of lost, stolen or abandoned shopping carts, or (ii) include a copy of each contract with a cart retrieval service (other than confidential financial information which may be retracted from the contract). For purposes of this Section 5.56.040, those persons identified in the Cart Retrieval Plan as providing cart retrieval services, whether employees of the business or independent contract services, shall be referred to in this section as 'retrieval personnel.' The owner shall provide written authorization to all retrieval personnel, which authorization shall be carried by each such person while performing cart retrieval services on behalf of the owner and shall be provided to any enforcement personnel upon request. Each vehicle used by retrieval personnel shall bear conspicuous signs on the vehicle identifying either the name of the retail establishment for which such retrieval service is being performed or, if applicable, the name of the cart retrieval service with which the retail establishment has contracted for such services.

C. **Prompt Retrieval of Carts.** The owner shall provide retrieval personnel in sufficient number to assure that all public streets within a minimum one-mile radius of the premises of the retail establishment are patrolled not less often than every 48 hours, and all bus stops within a minimum one-mile radius of the retail establishment are patrolled not less often than every 24 hours, and each lost, stolen or abandoned shopping cart owned or provided by the retail establishment which is found as a result of such patrols is immediately retrieved and removed from any public or private property upon which the cart is found. The Cart Retrieval Plan shall identify the perimeter streets and bus stops in which all streets within the perimeter area will be patrolled as required by this subsection; the manner, frequency and times of such patrols; and the procedures to be employed by the retail establishment to identify and retrieve any lost, stolen or abandoned shopping carts. The Cart Retrieval Plan shall identify the number of trucks, hours of operation of the retrieval personnel, and such other information as reasonably required by the City to assure that the owner is devoting sufficient resources to cart retrieval operations to comply with the provisions of this Section 5.56.040 and the approved Cart Retrieval Plan.

D. **Exemptions.** The requirements of this Section 5.56.040 shall not apply to any retail establishment which provides a total of ten or less shopping carts for use by customers of such business, or which retail establishment complies with the requirements of Section 5.56.030 of this chapter.

#### **5.56.050 PLAN SUBMISSION AND APPROVAL**

A. **New or relocated retail establishments.** Unless otherwise expressly exempt hereunder, each new retail establishment, and any existing retail establishment relocating to a different location with the City, shall submit a proposed plan complying with the requirements of either Section 5.56.030 or Section 5.56.040 of this chapter to the Community Development Director, and obtain approval thereof by the City, prior to providing any shopping carts to customers of the retail establishment. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Community Development Director unless accompanied by the processing fee established by the City Council.

**B. Existing retail establishments.** Unless otherwise expressly exempt hereunder, each existing retail establishment shall submit a proposed plan complying with the requirements of Section 5.56.030 or Section 5.56.040 of this chapter to the Community Development Director within 120 calendar days following the date of adoption of this chapter. No such retail establishment existing on the date this chapter is adopted shall provide or continue to provide shopping carts for the use of its customers after the 180<sup>th</sup> calendar day following the date of adoption of this chapter without a plan approved by the City as conforming to the requirements of either Section 5.56.030 or Section 5.56.040 of this chapter; provided, however, such date shall be extended for the period, if any, during which an appeal of the denial of such plan is pending pursuant to the provisions of this chapter. Each proposed plan shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed plan shall be accepted for filing and processing by the Community Development Director unless accompanied by the processing fee as established by the City Council.

**C. Plan Review and Approval.** Upon the filing of any proposed plan pursuant to either Section 5.56.030 or Section 5.56.040 of this chapter (collectively referred to herein as the 'Plan'), and receipt of the required processing fee, the Community Development Director shall review said proposed Plan and either approve or deny approval of said proposed Plan within thirty (30) calendar days following the receipt thereof by the Community Development Director. If the proposed Plan complies with each of the applicable requirements of this chapter, the Community Development Director shall approve the Plan, otherwise the proposed Plan shall be denied. The decision of the Community Development Director shall be made in writing and notice thereof shall be transmitted to the owner of the retail establishment by the United States Postal Service, first-class mail, postage prepaid, or by personal delivery or fax transmission. The notice of decision of the Community Development Director shall be deemed given to the owner on the date of personal delivery or on the date of the fax transmission to the owner; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the owner on the third day following the date of deposit in the course of transmission with the United States Postal Service, first-class mail, postage prepaid. If the proposed Plan is denied, the notice of decision given to the owner shall state the grounds upon which the proposed Plan was denied. The owner may appeal a decision of the Community Development Director in the time and manner provided in Section 5.56.060.

**D. Amendments by Owner.** The owner of any retail establishment which has an approved Plan conforming to the requirements of this chapter may, at any time, submit a proposed amendment to the approved Plan, which amendment shall be processed in accordance with the procedure provided for a proposed Plan as set forth in Section 5.56.030 or Section 5.56.040 above. Each proposed amendment shall be accompanied by a processing fee in an amount as set by resolution of the City Council. No proposed amendment shall be accepted for filing and processing by the Community Development Director unless accompanied by the processing fee as established by the City Council.

**E. Revocation or Amendment by City.**

1. Grounds. An approved Plan may be revoked by the City upon any of the following grounds:

a. The owner of any retail establishment is operating, or is permitting operation of, the retail establishment in violation of one or more of the provisions of said approved Plan and has failed to correct said violation(s) for a period of at least fifteen (15) calendar days following the date of receipt of written notice of such violation(s) from the City; or

b. The owner of any retail establishment with an approved Plan is operating, or is permitting the operation of, the retail establishment in violation of one or more of the requirements of this chapter and has failed to correct said violation(s) for a period of at least fifteen (15) calendar days following the date of receipt of written notice of such violation(s) from the City; or

c. The Cart Containment Plan, as approved, is inadequate to prevent the removal of shopping carts from the premises of the retail establishment; or

d. The Cart Retrieval Plan, as approved, is inadequate to ensure the prompt retrieval of lost, stolen or abandoned shopping carts removed from the retail establishment.

2. Order to Show Cause. If at any time following the approval of a Plan, the Community Development Director of the City obtains information or evidence that any of the grounds set forth in section 5.56.050.E.1.a above may exist, the Community Development Director shall issue a written Order to Show Cause as to why the approved Plan should not be revoked and schedule a meeting thereon, which meeting shall not be less than fifteen (15) calendar days nor more than thirty (30) calendar days following the date such Order to Show Cause is given to the owner of the retail establishment. The Order shall state the grounds upon which it is proposed to revoke the approved Plan and shall include the information and evidence, or a summary thereof, upon which such Order was issued.

a. Notice of Meeting. Notice of the meeting on any Order to Show Cause issued pursuant to this section shall be given in the time and manner provided in section 5.56.050.E.2 above.

b. Conduct of Meeting. The Community Development Director shall conduct a meeting and the legal rules of evidence shall not be applicable. The owner and the City shall each have the opportunity to present evidence and witnesses. The parties may each be represented by legal counsel or other representatives of their choice. The City shall bear the burden of proof to establish, by a preponderance of the evidence, that grounds exist to revoke the Plan. The Community Development Director, at his or her discretion, and as an alternative to revocation, may consider amendment of the Plan if the grounds for the Order to Show Cause are solely the inadequacy of the approved Plan.

c. Decision of Community Development Director. With fifteen (15) calendar days following conclusion of the meeting, the Community Development Director will render his or her decision in writing either dismissing the proceedings or revoking or amending the Plan. If the Plan is revoked or amended, the decision shall specify the findings of fact and the reasons for such action. If the Plan is amended, the decision shall also specify the amendment(s) to the Plan.

d. Notice of Decision. Notice of the decision of the Community Development Director shall be given in the time and manner specified in subsection section 5.56.050.E.2.c above.

e. Appeal of Decision. The decision of the Community Development Director shall be subject to appeal by the owner within the time and manner specified in Section 5.56.060. In the absence of a timely appeal, the decision of the Community Development Director shall be final and conclusive.

f. Use of Shopping Carts Following Revocation Prohibited. No owner of any retail establishment which is subject to the requirements of this Chapter shall provide or make available

shopping carts for the use of customers following the date any decision revoking a Plan required and approved pursuant to this chapter becomes final unless and until a new proposed Plan is approved by the City for such retail establishment. Notwithstanding any other provision of this chapter, an owner of a retail establishment shall not be eligible to submit a new proposed Plan to the City for processing for a minimum of 180 days following the date any decision revoking the prior Plan for such retail establishment becomes final. Any proposed Plan submitted to the City for such retail establishment during said 180-day period shall be returned to the owner of the retail establishment as untimely.

**5.56.060 APPEALS.**

A. Filing of Appeal. Any owner aggrieved by any adverse decision of the Community Development Director pursuant to this chapter may appeal such decision to the Planning Commission of the City within ten (10) working days following the date of giving of notice of such decision by filing with the Community Development Director a written notice of appeal briefly stating the grounds for such appeal. The notice of decision shall be deemed given on the date as provided in Section 5.56.050.E.2.c of this chapter. Such appeal shall be deemed filed on the date the appeal is actually received in the office of the Community Development Director accompanied by an appeal processing fee in an amount as set by resolution of the City Council. No appeal shall be accepted for filing and processing by the Community Development Director unless accompanied by the appeal processing fee as established by the City Council.

B. Notice of Hearing. If the appeal is timely filed, the Community Development Director shall cause the matter to be set for hearing, which hearing date shall be within thirty (30) calendar days following the date of receipt of such notice of appeal. The appellant shall be provided not less than ten (10) calendar days written notice of the date, time and place of the hearing. The Planning Commission shall conduct the hearing pursuant to the provisions of Chapter 19.120 of the Buena Park Municipal Code.

C. Conduct of Hearing. The hearing shall be conducted informally and the legal rules of evidence shall not be applicable. The owner and the City shall each have the opportunity to present evidence and witnesses. The parties may each be presented by legal counsel or other representatives of their choice. No additional evidence or argument shall be received or considered following the conclusion of the hearing except as may be agreed by stipulation of the parties.

D. Decision by Planning Commission. The Planning Commission shall render a decision on the appeal and adopt findings of fact in support of such decision within thirty (30) calendar days following the conclusion of the hearing.

E. Notice of Decision. The notice of decision of the Planning Commission shall be deemed given on the date of personal delivery or on the date of the fax transmission to the appellant; notices given by the United States Postal Service, first-class mail, postage prepaid, shall be deemed given to the appellant on the third day following the date of deposit in the course of transmission with the United States Postal Service.

F. Appeal to City Council. The decision of the Planning Commission may be appealed to the City Council in the same manner as provided for appeals of decisions of the Community Development Director. Planning Commission decisions may also be reviewed and acted upon by the City Council upon request of a Councilmember made within the ten (10) day appeal period, on the basis that the matter has city-wide importance and should be reviewed and determined by the elected

officials of the City. Decisions of the Planning Commission shall be final if no timely appeal or request for review by a Councilmember is filed.

**5.56.070 UNAUTHORIZED REMOVAL OR POSSESSION OF A SHOPPING CART.**

It is unlawful for any person to do any of the following, if a shopping cart has a permanently affixed sign pursuant to 5.56.030.A and 5.56.040.A:

- A. Remove a shopping cart from the premises or parking area of a business establishment.
- B. Leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment.
- C. 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.
- D. Be in possession of any shopping cart while that cart is not located on the premises or parking lot of a business establishment.

**5.56.080 VIOLATIONS – PENALTIES.**

A. Except as otherwise expressly provided in this chapter, it shall be unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, any shopping carts to customers of said retail establishment without an approved Cart Containment Plan or Cart Retrieval Plan as required by either Section 5.56.030 or Section 5.56.040 of this chapter; provided, however, this prohibition shall not apply to any retail establishment, or the owner thereof, which provides a total of ten or less shopping carts for the use of customers of said retail establishment.

B. It is unlawful for the owner of any retail establishment to provide or offer, or permit to be provided or offered, to customers of said retail establishment any shopping cart, which does not have a sign permanently affixed thereto containing all of the information specified in Section 22435.1 of the Business and Professions Code of the State of California.

C. Per Section 5.56.070, it is unlawful for any person to remove, be in possession of, leave and/or abandon a shopping cart at a location other than the premises or parking area of the retail establishment. It is also unlawful for any person to alter, convert or tamper with a shopping cart.

D. The first violation to any provisions of this chapter committed by the owner of any retail establishment or by any person or entity shall be an infraction punishable in accordance with the applicable provisions of the Buena Park Municipal Code. Any subsequent violations committed by the owner of any retail establishment or by any person or entity after having previously been convicted of violating said same section shall be a misdemeanor punishable as set forth in Section 1.04.010 of the Buena Park Municipal Code.”

**SECTION 2. SEVERABILITY.**

The City Council of the City of Buena Park hereby declares that should any section, subsection, paragraph, sentence, clause or word of this ordinance hereby adopted be declared for any reason invalid by the final judgment of any court of competent jurisdiction, it is the intent of the City

Council that it would have adopted all other portions of this ordinance independent of the elimination here from of any such portion as may be declared invalid.

SECTION 3. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the appeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

I, Shalice Reynoso, City Clerk of the City of Buena Park, California, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Buena Park held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and was finally passed at a regular meeting of the City Council of the City of Buena Park held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Clerk