



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Chris Burton

**SUBJECT:** Abandoned Shopping Cart  
Policy Options

**DATE:** January 13, 2025

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Approved

Date:

1/24/25

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**COUNCIL DISTRICT:** Citywide

## **RECOMMENDATION**

Direct the City Manager to:

- a) Conduct an outreach process with retailers in San José to evaluate options for enhancing the City's efforts to prevent and retrieve abandoned shopping carts, including the possibility of the City establishing a cart retrieval program, implementing an abandoned shopping cart retrieval program on a voluntary cost-recovery basis, adopting enhanced regulations as part of the City's existing regulatory program, and other options as retailers may wish to propose.
- b) Advocate for changes to State law that would remove barriers to the City recovering its costs for retrieving abandoned shopping carts.

## **SUMMARY AND OUTCOME**

The purpose of this memorandum is to provide the City Council context on the City's current approach to abandoned shopping carts and to set out policy options for additional measures the City could implement with recommended next steps..

## **BACKGROUND**

Through approval of the 2024-2025 March Budget Message, the City Council provided the following direction to address the issue of abandoned shopping carts.

The City Manager is directed to engage with large retailers that fall under Municipal Code 9.60 and, in collaboration with the City Attorney, return to City 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.

As part of the 2024-2025 budget process, Manager's Budget Addendum #26 responded to this direction, indicating that staff would return to City Council by the end of the 2024-2025 Fiscal Year. Manager's Budget Addendum #26 was approved by the City Council through adoption of the June Budget Message.

In response to the above direction, staff has prepared an analysis of options to address the issue of abandoned shopping carts. This memorandum outlines those options and makes recommendations for next steps.

## **ANALYSIS**

The analysis section is divided into three parts: first, it outlines current City efforts to address abandoned shopping carts; second, it describes the restrictions State law imposes on the City in addressing this issue; and finally, it sets out the policy options staff has identified, makes recommendations, and explains the reasoning behind the recommendations.

### **Current City Efforts**

Under the City's current practices, the Code Enforcement Division of the Planning, Building, and Code Enforcement Department, the BeautifySJ unit in the Parks, Recreation, and Neighborhood Services Department, and the Department of Transportation are all involved in managing abandoned shopping carts.

#### *Code Enforcement*

Chapter 9.60 (Prevention of Abandoned Carts) of Title 9 of the San José Municipal Code requires retailers with 26 or more carts to submit a shopping cart management plan to the City. There are 134 retailers that currently fall under this requirement. Per the San José Municipal Code, the management plans must contain the following certain information.

- A community outreach plan, which could involve, for example, placing signs on the retailers premises indicating that removal of carts is illegal,
- A loss prevention plan to prevent removal of carts from the retailer's premises, which could include measures such as wheel locking mechanisms or staff who patrol the parking lot to prevent cart theft, and
- A plan for retrieving abandoned carts owned by the retailer within 24 hours.

One Code Enforcement Inspector is devoted to administering and enforcing this management plan requirement. This position is funded by an annual fee that retailers must pay along with submission of their management plan. The fee is set at \$2,126 per retailer in the current fiscal year. The Code Enforcement Inspector reviews and approves the management plans and conducts inspections of retailer premises to determine compliance with the plans. As the inspector travels the City to conduct inspections they also patrol for abandoned carts. When the inspector finds an abandoned cart, the inspector will notify the retailer who owns it. The retailer then has three days to pick up the abandoned cart(s) per State law as discussed below. If the abandoned cart is not picked up within three days the inspector may issue a fine. Fines are capped by State law at \$50 per occurrence, where an occurrence is all carts from a given retailer cited within one day. State law is discussed in more detail below.

### *BeautifySJ*

BeautifySJ does not have a dedicated service to proactively patrol for abandoned carts or to respond to complaints about them, but it does pick up carts encountered as part of its regular cleanup activities. For example, if abandoned carts are encountered during a cleanup in a creek, BeautifySJ would remove them. If a cart is in good condition, it is sent to Mabury Yard for storage (as discussed below) and if it is damaged or otherwise in poor condition it is disposed of. BeautifySJ removes over 1,000 carts a year in this manner.

### *Department of Transportation*

The Department of Transportation will remove abandoned carts that are obstructing traffic but does not pick up carts otherwise. As mentioned above, if BeautifySJ picks up a cart that is in good condition during a cleanup it is taken to Mabury Yard, which is operated by the Transportation Department. A small portion of the yard is dedicated to storing the carts. When there are too many carts for the space available, they are disposed of.

### Service Gap

Although BeautifySJ picks up a large number of abandoned carts each year in the course of cleanup activities, the City does not have a dedicated service that focuses on proactively picking up abandoned carts or responding to complaints about them. Staff's analysis of this issue focuses on identifying strategies to create a dedicated service to retrieve carts. Also, consistent with the original City Council direction, staff analyzed how the City could recover costs for that service from retailers.

### **State Law Restrictions**

State law imposes substantial restrictions on the City's ability to recover costs for picking up abandoned shopping carts. In order to recover costs, the City must operate a

shopping cart impound lot. If an abandoned cart is discovered, the City may impound the cart and notify the owner. The owner then has three days to pick up the cart from the impound lot. The lot must be open for retailers to retrieve carts for six hours a day on business days. If the cart is picked up within three days, the City may not recover its costs. Alternatively, if the cart is not picked up, the City can recover its costs and impose a fine of no more than \$50, but it must also retain the cart at the impound lot for an additional 30 days. The attachment to this memorandum provides a process map of the State requirements.

These requirements pose a significant obstacle to recovering costs for a cart retrieval program. Operating an impound lot would require a site large enough to hold a substantial number of carts for over 30 days. As noted above, the Department of Transportation temporarily stores carts picked up by BeautifySJ at the Mabury Yard, but the available site is small. It is inadequate to store carts in the numbers and for the length of time that would be required to operate an impound lot. Alternative space for an impound lot is not available at Mabury Yard or another service yard.

Operating an impound lot would also entail costs for the City. Staff positions would be necessary to operate the lot, including managing carts, notifying retailers, and ensuring that the lot is open for retailers to retrieve carts on business days. At the same time, the City would not be guaranteed to fully recover these costs. Per State law, costs cannot be recovered if the cart is picked up from the impound lot within three days. For any proportion of carts picked up within that window the City would need to absorb the cost of the service.

## **Policy Options**

This section provides an overview of the policy options staff has identified to address abandoned shopping carts. Note that some options are incorporated into the recommendation of this memorandum while others are not recommended, but still included for the City Council's consideration.

### **1. Mandatory Cost Recovery Cart Retrieval Program (Not Recommended)**

To implement a mandatory cost recovery program the City would need to comply with State law, as described above, including operating an impound lot. This option is challenging for two reasons. First, there is not available space at any of the service yards to establish an impound lot. Staff would need to identify a site, which could potentially entail site acquisition and improvement costs. Second, if the City did operate such a lot, it would not be guaranteed to fully recover its costs. To the extent that retailers retrieved their carts within three days, the City would not be able to charge cost recovery fees. Given the difficulty in identifying a site and the uncertainty of cost recovery staff does not recommend pursuing mandatory cost recovery at this time. If State law were changed (as discussed in Option 5 below) this option could be reconsidered.

**2. Non-Cost Recovery Cart Retrieval Program (Recommended)**

Under this option, the City would fund a cart retrieval service, but would not recover its costs and thus would not need to operate an impound lot. In reviewing approaches to this issue in other cities, staff has discovered that many cities hire an outside contractor to perform this service, often one of the same contractors that large retailers hire to collect their own carts. Such contractors have service models specifically designed for cart retrieval and typically charge a per-cart fee for each abandoned cart that they retrieve. As an example, the City of Milpitas has an agreement with a contractor to collect carts for an \$11 per cart fee.

Allocation of General Fund funding through the 2025-2026 budget process would be needed to provide for this service. If funding is allocated, staff recommends that the funding be used to retain a contractor, consistent with the common practice in other jurisdictions described above. Although this option would not recover costs, it would allow carts to be returned directly to the retailer instead of stored at an impound lot, which makes it significantly more efficient and easier to implement. Staff recommends exploring this option through the outreach process proposed in Recommendation (a) above.

**3. Voluntary Cost Recovery Cart Retrieval Program (Recommended)**

In evaluating practices in other cities, staff has discovered that Milpitas has developed a voluntary cart retrieval program. Under this program, the City of Milpitas contracts with a cart retrieval company and allows retailers to voluntarily participate in a program under which the contractor retrieves carts and returns them directly to retailers, without the need for an impound lot. The retailer then invoices the City of Milpitas for the work and Milpitas bills participating retailers. Retailers who do not voluntarily participate have their carts taken to an impound lot and must pay a higher cost recovery fee (but only if they don't pick them up within three days, consistent with State law.)

The advantage of this approach is that it allows for both cost recovery and for carts to be returned directly to a retailer without an impound lot, at least for retailers who participate voluntarily. The disadvantage is that there is no certainty that retailers will participate. That said, staff believes it is worth exploring this option, and in particular considering what incentives other than operating an impound lot may be useful in encouraging retailers to participate. To that end, staff recommends exploring this option with retailers through the outreach process proposed in Recommendation (a) above. It is also important to note that like Option 2, this option would require a General Fund budget allocation to fund a cart retrieval contractor, at least initially.

**4. Industry Coordination Cart Retrieval Program (Not Recommended)**

Under the City's existing regulatory program, each of the 134 covered retail locations must have a plan to retrieve their own abandoned carts and must provide a contact who can retrieve the carts when asked. Under this option, instead of picking up the carts itself, the City would attempt to build a more efficient process for referring concerns about abandoned carts from staff or from the public to the relevant retailer. The retailer would then be expected to retrieve the cart themselves. The advantage of this approach is that the City would not need to pick up the cart. The disadvantage is that with so many different retail locations and different contacts for cart pickup, it would be very complicated to determine which retailer to send each complaint to. A complainant would first need to know who the cart belonged to, and then need to search through dozens of contacts to find the right one. Given the number of retailers in the program it would be difficult to make this an efficient and user-friendly process. Consequently, staff does not recommend pursuing it.

**5. Advocate for Revisions to State Law (Recommended)**

State law makes it very difficult to operate a mandatory cost recovery cart retrieval program. One option for remedying this situation is to advocate for changes to State law. In particular, the City could explore changes that would allow the City to return carts directly to retailers and recover its full costs for the service without a requirement that the cart first be taken to an impound lot. This would streamline the process and make a cost recovery model much easier. Recommendation b) would direct staff to advocate for such changes at the State level.

**6. Enhanced Regulation (Recommended)**

Currently retailers are required to prepare a shopping cart management plan and to provide various information on how they will prevent the theft of their carts, but there are not currently strict substantive requirements for the content of the plan. Under this option the City could consider adopting more prescriptive requirements for our existing regulatory program. As an example, consider that under current regulations the management plan must include a loss prevention plan that describes how a retailer will discourage carts from being taken from their premises. Currently retailers have broad discretion as to what to put in their loss prevention plan (having security on site would be an example of a loss prevention measure). A more prescriptive regulatory program could establish a narrower set of loss prevention options that retailers would need to choose between, with the goal of narrowing down to the most effective strategies.

While staff believes this is worth exploring, it is important to understand the limits of current approaches. For example, carts with automatic wheel locks can be a

deterrent, but at the same time they can often be defeated by lifting the wheel up a few inches off the ground. This is an area where industry feedback and expertise is especially useful. As such staff recommends exploring this option with retailers through the outreach process proposed in Recommendation a).

In summary, staff recommends pursuing Options 2, 3, 5, and 6. Options 2, 3 and 6 are incorporated into Recommendation (a) above and Option 5 is incorporated into Recommendation (b) above.

### **EVALUATION AND FOLLOW-UP**

Recommendation (a) in this memorandum proposes initiating an outreach process with retailers to explore policy options for addressing abandoned carts and Recommendation (b) recommends advocating for changes to State law.

If Recommendation (a) is approved, staff will initiate an outreach process in winter/spring 2025 to explore Options 2, 3, and 6 as outlined above, in addition to any other options retailers may wish to propose. As noted in the next section, Options 2 and 3 would require additional budgetary resources. Staff can initiate outreach on these options with approval of Recommendation (a), but would need budget resources to implement them. Allocation of such resources could be considered through the 2025-2026 budget process, in the context of the City's overall fiscal condition and other budget priorities.

If Recommendation (b) is approved, the City Manager's Office of Administration, Policy, and Intergovernmental Relations will pursue State legislation to reduce the restrictions State law places on the City in implementing a cost recovery program for retrieving abandoned shopping carts.

### **COST SUMMARY/IMPLICATIONS**

As noted in the Analysis section, a number of the options evaluated would require additional General Fund budgetary resources, subject to allocation through a future budget process. Of the options recommended by staff Option 2 and Option 3 would require funding to hire a cart retrieval contractor. One of San José's neighboring cities, City of Milpitas, has such a contract. The contractor charges the City of Milpitas \$11 for every cart it collects.

Of the options not recommended by staff, Option 1 would also require additional General Fund budgetary resources. Similar to Options 2 and 3, it would require resources for a contractor to retrieve carts. It would also require resources for the operation of an impound lot, which would include staff costs to manage the carts, notify

retailers, and keep the lot open for cart retrieval for six hours a day on business days. As noted above, staff would need to identify a site for an impound lot, as the current site where carts are stored, Mabury Yard, is not adequate to accommodate this function. It is possible that securing a site could entail site acquisition and improvement costs.

### **COORDINATION**

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

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the February 4, 2025 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

### **CEQA**

Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body.

### **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

*/s/*  
CHRIS BURTON  
Director, Department of Planning,  
Building and Code Enforcement



HONORABLE MAYOR AND CITY COUNCIL

January 13, 2025

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For questions, Peter Hamilton, Assistant to the City Manager, City Manager's Office of Office of Administration, Policy and Intergovernmental Relations, at [peter.hamilton@sanjoseca.gov](mailto:peter.hamilton@sanjoseca.gov).

**ATTACHMENT**

Shopping Cart Impound Process as Specified by State Law (Business and Professions Code Section 22435.7)

Attachment: Shopping Cart Impound Process as Specified by State Law (Business and Professions Code Section 22435.7)

