



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

SUBJECT: See Below

DATE: April 17, 2025

Approved

Date:

4/24/2025

COUNCIL DISTRICT: Citywide

SUBJECT: Amendment to Title 9 of the San José Municipal Code to Establish Additional Requirements for Mandatory Abandoned Shopping Cart Prevention Plans

RECOMMENDATION

Approve an ordinance amending Section 9.60.330 of Title 9 of the San José Municipal Code to establish additional requirements for Mandatory Abandoned Shopping Cart Prevention Plans.

SUMMARY AND OUTCOME

This memorandum proposes amendments to the City's existing Municipal Code provisions pertaining to abandoned shopping carts for the purpose of establishing enhanced regulations on retailers. Approval of the staff recommendation will result in the approval of these amendments. This memorandum also provides an update on the full range of staff efforts to address the issue of abandoned shopping carts, including the pursuit of state legislation, implementation of a shopping cart retrieval pilot program, and a voluntary cart retrieval program under which retailers would voluntarily reimburse the City for the cost of retrieving abandoned carts.

BACKGROUND

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

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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 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.

Manager's Budget Addendum #26¹ 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 the adoption of the 2024-2025 Mayor's June Budget Message.

In response to the above direction, staff presented policy options for addressing abandoned shopping carts at the February 4, 2025, City Council meeting.² Through action on that item, the City Council approved the staff recommendation as follows:

- 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, options for implementing a 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.

Additionally, the City Council also approved a memorandum from Mayor Mahan and Councilmembers Cohen, Mulcahy, Doan, and Casey that provided the following direction:

Direct the City Manager to report back to Council before May 2025 with:

- a. An executed agreement to provide an abandoned shopping cart retrieval service that includes SJ311 integration for reporting abandoned carts, sets clear expectations for cart removal from creeks and trails, and outlines the process for disposing of carts filled with personal items, similar to the City of Milpitas.
- b. Progress on establishing a voluntary cost-recovery cart retrieval program similar to the City of Milpitas.
- c. Recommendations to amend Municipal Code 9.60 to:
 - i. Prescribe stronger loss prevention strategies in the mandatory abandoned cart prevention plan, such as by mandating wheel locking mechanisms,

¹ <https://www.sanjoseca.gov/home/showpublisheddocument/112436/638526923192630000>

² <https://sanjose.legistar.com/LegislationDetail.aspx?ID=7101222&GUID=FFF31E60-E840-40B7-92C8-7EA45342BB46&Options=&Search=>

- ii. Add a provision to 9.60.320 to assign penalties for unlawfully removing a cart from the premises of a business establishment without permission.

This memorandum responds to the above direction.

ANALYSIS

State Legislation

The City Council's initial direction in the 2024-2025 March Budget Message called for the City to establish a cart retrieval service and recover costs for that service through a fee on retailers. As discussed at the February 4, 2025 City Council meeting, current state law makes cost recovery for such a service challenging. It requires cities to impound carts if they wish to assess a cost recovery fee and allows retailers to avoid such a fee by retrieving their carts from the impound lot within three days. The requirement to operate an impound lot, which would entail additional expense for the City, combined with the ability to avoid cost recovery, makes it difficult to implement a cost recovery program under current law.

Pursuant to City Council direction from the February 4, 2025 meeting, City staff, in coordination with the Mayor's Office, is pursuing state legislation that would make it easier for the City to operate a cost-recovery program. State Senator Cortese agreed to carry a bill on this topic. In coordination with the Senator's staff, City staff drafted proposed amendments to state law that would allow cities and counties in California to return abandoned carts directly to the retail locations of their owners instead of operating an impound lot. Returning carts directly is a more efficient service model than operating an impound lot and can be accomplished at a lower cost. The proposed amendments also provide that after the carts are returned, cities and counties would be able to assess a cost recovery fee without an option for the fee to be avoided. These amendments would make operating a cost recovery program significantly easier for the City.

Senator Cortese has submitted Senate Bill 753, which includes the amendments described above. Staff is continuing to work with Senator Cortese's Office to advocate for this legislation. The League of California Cities and the California State Association of Counties have recently moved to support this legislation.

Enhanced Regulations

Pursuant to City Council direction, staff has also developed a proposed amendment to the San José Municipal Code that would strengthen current shopping cart regulations. Currently, the City ordinance requires that any retailer with 26 or more shopping carts must submit an abandoned cart prevention plan on an annual basis. The plan must

describe a retailer's efforts to prevent cart theft and to retrieve abandoned carts upon notification by the City. Retailers currently have wide discretion on what kinds of strategies they list in their plans. Staff is recommending adoption of San José Municipal Code revisions that would establish more specific requirements as to what kind of strategies retailers would need to adopt. By adopting more stringent requirements, the City may be able to improve the effectiveness of its regulations.

Staff proposes that these enhanced regulations only apply to retailers with 76 or more carts to ensure that the additional regulations are not an undue burden for smaller retailers. Retailers with 26 to 75 carts tend to be small supermarkets or specialty retailers. They would continue to submit abandoned cart prevention plans consistent with the current ordinance, but would not be subject to the additional regulations.

Retailers with 76 or more carts would be subject to the new regulations. They would need to include at least one of the following three options in their abandoned cart prevention plan:

- **Theft Prevention Devices:** Under this option, retailers would need to implement a device or mechanism designed to physically prevent the removal of shopping carts from the owner's premises, such as an electronic wheel locking mechanism or poles attached to carts that prevent them from being taken outside of a retailer's interior premises.
- **Security Deposit Devices:** Under this option, retailers would install devices on their carts that would require customers to make a security deposit before being allowed to use a cart.
- **Cart Retrieval Contract:** Under this option, the retailer would need to maintain an agreement with a cart retrieval service that makes weekly, proactive efforts to retrieve the owner's abandoned carts and can retrieve an abandoned cart within 24 hours upon notice of the abandoned cart's location by the City. If this option is selected, a copy of the agreement with the cart retrieval service must be submitted along with the abandoned cart prevention plan.

As noted previously, retailers would only need to implement one of the three options above. Providing retailers with a choice of different strategies allows them to select the option that works best for their customers and circumstances.

Staff conducted two outreach meetings to gather feedback on this proposal. The first meeting was on Thursday, April 3, 2025, and the second was on Tuesday, April 8, 2025. These meetings were advertised to the City's contact list for retailers regulated by the City's current abandoned shopping cart ordinance. Businesses represented at these meetings included Trader Joe's, Sprouts, Costco, La Plaza Market, Lee's Supermarket, and a couple of cart retrieval contracting businesses.

Themes from these outreach meetings included the following:

- **Theft Prevention Devices:** Multiple retailers who participated in the meetings had experience with electronic wheel lock systems at their locations. They noted that while they may provide a modest deterrent to theft, they can be complicated and expensive to install, expensive to maintain, and are only partially effective.
 - Retailers pointed out that installing an electronic wheel lock system requires laying a wire beneath the ground around the perimeter of the parking lot. This kind of project requires the involvement of the retailer's landlord and may also require coordination with other tenants in the same shopping center that share the parking lot.
 - These projects can cost as much as \$40,000 to install and potentially take up to a year to fully implement.
 - Retailers also pointed out that some shopping centers may be configured such that it is not possible to install underground lines around the entire perimeter.
 - Multiple retailers noted that these systems can be easily defeated by individuals determined to steal a cart, such as by lifting the locked wheel up above the ground as the cart passes over the underground wire. One participant noted that putting two locking wheels on a cart, diagonally at the front and rear, instead of just one, may make it more difficult to do this.
 - Retailers noted that locking wheels often break or malfunction, and that maintenance costs for the system can be significant.
- **Security Deposit Devices:** Retailers indicated a lack of familiarity with these devices, which usually involve putting a coin into the cart to unlock and use it. While more common in other countries, security deposit devices are relatively rare in the United States.
- **Cart Retrieval Contract:** Several retailers expressed familiarity with this option and indicated that they already employed a cart retrieval contractor.

Based on this feedback, staff determined that providing a range of compliance options to choose from would help to ensure that retailers could develop a strategy that worked for their specific situation. The three options proposed in the ordinance are intended to provide this kind of choice.

Retailers who are covered by the current ordinance are required to submit their abandoned cart prevention plans on an annual basis in January of each year. If the City Council passes the proposed ordinance amendment, the new requirements would come into effect when plans are next submitted in January 2026.

The City Council also directed staff to “add a provision to Section 9.60.320 to assign penalties for unlawfully removing a cart from the premises of a business establishment without permission.” Staff has determined that the San José Municipal Code already establishes penalties for unlawfully removing a cart. Section 9.60.320 of the San José

Municipal Code provides that it is unlawful to remove a cart from its owner's premises without permission, while Section 1.08.010 provides that any person violating provisions of the code shall be guilty of a misdemeanor. This section also establishes a penalty for any person convicted of a misdemeanor at a maximum \$1000 fine, a maximum six month prison sentence, or both. As such, unauthorized removal of a cart is currently a misdemeanor under the Municipal Code and is subject to the associated penalties.

Cart Retrieval Pilot Program

Staff is also working to establish a pilot program that would retrieve carts and return them to their owners' premises. This pilot would not be cost recovery—it would be provided as a service to retailers at no cost. The purpose of the pilot program is to gain experience with managing a cart retrieval contractor with the goal of establishing an ongoing cart retrieval service model that is potentially cost-recovery in the future.

Staff has developed the following format for the pilot program:

- **Geographic Area:** Before rolling out a cart retrieval service to the entire City, staff believes it is prudent to conduct a pilot in a smaller geographical area to gain experience in how to arrange and manage such a program. To that end, the pilot program will be conducted in two pilot areas. The maps of these areas can be found in the attachment to this memorandum. Area 1 is roughly bounded by Highway 880 to the north, Tully Road to the south, Highway 101 to the east, and Highway 280 to the west, while area 2 is centered on the intersection of Blossom Hill Road and Almaden Expressway. These areas were chosen because, based on feedback from City staff and retailers through the outreach meetings, they were noted as having higher incidence of abandoned carts.
- **Duration:** The pilot program is intended to last for three months, from May to July 2025. Staff will return to City Council by September 2025 with an evaluation of the pilot program and a recommendation for an ongoing, citywide service model, as appropriate.
- **Scope of Service:** The pilot program will involve a contractor retrieving abandoned carts from the two geographic areas and returning them to retailers directly. The contractor would retrieve carts from the public right of way, as well as other areas where carts may be found, such as along trails and creeks, provided that the area can be accessed safely. If a cart is encountered containing personal items, the contractor would refer the cart to BeautifySJ. Carts with personal property in them would then need to be posted with a 72-hour notice before retrieval.
- **San José 311 Integration:** Integration with San José 311 is an important goal for the new cart retrieval service. Given that the pilot program will not encompass the entire City, integration with San José 311 during the pilot would be challenging, as it could be confusing for users as to whether the cart that they are requesting be picked up is within the pilot area. Consequently, staff proposes to

defer San José 311 integration until an ongoing, citywide service is established after the pilot program is complete.

The Code Enforcement Division has established funding in the amount of \$20,000 to fund this pilot. Staff is pursuing a unique services contract with CarTrac, a shopping cart retrieval vendor, to implement the pilot program, with the goal of beginning service in May 2025. As noted above, staff will return to the City Council in September 2025 with an evaluation of the pilot program and a recommendation for an ongoing service model, as appropriate. Staff would seek to make the ongoing program cost recovery, to the extent feasible. If the state legislation discussed above were to pass, staff would seek to recover the costs of the program from retailers. In the event that the state legislation does not pass, staff would pursue a voluntary cost recovery program, as discussed in the next section.

Voluntary Cart Retrieval Program

Staff has also pursued establishment of a voluntary cart retrieval program, which would entail retailers agreeing to voluntarily reimburse the City for the retrieval of their carts in exchange for certain incentives. The program could be designed such that if a retailer voluntarily agreed to reimburse the City, they would be exempted from the more stringent regulations staff is proposing through the ordinance amendment proposed in this memorandum.

Staff discussed this proposal with retailers during the outreach meetings. Retailers indicated that their interest in participating in a voluntary program would depend on the details of the service being offered, such as the cost. Staff believes that before establishing a voluntary program, it would be useful to gain experience in managing a cart retrieval service through the pilot program, to better judge the level of effort needed to manage an ongoing program and develop an ongoing service model that could be offered to retailers as an efficient and effective option for cart retrieval. Waiting to establish a voluntary program until after the pilot is complete would also provide an opportunity to determine whether Senator Cortese's proposed legislation on shopping carts will advance over the next several months. If that legislation is successful, a voluntary program would not be necessary, as it would allow the City to recover its costs for cart retrieval on a mandatory basis.

When staff returns to the City Council in September 2025, staff will make a recommendation for a voluntary cart retrieval program as part of its recommendation for an ongoing cart retrieval service, as appropriate. Staff would implement a voluntary program concurrent with the next round of abandoned cart management plans, which are due in January 2026.

EVALUATION AND FOLLOW-UP

Staff will return by September 2025 with an evaluation of the pilot program and a recommendation for an ongoing service model, as appropriate.

COST SUMMARY/IMPLICATIONS

Funding for the pilot program in the amount of \$20,000 will be allocated from the Code Enforcement Division's existing non-personal/equipment budget. If the pilot program is successful and results in a meaningful reduction of the number of abandoned shopping cars, the Administration will recommend the reallocation of existing budgetary resources to continue, and potentially expand, the cart retrieval program through the remainder of 2025-2026. Further continuation of the program into 2026-2027 would be included in that year's annual budget development process.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the City Manager's Office of Administration, Policy, and Intergovernmental Relations.

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the May 6, 2025 City Council meeting.

Staff conducted two outreach meetings to gather feedback on the ordinance proposed through this memorandum, first on Thursday, April 3, 2025 and the second on Tuesday, April 8, 2025. These meetings were advertised to the City's contact list for retailers regulated by the City's current abandoned shopping cart ordinance. Businesses represented at these meetings included Trader Joe's, Sprouts, Costco, La Plaza Market, Lee's Supermarket, and a couple of cart retrieval contracting businesses.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

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

For questions, please contact Rachel Roberts, Deputy Director, Planning, Building and Code Enforcement Department, at rachel.roberts@sanjoseca.gov.

ATTACHMENT

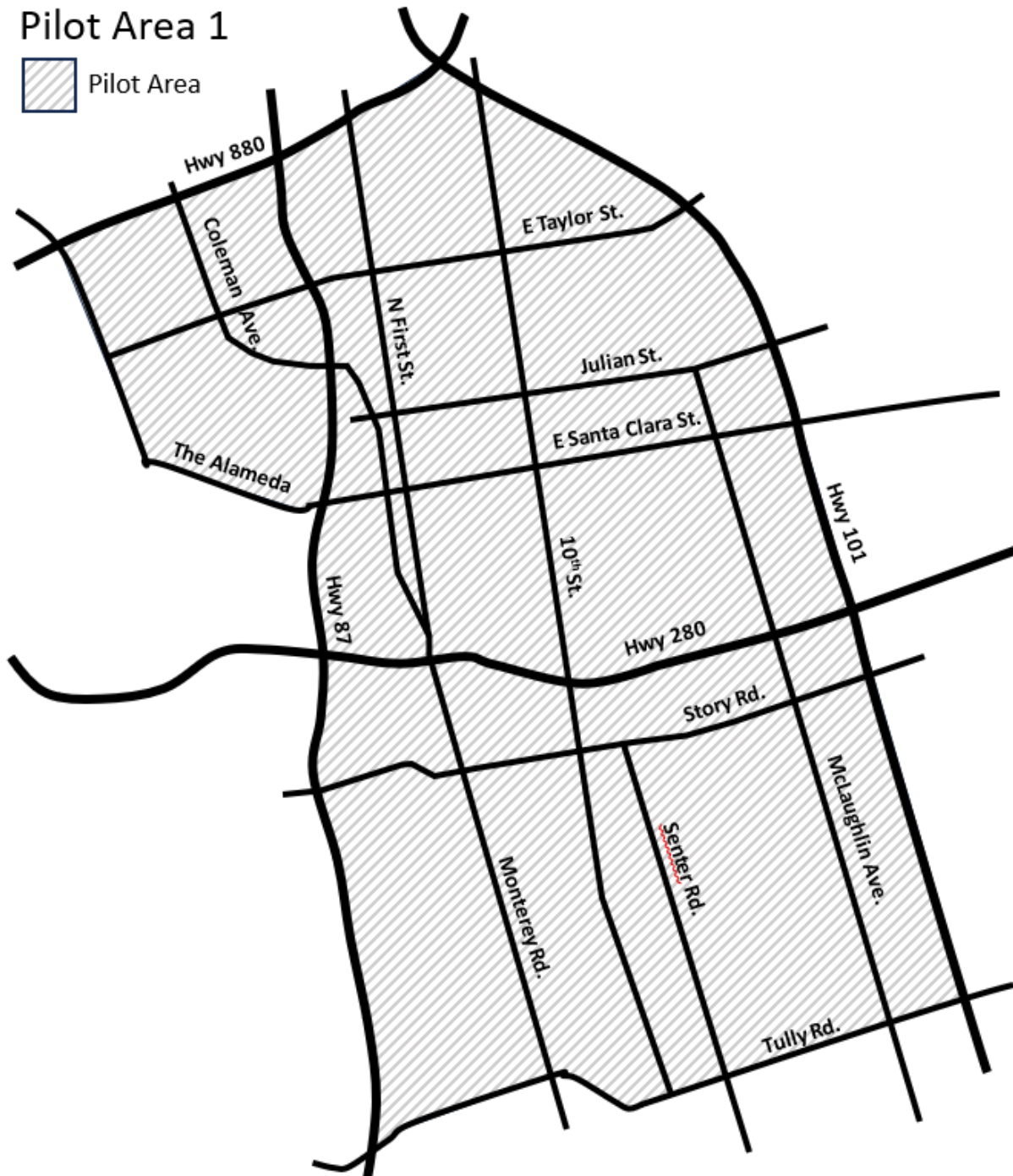
Map of Pilot Areas

Attachment Maps of Pilot Areas

Pilot Area 1



Pilot Area



Pilot Area 2

