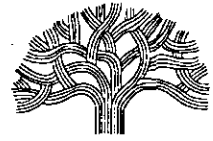


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CITY OF OAKLAND



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NANCY J. NADEL
Councilmember
District # 3

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TO : Council President Brunner and Councilmembers
FROM: Nancy J. Nadel, Council District 3
RE : Recycling Performance Standards, Item 14.1
DATE : February 3, 2009

Dear Council President Brunner and Councilmembers:

Performance standards for recyclers will help us prevent the mistakes we made in the past. Recycling is an important industry for our city but not pleasant to live near or even to do business near if they are not kept to certain cleanliness and parking standards.

Cleanliness/Shopping Carts: Sections d. and e. are created to address litter (d) and shopping carts (e). Staff suggests a shopping cart management plan in item e. State law says that shopping carts with identifying information on them as to their retailer source are the property of that retailer and are not to be removed from the retailer's property. Therefore, I have added a section, e.1., such that if identifying information is visible on the cart, the Recycling Center should not accept goods from that individual as they are using stolen equipment. My proposed amendment is attached as *Attachment A*.

Section e.2. is the language staff already proposed and vetted with the recyclers. There have been some threats by recyclers that state law covers all shopping cart issues and we cannot have a section on shopping carts. The state law on shopping carts is attached, as *Attachment B*. It only covers programs where the municipal agency itself has a retrieval program. It specifically states:

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.

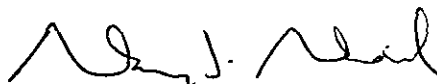
Oakland's proposed standards would not create a city shopping cart collection program and therefore does not conflict with state law.

Parking: Many recyclers begin to use the public right of way when they exhaust their own site spaces as their businesses grow, instead of leasing ancillary space or moving their business to larger quarters. Options 1 and 2 are alternatives to address the parking of large Recycling Center (not customer) vehicles in the public right of way. There is consensus on keeping vehicles off the street during the evening and week-end hours but no consensus during operating hours. The problem during operating hours is the recyclers move their own vehicles from inside their facility to all around the neighborhood of their facility. Residents and other businesses would like the operating hours parking to be restricted to the curbs on the blocks occupied by the facility. I am supporting that option (Option 1, *Attachment A*).

Item 14.1
ORA/Council
February 3, 2009

It is very difficult to attract new business to areas where this "recycling business creep" is occurring and as new businesses are attracted, they should also have some street parking options in front of their businesses for customer and worker parking.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy J. Nadel", written over a horizontal line.

Nancy J. Nadel
City Councilmember, District 3

ATTACHMENT A

Below please find my suggested amendment (see addition of e.1. and Option 1) to the draft language proposed by Staff for O.M.C. Sections 17.73.035.B.5d. and 5e, regarding litter, debris, graffiti, cleanliness and shopping carts for existing, new or expanded uses is shown as an excerpt from the text that was presented at the December 9, 2008 City Council meeting with proposed compromise language shown in strikeout/underline.

The following is the language proposed by Staff:

- d. A cleanliness/litter management and control plan shall be developed, implemented and maintained, such that it is ready for inspection. The plan shall include provisions for the disposal of recycling-related litter and debris in the public right-of-way ~~all materials, within a one-block radius of the premises,~~ as well as a graffiti abatement plan; ~~a one-block radius of the premises shall comprise all street sides of the nine (9) square block area that includes the block on which the premises is located (as the center block of the nine (9) square block area)~~ within the area comprised of all streets adjacent to the premises, and the one-block extension of those streets to the north and south, and east and west, respectively (See Figure 1). This would not include material illegally dumped that is not related to the recycling operation, including but not limited to hazardous material, containers of paint or unidentified liquids, tree trimmings, residential, commercial and/or industrial waste or dumping of materials not accepted by the Primary Collection Center. In addition, the Primary Collection Center shall produce a notice to distribute to customers that states that all illegal dumping shall be reported to City authorities.
- e. ~~The Primary Collection Center shall be responsible for keeping the area within a two (2) block radius of the premises clear of shopping carts. A site/immediate neighborhood (five (5) block radius) shopping cart management plan shall be developed, implemented and maintained, such that it is ready for inspection. If the Primary Collection Center accepts materials from the public brought by means of a shopping cart,~~

Suggested Amendment (e.1)

- 1. **If the Center staff determines that the cart has identifying information on it connecting it to its source store, the Center staff should report the cart stolen and refuse to do business with the bearer.**
- 2. If Center staff determines that the cart has no identifying information on it, the Center shall be responsible for the retrieval of all shopping carts within the area comprised of all streets adjacent to the premises, and the one-block extension of those streets to the north and south, and east and west, respectively (See Figure 1). Additionally, a Primary Collection Center shall post signage that includes contact information to report abandoned shopping carts in the vicinity of the facility; if called or notified by a member of the public about abandoned shopping carts located within a two-block radius of the premises, a Primary Collection Center shall retrieve said carts. A two-block radius of the premises shall comprise all street sides of the twenty-five- (25) square block area that includes the block on which the premises is located (as the center block of the twenty-five (25) square block area); a five (5) block radius of the premises shall comprise all street sides of the one hundred twenty one (121) square block area that includes the block on which the premises is located (as the center block of the one hundred twenty one (121) square block area).

Option 1: "During business hours, all facility-owned vehicles shall be stored within the facility, at an appropriate alternative off-street location, or parked on the street sides immediately adjacent to and located within the block on which the Primary Collection Center is located" (O.M.C. Section 17.73.35B.7d per December 9, 2008 text presented to City Council for first reading).

ATTACHMENT B

Copy of California Code Regarding Shopping Carts

CALIFORNIA CODES

BUSINESS AND PROFESSIONS CODE

SECTION 22435-22435.8

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAIISdocID=20557819123+0+0+0&WAIISaction=retrieve>

22435. As used in this article:

(a) "Shopping 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.

(b) "Laundry cart" means a basket which is mounted on wheels and used in a coin-operated laundry or drycleaning retail establishment by a customer or an attendant for the purpose of transporting fabrics and the supplies necessary to process them.

(c) "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.

22435.1. The provisions of Section 22435.2 shall apply when a shopping cart or a laundry cart has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; 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 retail 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.

22435.2. It is unlawful to do any of the following acts, if a shopping cart or laundry cart has a permanently affixed sign as provided in Section 22435.1:

(a) To remove a shopping cart or laundry 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 shopping cart or laundry cart that has been removed from 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 shopping cart or laundry 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 or laundry 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 shopping cart or laundry 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 or laundry cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

22435.3. Any person who violates any of the provisions of this article is guilty of a misdemeanor.

The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

22435.4. This article shall not apply to the owner of a shopping cart or laundry cart or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 22435.2.

22435.5. (a) In any civil proceeding, any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 shall establish a rebuttable presumption affecting the burden of producing evidence that the property is that of the person or business named in the sign and not abandoned by the person or business named in the sign.

(b) In any criminal proceeding, it may be inferred that any shopping cart or laundry cart which has a sign affixed to it pursuant to Section 22435.1 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

22435.7. (a) The Legislature hereby finds that the retrieval by local government agencies of shopping carts specified in this section is in need of uniform statewide regulation and constitutes a matter of statewide concern that shall be governed solely by this section.

(b) A shopping cart that has a sign affixed to it in accordance with Section 22435.1 may be impounded by a city, county, or city and county, provided both of the following conditions have been satisfied:

(1) The shopping cart is located outside the premises or parking area of a retail 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.

(2) Except as provided in subdivision (i), the shopping cart is not retrieved within three business days from the date the owner of the shopping cart, or his or her agent, receives actual notice from the city, county, or city and county of the shopping cart's discovery

and location.

(c) In instances where the location of a shopping cart will impede emergency services, a city, county, or city and county is authorized to immediately retrieve the shopping cart from public or private property.

(d) Any city, county, or city and county that impounds a shopping cart under the authority provided in subdivisions (b) and (c) is authorized to recover its actual costs for providing this service.

(e) Any shopping cart that is impounded by a city, county, or city and county pursuant to subdivisions (b) and (c) shall be held at a location that is both:

(1) Reasonably convenient to the owner of the shopping cart.

(2) Open for business at least six hours of each business day.

(f) A city, county, or city and county may fine the owner of a shopping cart in an amount not to exceed fifty dollars (\$50) for each occurrence in excess of three during a specified six-month period for failure to retrieve shopping carts in accordance with this section. An occurrence includes all shopping carts impounded in accordance with this section in a one-day period.

(g) Any shopping cart not reclaimed from the city, county, or city and county within 30 days of receipt of a notice of violation by the owner of the shopping cart may be sold or otherwise disposed of by the entity in possession of the shopping cart.

(h) This section shall not invalidate any contract entered into prior to June 30, 1996, between a city, county, or city and county and a person or business entity for the purpose of retrieving or impounding shopping carts.

(i) Notwithstanding paragraph (2) of subdivision (b), a city, county, or city and county may impound a shopping cart that otherwise meets the criteria set forth in paragraph (1) of subdivision (b) without complying with the three-day advance notice requirement provided that:

(1) The owner of the shopping cart, or his or her agent, is provided actual notice within 24 hours following the impound and that notice informs the owner, or his or her agent, as to the location where the shopping cart may be claimed.

(2) Any shopping cart so impounded shall be held at a location in compliance with subdivision (e).

(3) Any shopping cart reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be released and surrendered to the owner or agent at no charge whatsoever, including the waiver of any impound and storage fees or fines that would otherwise be applicable pursuant to subdivision (d) or (f). Any cart reclaimed within the three-business-day period shall not be deemed an occurrence for purposes of subdivision (f).

(4) Any shopping cart not reclaimed by the owner or his or her agent, within three business days following the date of actual notice as provided pursuant to paragraph (1), shall be subject to any applicable fee or fine imposed pursuant to subdivision (d) or (f) commencing on the fourth business day following the date of the notice.

(5) Any shopping cart not reclaimed by the owner or his or her agent, within 30 days of receipt following the date of actual notice as provided pursuant to paragraph (1), may be sold or disposed of in accordance with subdivision (g).

22435.8. This article shall not invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city, county, or city and county, which ordinance regulates or prohibits the removal of shopping carts or laundry carts from the premises or parking area of a retail establishment except to the extent any provision of such an ordinance expressly conflicts with any provision of this article.