

Item Type:	Program Guideline Adoption/Amendments
Description:	Shopping Carts
Department:	Community & Economic Development
Division:	Code Services
Action Requested:	Adopt/not adopt Ordinance
Public Input:	Public Input

Executive Summary

Administration requests that Council adopt an ordinance which authorizes the city to take certain actions on abandoned and unlawfully removed shopping carts.

Background

Abandoned shopping carts have become an increasing nuisance on public and private properties throughout the city. Code Services and Public Services are spending considerable amounts of time to pick up and return or dispose of the carts.

Code Services has reached out to most applicable store managers to discuss the challenges of providing and maintaining shopping carts. The unlawful removal of shopping carts from their properties is detrimental to their business. All contacted retailers were in favor of some regulation of shopping carts, and appropriate, relevant feedback has been considered and incorporated into the proposed ordinance.

Proposal

Adopt an ordinance which amends section 12-1-1 of the Ogden Municipal Code and adds Chapter 5, authorizing the city to take certain actions on abandoned and unlawfully removed shopping carts.

A summary of the amendments are as follows:

- Defines the terms “shopping cart”, “shopping cart owner”, and “shopping center”
- Outlines the duties of shopping cart owners, who will be expected to:
 - Label carts with durable signage
 - Collect and store carts within the shopping center

- Implement city-provided measures to prevent illegal removal
 - Place signage notifying cart removal is illegal
 - Not resell, gift, or convey a shopping cart for non-commercial use
- Outlines the parameters of reclaiming and disposing of illegally removed shopping carts:
 - Determines that the city may remove and take possession of shopping carts found on public property.
 - Outlines the process for the city to remove and take possession of shopping carts found on private property that is not related to a store or shopping center (e.g., residential properties).
 - Outlines the city's process of notifying shopping cart owners of retrieved carts unless the respective owner has waived this right under Subsection 12-5-2.
 - Determines that the city can dispose of unclaimed shopping carts after 30 days from date of notice, and that the city can dispose of carts at any time, should they lack proper identification.
 - Clarifies that a shopping cart owner may provide the city with a written statement, waiving the right to be notified of retrieved carts. The city may dispose of these carts at any time.
- Defines unlawful removal and possession of shopping carts.
 - Unlawful acts:
 - Remove a shopping cart from shopping area
 - Be in possession of shopping cart illegally removed from shopping area
 - Leave or abandon a shopping cart on public or private property not permitted
 - Remove, deface, or obscure identifying marks or signage installed on cart
 - Obstruct, impede, or interfere with city's attempt to reclaim an illegally removed shopping cart.
 - Describes assumptions for any civil or criminal proceeding:
 - Remove a shopping cart from shopping area
 - Be in possession of shopping cart illegally removed from shopping area
 - Leave or abandon a shopping cart on public or private property not permitted
 - Remove, deface, or obscure identifying marks or signage installed on cart
 - Obstruct, impede, or interfere with city's attempt to reclaim an illegally removed shopping cart.
 - Describes assumptions for any civil or criminal proceeding:
 - Shopping cart is owned, with proper identification on the cart;
 - The shopping cart owner has not abandoned the cart;

- The identified shopping cart owner has not authorized another person to use the shopping cart.
 - Provides an overview of penalties for violations
 - Violation of the proposed amendments may result in a criminal penalty, a civil penalty, or both.
 - Criminal penalties:
 - 1st violation is a simple infraction, subsequent violations are Class C misdemeanors, as established by Title 1, Chapter 4 of city code.
 - Civil penalties are \$50 per violation.

Attachments

1. Administrative Transmittal
2. Proposed Ordinance

Administrative Staff Contact: Jared Johnson, (801)-629-8952

Council Staff Contact: Warren Hallmark, 801-629-8629





Ogden City Council Transmittal

Submitted to CAO:
Received by Council:

Amendment of Ogden Municipal Code 12-1-1 adding Chapter 5 regarding shopping carts.

DEPARTMENT:

Community and Economic Development

DIRECTOR:

Brandon Cooper

DIVISION:

Building Services

MANAGER:

Jared Johnson

STAFF:

Brandon Cooper, Director
Jared Johnson, Div Mgr

CONTACT:

801-629-8946
801-629-8952

REQUEST:

Adoption of an ordinance amending section 12-1-1 of the Ogden Municipal Code adding Chapter 5 authorizing the City to take certain actions on abandoned and unlawfully removed shopping carts.

REQUESTED TIMELINE:

As soon as convenient

BACKGROUND INFORMATION:

Abandoned shopping carts have become an increasing nuisance on public and private properties throughout the city. Code Services and Public Services are spending considerable amounts of time to pick up and return or dispose of the carts.

Code Services has reached out to the majority of store managers of local retailers with shopping carts to have one on one meetings to discuss the challenges they face. The unlawful removal of shopping carts from their properties is detrimental to their business. All retailers that Code Services met with were in favor of some regulation to assist in this effort and received a copy of the proposed ordinance with contact information. Several retailers provided comment and those requests have been incorporated into this proposal.

ORDINANCE NO. _____

AN ORDINANCE OF OGDEN CITY, UTAH, AMENDING THE OGDEN MUNICIPAL CODE BY AMENDING HEALTH AND SAFETY DEFINITIONS IN SECTION 12-1-1; BY ADOPTING A NEW CHAPTER 5 TO TITLE 12 REGARDING SHOPPING CARTS; AND BY PROVIDING THAT THIS ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON POSTING AFTER FINAL PASSAGE.

WHEREAS, the City Council finds that abandoned shopping carts on public and private property create conditions that are unsightly; interfere with pedestrian and vehicular traffic; accumulate over time on public and private property; promote blight resulting in reduction of property values and deterioration of neighborhoods; are detrimental to the public health, safety and welfare; and constitute a public nuisance; and

WHEREAS, shopping cart nuisances are caused by persons unlawfully removing shopping carts from shopping centers and by retail establishments failing to maintain adequate supervision of their premises and parking areas and failing to implement effective cart removal prevention programs; and

WHEREAS, supplementing state law in preventing the removal of shopping carts from shopping centers and regulating the collection and impound of shopping carts that have been removed from shopping centers will prevent nuisances and promote the health, safety, and welfare of Ogden residents.

NOW, THEREFORE, the Council of Ogden City hereby ordains:

SECTION 1. Section amended. Section 12-1-1 of the Ogden Municipal Code is hereby amended to read and provide as follows:

12-1-1: [HEALTH AND SAFETY DEFINITIONS:]

As used in this title the following terms shall have the meanings designated:

APARTMENT HOUSE: A building comprising three [~~3~~] or more suites designed for separate housekeeping tenements.

AUTOMATED CART: Refuse containers meeting certain design specifications required as part of the automated system employed by the city in delivering refuse collection services.

AUTOMATED SYSTEM: A refuse collection system using machinery capable of lifting and dumping refuse containers by remote mechanical means without the operator handling either the refuse or the containers.

BULKY WASTE: Large items of solid waste, including [~~but not limited to,~~] appliances, furniture, motor vehicles, tires, branches, and stumps.

CINDERS: The residue of materials burned in boilers, furnaces, and heating plants of public buildings, places of business, apartment houses, hotels, and manufacturing plants.

COMMUNITY WASTE: Lawn cuttings, clippings from bushes and shrubs, leaves, sweepings from yards, tin cans, newspapers, magazines, and cardboard cartons (but not bulky waste or construction and demolition waste).

CONSTRUCTION AND DEMOLITION WASTE: Waste building materials and rubble resulting from construction, remodeling, repair, or demolition operations on houses, commercial or industrial buildings, accessory structures such as garages or storage facilities, roofs, fences, sidewalks, driveways, walkways, other structures, or pavements.

COUNTY HEALTH DEPARTMENT: The Weber-Morgan district health department or its successor.

CUSTOMER: The person or persons paying for and receiving refuse collection service provided by the city.

GARBAGE: The animal and vegetable waste and other food refuse resulting from handling, preparing, cooking, or consumption of food.

GROUP DWELLING: A residential development which has more than one residential building on a lot and which is planned as a single complex.

HAZARDOUS WASTE: Any solid or hazardous waste designated as such by the U.S. environmental protection agency or a combination of solid waste that, because of its quantity, concentration, physical, chemical, or infectious characteristics may:

- A. Cause or significantly contribute to an increase in mortality or an increase in serious illness in humans; or
- B. Pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

HEALTH OFFICIAL: [~~Health official means t~~]The director of the Weber-Morgan County health department or the director's duly authorized agent.

INOPERABLE VEHICLE: Any motor vehicle, trailer, or semitrailer that cannot be operated in its existing condition because the parts necessary for operation, such as ~~;~~ but not limited to, tires, windshield, engine, drive train, driver's seat, steering wheel or column, or gas or brake pedals are removed, destroyed, damaged, deteriorated or nonfunctioning; or any motor vehicle which is not currently registered and licensed in this state or another state.

JUNK OR SALVAGE MATERIAL: Articles that are used, secondhand, worn out, obsolete, defective, destroyed, or discarded and which may be reused or resold in their original form or which may have outlived their usefulness in their original form and are commonly gathered up and sold to be converted into another product either of the same or a different kind by some manufacturing or recycling process, or which may be salvaged by separating, collecting or retrieving reusable materials or parts therefrom. Junk or salvage material includes ~~but is not limited to,~~ inoperable vehicles, auto parts or parts from other types of vehicles, tires, machinery or parts thereof, building materials, scrap metal or other scrap material, and recyclable materials.

LITTER: Any quantity of uncontainerized paper, metal, plastic, glass, or miscellaneous solid waste which may be classified as trash, debris, rubbish, refuse, garbage, or solid waste material.

MARKET WASTE: Condemned or decayed or unsound vegetables, meat, fish, ~~and~~ fruit, and all waste and offal thereof from markets, stores, and factories, and all vegetable waste and refuse from such markets, stores, and factories.

MULTIPLE-DWELLING UNITS: An apartment house, a building arranged or designed to be occupied by three ~~(3)~~ or more families, or a group dwelling, except for purposes of this title a group dwelling shall not be ~~considered to be~~ multiple-dwelling units if no more than two ~~(2)~~ dwelling units are located on the site.

NUISANCE: Whatever is dangerous to human life or health and whatever renders soil, air, water, or food impure, unwholesome, or offensive is declared to be "nuisance".

OPERATIONS DIVISION OR DIVISION: The operations division of the Ogden City public works department.

ORNAMENTAL GRASSES: Any of the following grasses: yellow foxtail (*Alopecurus pratensis*), blue or western wheatgrass (*Agropyron smithii* or *Pascopyrum smithii*), big bluestern (*Andropogon gerardii*), bulbous oatgrass (*Arrhenatherum elatius*), sideoats grama (*Bouteloua curtipendula*), blue grama (*Boureloua gracilis* or *Chondrosum gracile*), rattlesnake or quaking grass (*Briza media*), feather reed grass (*Calamagrostis acutiflora* or *C. arundinacea*), northern sea oats (*Chasmanthium latifolium*), pampas grass (*Cortaderia selloama*), lemon grass (*Cymbopogon citratus*), tufted hair grass (*Deschampsia caespitosa*), blue lyme grass (*Elymus arenarius*), sand love grass (*Eragrotis trichodes*), ravenna or plume grass (*Erianthus ravennae* or *Saccharum ravennae*), blue fescue (*Festuca cinerea*, *F. ovina* or *F. glauca*), variegated mannagrass (*Glyceria maxima variegata*), blue oatgrass (*Helictotrichon sempervirens*), velvet grass (*Holcus lanatus*), Japanese blood grass (*Imperata cylindrica*), junegrass (*Koeleria cristata*, *K. gracilis* or *K. macrantha*), woodrush (*Leymus* spp. or *Luzula* spp.), hairy melic grass (*Melica ciliata*), giant Chinese silvergrass (*Miscanthus floridulus* or *M. giganteus*), Japanese silvergrass (*Miscanthus oligostachys*), silver banner grass (*Miscanthus sacchariflorus*), maiden grass or silvergrass (*Miscanthus sinensis*), moor grass (*Molina caerulea*), muhly grass (*Muhlenbergia* spp.), Indian ricegrass (*Oryzopsis*

hymedoides or Achnatherum hymenoides), switchgrass (Panicum virgatum), feathergrass (Pennisetum alopecuroides), tender fountain grass (Pennisetum setaceum), feather top (Pennisetum villosum), ruby grass (Rychelytrum neriglume), little bluestem (Schizachyrium scoparium or Andropogon scoparius), autumn moorgrass (Sesleria antumnalis), Indian grass (Sorghastrum nutans or S. avenaceum), cord grass (Spartina spp.), frost or graybeard grass (Spodiopogon spp.), prairie dropseed (Sporobolus heterolepis), and any other species of grass approved by the city manager that is customarily used for ornamental purposes and not as a turf grass.

OWNER: Any person who alone, jointly or severally with others:

- A. Has legal title to any premises, dwelling, or dwelling unit as legal or equitable owner, agent of the owner, lessee; or
- B. Is an executor, executrix, administrator, administratrix, trustee, or guardian of the estate of the owner.

PLACE OF BUSINESS: Any place in the city in which there is conducted or carried on principally or exclusively any pursuit or occupation by any person or persons for the purpose of gaining a livelihood.

PUBLIC BUILDINGS AND PLACES: Office buildings, theaters, garages, auto camps, hotels, clubs, schools, hospitals, or other places of similar character.

RECYCLABLE: Waste material that may be collected, separated, cleansed, treated, or reconstituted and returned to the economic stream in the form of raw materials or products, and which is approved for collection as a recyclable by the director of the public works department.

RECYCLE, RECYCLING: The process of collecting, separating, cleansing, treating, and reconstituting post-consumer materials that would otherwise become solid waste and returning them to the economic stream in the form of raw material for reconstituted products.

RESIDENCES: Buildings or dwellings comprising not more than two [(2)] dwelling units designed for separate housekeeping tenements, and where no business of any kind is conducted except such home occupations as are defined in the zoning title of the city.

SHOPPING CART: A basket or platform which is mounted on wheels or a similar device generally used in a business establishment by a customer for the purpose of transporting goods of any kind.

SHOPPING CART OWNER: Any person, business establishment, or entity that owns, possesses, or makes a shopping cart available to customers. Shopping cart owner includes the store owner, manager, on-site manager, on-duty manager, or other

designated agent of a business establishment providing shopping carts for customer use.

SHOPPING CENTER: The entire area owned, rented, leased, or utilized by a business establishment that provides shopping carts for customer use, including parking areas. A shopping center may include more than one establishment with shared areas of parking and public access.

SOLID WASTE: Garbage, refuse, trash, rubbish, community waste, trade waste, hazardous waste, industrial waste, market waste, construction and demolition waste, dead animals, sludge, liquid or semiliquid waste; other spent, useless, worthless or discarded materials, or materials stored or accumulated for the purpose of discarding; materials that have served their original purpose; or waste material resulting from industrial, manufacturing, mining, commercial, agricultural, residential, institutional, recreational, or community activities.

It does not include solid or dissolved materials in domestic sewage or in irrigation return flows, or discharges from which a permit is required under Utah Code Annotated [t]Title 26, [e]Chapter 11, as amended, or its successor, or under the ~~[federal water pollution control act]~~Federal Water Pollution Control Act, 33 USC [s]Section 1251 et seq., or successor sections.

It is not intended to include recyclables as long as such materials are being properly contained, collected, disposed, or reused.

STOVE ASHES: The residue of material burned in fireplaces, stoves and furnaces in private residences, but not the residue from furnaces in apartment houses, hotels, business houses, heating, or manufacturing plants.

TRADE WASTE: All discarded wooden boxes, barrels, broken lumber, cardboard boxes, cartons, waste paper, leather, rubber, excelsior cuttings, sweepings, rags, ~~and~~ other inflammable waste materials, and all discarded trade or manufacturing refuse from stores, factories, or other places of business which are not included within the definition of garbage, stove ashes, and market waste.

WEEDS: Vegetation growing upon any real property within the city which will attain such a growth as to become a fire hazard when dry, or which is otherwise noxious, a nuisance, or dangerous, as determined by the fire department or county health department. Weeds shall also include~~[, but shall not necessarily be limited to, the following]:~~

- A. Dry grasses, stubble, brush, tumbleweeds, and clippings which endanger the public health and safety by creating a fire hazard, insect or rodent harborage, or any other nuisance;

- B. Poison ivy, when the public health and safety in residential or other developed and populated areas are affected; and
- C. Those plants named in the Utah noxious weed act, Utah Code Annotated [t]Title 4, [e]Chapter 5, and its subsequent regulations and successor sections.

SECTION 2. Chapter adopted. Title 12 of the Ogden Municipal Code is hereby amended by adopting a new Chapter 5 to read and provide as follows:

CHAPTER 5: SHOPPING CARTS

12-5-1: [OWNER'S DUTIES:]

- A. Every shopping cart owner shall:
 - 1. Label each shopping cart with durable signage identifying the shopping cart owner.
 - 2. Collect and store all shopping carts within the shopping center.
 - 3. Implement one or more of the following measures to prevent removal of shopping carts from the shopping center:
 - a. Install devices on shopping carts that automatically disable them if they are removed from the shopping center;
 - b. Assign personnel to deter customers from removing shopping carts;
 - c. Install obstacles to prevent shopping cart removal;
 - d. Require security deposits for shopping cart use;
 - e. Utilize a shopping cart retrieval service; or
 - f. Provide locked areas to keep shopping carts secure when not in use.
 - 4. Place a sign at the shopping center explaining that removing shopping carts from the shopping center is a violation of the law.
- B. Shopping cart owners may not resell, gift, or convey a shopping cart for noncommercial use.

12-5-2: [AUTHORITY TO REMOVE SHOPPING CARTS IN PUBLIC PLACES:]

- A. Upon the discovery of a shopping cart on public property, the city or its authorized contractor may take possession of and store the shopping cart.
- B. Upon the discovery of a shopping cart on private property outside of the shopping center, the city or its authorized contractor may take possession of and store the shopping cart if:
1. The shopping cart is found on private property in an area that is open to the public;
 2. The shopping cart is on residential property:
 - a. That does not include the home or the curtilage of the home; and
 - b. Where there is no expectation of privacy; or
 3. The owner of the property gives consent to removal of the shopping cart.
- C. Whenever the city takes possession of a shopping cart bearing identification of ownership and the shopping cart owner has not waived the right to be notified subject to Subsection 12-5-2.E, the city shall mail a notice to the shopping cart owner advising the owner that the removed shopping cart can be retrieved upon the payment of a storage and handling fee of \$2 per day. If a shopping cart owner maintains multiple retail locations, the notice required herein is adequate if mailed to the address of any retail location within the city. If no retail locations of a shopping cart owner are located within the city, the notice is sufficient if addressed to any nearby retail location of the shopping cart owner within Weber County, or an adjacent county.
- D. The city may dispose of unclaimed shopping carts after 30 days from the date of the notice described in Subsection 12-5-2.C.
- E. If a shopping cart lacks sufficient marks or signage to enable the city to identify the shopping cart owner, no notice shall be required before city disposal of the shopping cart.
- F. A shopping cart owner may provide the city with a written statement waiving the right to be notified when the shopping cart owner's carts are found outside its shopping center. If a shopping cart owner has waived the right to be notified, the city may dispose of that owner's shopping carts at any time.

12-5-3: [UNAUTHORIZED REMOVAL OR POSSESSION:]

A. It is unlawful to do any of the following acts:

1. Remove a shopping cart from the shopping center of a shopping cart owner.
2. Be in possession of a shopping cart that has been removed from the shopping center of a shopping cart owner.
3. Leave or abandon a shopping cart on public or private property at a location other than the shopping center of a shopping cart owner.
4. Remove, deface, or obscure identifying marks or signage of ownership installed on a shopping cart.
5. Obstruct, impede, or interfere with any representative of the city or its authorized contractor who is engaged in removing or transporting a shopping cart in accordance with this chapter.

B. Any shopping cart on any property within the city whether public or private that is controlled or used by any person violating Subsection 12-5-3.A above, may be removed in accordance with the procedures set forth in Section 12-5-2.

C. This section shall not apply to:

1. Any person who provides documentary evidence of ownership of the shopping cart; or
2. Any person having written permission of the shopping cart owner to have the shopping cart away from the shopping cart owner's shopping center.

D. In any civil or criminal proceeding, any shopping cart with identification pursuant to Subsection 12-5-1.A.1 located outside the shopping center of the shopping cart owner, establishes a rebuttable presumption that:

1. The shopping cart is owned by the shopping cart owner identified on the cart;
2. The shopping cart owner has not abandoned the shopping cart;
3. The identified shopping cart owner has not authorized another person to use the shopping cart.

12-5-4: [PENALTY:]

- A. Criminal Penalties: The first violation of any provision of this chapter is an infraction, punishable as set forth in Title 1, Chapter 4 of this code. Any subsequent violation is a Class C misdemeanor, as set forth in Title 1, Chapter 4 of this code.
- B. Civil Penalties: Failure to comply with a requirement of this chapter may result in a civil penalty of \$50 per violation.
- C. A violation of this chapter may result in a criminal penalty, a civil penalty, or both.
- D. No criminal conviction or imposition of civil penalties shall excuse a person from otherwise complying with the provisions of this chapter.

SECTION 3. Effective date. This ordinance shall be effective immediately upon posting after final passage.

PASSED, ADOPTED AND ORDERED POSTED by the Council of Ogden City, Utah this ____ day of _____, 2022.

CHAIR

ATTEST:

CITY RECORDER

TRANSMITTED TO THE MAYOR ON: _____

MAYOR'S ACTION: Approved Vetoed

MAYOR

ATTEST:

CITY RECORDER

POSTING DATE: _____

EFFECTIVE DATE: _____

APPROVED AS TO FORM: KME 10/21/22
 Legal Date

* The headings, catchlines or catchwords suggested for use in the Ogden Municipal Code and which are bracketed at the beginning of sections or subsections, shall not be considered to be a part of the ordinance adopted herein.