



Council Work Session Summary

Meeting: Special Work Session - Apr 29 2024

TITLE: SOLICITATION AND SHOPPING CART ORDINANCES.

PURPOSE(S) OF DISCUSSION: ☐ Inform/Update ☐ Direction/Guidance ☒ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Las Cruces has suffered from increased crime, blight, and quality-of-life offenses in recent years. This work session aims to discuss the development or modification of ordinances to enhance public safety, reduce blight, and improve the quality of life for all Las Cruces residents, businesses, and visitors.

SUPPORT INFORMATION:

[Revised Shopping Cart Containment and Retrieval Ordinance Final Version](#)
[Shopping Cart Project](#)
[LCMC Section 21-62 Revised Final](#)
[LCMC Section 21-63 Revised](#)

PLAN(S):

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

None

SHOPPING CART CONTAINMENT AND RETRIEVAL

1. APPLICABILITY

This article applies to:

- A. Every business in the City of Las Cruces that provides shopping carts for customer use on its business premises, and;
- B. Any person who removes or who is in possession of, or who has abandoned an off-site shopping cart.

2. DEFINITIONS

“Administrator” means the Director of Community Development or his/her designee.

“Business owner” or “Owner” means one or more persons or any legal entity doing business on behalf thereof, such as, but not limited to, a corporation, limited liability company, partnership or association, that owns a business that provides shopping carts for customer use on their premises.

“Off-site shopping cart” means a shopping cart that has been removed from the premises where it is used for shopping purposes in violation of the requirements of this article.

“Premises” means the entire area owned or under the control of a business owner, including the parking area, and for businesses in a shopping center or other development where common areas serve more than one business, the common area shared by the business with other businesses in the development.

“Shopping cart” or “Cart” means a basket or similar device which is mounted on wheels and is generally owned and used as part of a retail establishment and used by a customer for transporting goods within the retail establishment’s premises.

“Shopping Cart Plan” means a document submitted to the City by the business owner under Subsection 5(C) of this code.

3. PROHIBITIONS

- A. Prohibitions Applicable to Business Owners: It shall be unlawful and a violation of this Article for a business owner to:
1. Fail to affix an identifying sign or engraved marker to each shopping cart;
 2. Fail to submit a shopping cart plan or request for exemption in conformance with Subsection 5(B) of this code;
 3. Fail to comply with a shopping cart plan approved by the City;
 4. Allow or authorize a shopping cart to be removed from the premises, except to allow for shopping carts to be serviced or repaired by a qualified and licensed company off-site;
- B. Other Prohibitions: It shall be unlawful and a violation of this Article for any person to:
1. Remove a shopping cart from the retail premises where it is used for shopping purposes; or
 2. Possess an off-site shopping cart not subject to an exception identified in this Article; or
 3. Abandon an off-site shopping cart; or
 4. Alter, convert, or tamper with a shopping cart, or remove any part or portion thereof or remove, obliterate, or alter an identifying sign, mark, or serial numbers on a shopping cart.
 5. Exceptions: Shopping carts may be removed from retail premises for the purposes of maintenance, repair, or any other service, with the written permission of the Owner or his/her designee. Shopping carts may also be temporarily removed from the premises with the permission of the Owner or his/her designee for the purpose of transporting goods to any public mode of conveyance, so long as the shopping cart is immediately retrieved by an employee of the business and returned to the premises.

4. SHOPPING CART IDENTIFICATION SIGNS

The business owner shall have a sign permanently affixed to each cart in a prominent and clearly visible location. The sign and/or engraved marker shall include all of the following information:

- A. The identity of the owner of the cart or the business, or both;
- B. The valid address or phone number of the business for returning the cart to the owner or business;
- C. If the business has more than one location within the city, an identifying store number;
- D. Notice to the public that the unauthorized removal of the cart from the premises or the unauthorized possession of the cart is a violation of the Las Cruces Municipal Code.

5. SHOPPING CART PLAN

- A. General Requirement: Each owner of a business shall effectively implement a shopping cart plan in accordance with this article. Each shopping cart plan shall be conspicuously posted at the place of business.
- B. Exemptions: A business owner is exempt from this article for two (2) years at a time if the owner submits an exemption request and meets all the following requirements:
 - 1. The business has effective restraints that prohibit any carts from exiting the premises or from operating off the premises. Examples of such effective restraints include but are not limited to: poles attached to carts to keep them from passing a certain point; electronic wheel locks on all carts which prevent wheels from rolling past the perimeter of the premises; physical constraints such as bollards; and continuous use of courtesy clerks to accompany customers and return the carts to the store, or;
 - 2. The business secures all shopping carts during the hours the business is closed by storing carts inside or locking them outside, on the condition that the carts be immobilized if stored outside, or secured in such a manner that the carts are not accessible to the public.
- C. Contents of the Shopping Cart Plan: The shopping cart plan shall include all the following elements:
 - 1. Name, address, and telephone number of the business, business owner, and the name and telephone number of the on-site manager.

2. The number of on-site shopping carts and a description of how the business owner intends to comply with the requirements for sign identification on carts.
 3. Public Notices: A description of a customer education process by which the business owner will inform customers that the removal or off-site possession or abandonment of carts is a violation of state law and this Article. This information may include business signs posted in prominent places, flyers, warnings on shopping bags, direct mail, in-store announcements, or other means demonstrated to be effective. Public notice to customers shall include signage permanently affixed to each shopping cart that identifies the owner of the cart or the retailer, or both, as set forth in Section 4 of this code.
 4. Loss Prevention: A description of the measures that the business owner will implement to prevent the removal of shopping carts from the premises. These measures may include any of those listed in Subsection B of this section or use of security personnel to prevent removal, security deposit for use of a cart, or other measures demonstrated to be effective and approved by the City.
 5. Cart Retrieval: A plan for mandatory retrieval of off-site shopping carts occurring at least once a week, and within three (3) business days of notice from the City under Subsection A of this code. Cart retrieval may be done by the business owner, employees or agents of the business, or a cart retrieval service contracted for by the business owner or by a combination of owners, at owner expense. A business owner shall not be required to retrieve an off-site shopping cart in the immediate possession of any person.
 6. Implementation: The plan shall describe the measures the owner will take to prevent the removal of shopping carts from the premises, to retrieve off-site shopping carts on at least a weekly basis, and to modify these measures should they result in circumstances that would justify revocation of the plan set forth in Subsection G of this code.
- D. Administrator Review: Within 30 days of the submission of a shopping cart plan, the Administrator shall either approve or deny the plan, or request additional information needed to render a decision. If a plan is denied as being incomplete or inadequate, or if additional information is needed, the Administrator shall notify the owner in writing. The owner has 30 days from the date of receipt to submit the additional information or to submit a complete and adequate plan.

The Administrator may deny a proposed plan on any of the following grounds:

1. The plan fails to include the information required under this Article or fails to adequately address the required elements;
 2. The plan fails to meet the standards contained in Subsection C(5) of this section to prevent removal of shopping carts;
 3. If implementation of the plan would violate any state, local, or federal law(s);
 4. If the owner knowingly makes a false statement and/or omits material facts from the plan, or any amendment thereto.
- E. Plan Modification: The owner may submit a proposed plan modification to any previously approved shopping cart plan to address a material change in circumstances or to modify ineffective provisions. The Administrator shall review and consider the requested modification in the same manner set forth in Subsection D of this section.
- F. Biennial Renewal: Every two (2) years a business owner shall renew an exemption or a previously approved shopping cart plan, without modification, if no more than six (6) of the owner's shopping carts have been found off-site within the preceding 90 days. The owner shall submit a written application for renewal by July 1 of the year of renewal, together with the owner's sworn statement that no more than six (6) of the business' shopping carts have been found off-site within the preceding 90 day period.
- G. Denial or Revocation: The Administrator may revoke a plan approved under Subsection D of this section, deny a renewal request under Subsection F of this section, or revoke an exemption granted under Subsection B of this section if:
1. Any shopping cart belonging to the business has been found off-site on seven (7) or more occasions within a 90 day period; or
 2. The owner has failed to comply with any other provision of this Article; or
 3. The owner has knowingly made a false statement or failed to disclose material facts in an application, request for amendment, or any other

report required or provided for under this Article.

4. No such plan shall be revoked until the Community Development department director, or his/her designee notifies the business owner in writing that the revocation is pending and will become final in 30 days, unless the revocation is stayed by filing a request for a hearing with the Community Development department to appeal the decision. The City Council will act as the board for hearing such appeals. If no appeal request is filed within the 30-day notification period, the revocation decision shall become final.

6. ENFORCEMENT

A. Retrieval: Whenever the Administrator notifies a business owner of an off-site shopping cart, either verbally or in writing, the owner shall retrieve the cart within three (3) business days. A person shall only be responsible for retrieval of the cart if it is apparent that the cart is abandoned and is not currently in use. There will be no duty of retrieval when the off-site cart is in the immediate possession of another person.

B. Violations: The following will be subject to any enforcement actions permitted by law, as set forth in Subsection C of this section:

1. An owner who violates this article or any provision of the owner's approved shopping cart plan;
2. A person who removes or possesses or abandons a shopping cart off-site;
3. A person who alters, converts, or tampers with a shopping cart; or
4. An owner of real property who allows off-site shopping carts to remain on their real property.

C. The enforcement procedures permitted by law for violations of this Article include:

1. Revocation of an exemption under Subsection 5 of this code.
2. The requirement that the owner abide by the conditions of a new shopping cart plan, with terms to be dictated by the Administrator.
3. Prosecution as a petty misdemeanor under the authority of Las Cruces Municipal City Ordinance Sec. 1-10.
4. Imposition of a fine of not less than (a) one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) for a first violation, (b) two hundred dollars (\$200.00), nor more than five hundred dollars for a second violation within a 365 day period, and (c) five hundred dollars (\$500.00) for each additional violation within a 365 day period.

5. Procedures for abatement of a nuisance under Sections 18-5 and 18-7 of the Las Cruces Municipal Code.

6. Civil action for enforcement, including to abate a public nuisance by injunctive relief or any other court order.

7. Proceedings for revocation of a use or site development permit, if applicable.

These enforcement procedures and penalties are cumulative with one another and any other remedy available at law or in equity and are not mutually exclusive. Any one or more of them may apply and be used or charged in response to a single violation of this article. At the discretion of the sentencing judge, any person convicted under this Article may perform community service in lieu of any fine imposed by the Court.

Shopping Cart Project

This project was conducted on 4/23/24 and it only lasted 2 hours. This project involved the Las Cruces Police Community Outreach Unit, Codes, Streets, Parks & Rec and EBID. In only 2 hours we were able to account for 162 shopping carts totaling to a value amount of \$32,180. This dollar amount is less than the past projects because Walmart has reduced the cost per unit from \$450 to \$180.

EBID has invoices proving that they have spent thousands of dollars in cleaning up their ditch banks. Shopping carts and their contents have become such an issue for them. Please see some of the pictures attached to this document.

Our Streets and Parks & Rec department have spent many hours and usually need large crews to remove all the debris that got left behind. This includes large appliances, large furniture, shopping carts, and waste. This has been an ongoing issue for them considering that they also pay a tonnage fee.

Shopping Cart Project 4/23/24 (2 hours)			
Business	Number of Carts	Cost	Total dollar amount
Walgreens	4	\$ 130.00	\$ 520.00
Dollar General	7	\$ 500.00	\$ 3,500.00
Sprouts	2	\$ 300.00	\$ 600.00
Albertsons	6	\$ 350.00	\$ 2,100.00
Walmart	132	\$ 180.00	\$ 23,760.00
Home Depot	1	\$ 300.00	\$ 300.00
Target	1	\$ 200.00	\$ 200.00
Petsmart	3	\$ 300.00	\$ 900.00
Lowes Fiesta Foods	2	\$ 150.00	\$ 300.00
Unknown	5	?	\$ 32,180.00
Total Carts: 162			
Total Value: \$32,180			





Parks and Rec loading waste that
filled up two dump trucks at
Branigan Park.



Sec. 21-62. - Prohibited solicitations.

It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services in the manner described in subparagraphs (1) through (3) of this section.

Solicitation is prohibited as follows:

- (1) In an aggressive manner in a public area or on private property within the city limits; (2) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are prohibited on the property; or (3) From any occupant of a motor vehicle that is in traffic on a public street, if the solicitation would cause any person to walk upon a portion of the roadway not clearly designated and/or marked for pedestrian foot traffic.

Sec. 21-63. - Standing or loitering on or near street or highway.

- (a) The purpose of this section is to prevent dangers to persons and property, to prevent traffic delays, and to avoid interference with traffic flow. Roadways that have center medians often are designed to handle specific traffic flow problems. Any delay or distraction may interfere with traffic planning and may present dangerous roadway conditions for drivers and pedestrians.
- (b) It shall be unlawful for any person to stand or loiter on a street or highway when such activity: (1) Causes the person performing the activity to enter onto the traveled portion of a street or highway. (2) The person performing the activity is located such that vehicles cannot move into a legal parking area safely.
- (c) It shall be unlawful for any person to stand or loiter on any highway included in the interstate system including any entrance to or exit from the highway.
- (d) For purposes of this section, the traveled portion of the street or highway shall mean that portion of the road normally used by moving motor vehicle traffic.