

REDLINED VERSION

Chapter 8.61

SHOPPING CARTS

8.61.010 Definitions.

For purposes of this chapter only, and unless the context clearly requires a different meaning, the words, terms and phrases set forth in this Section are defined as follows:

A. "Business premises" means the interior of a cart owner's commercial establishment, adjacent walkways, any loading area, and the parking area, as defined herein.

B. "Cart identification sign" means a sign or engraved surface which is permanently affixed to a shopping cart containing all of the information specified in section 8.61.050 of this chapter.

C. "Cart owner" means the owner or operator of a commercial establishment which provides carts for use by its customers for the purpose of transporting goods of any kind. ~~Cart owner includes the on-site manager or designated agent of the actual cart owner.~~

D. "Cart removal warning" means a placard, sign or painted text which meets the requirements of section 8.61.030 of this chapter.

E. "Enforcement officer" means any officer or employee of the city designated with the authority to enforce the applicable provisions of the Long Beach municipal code.

F. "Enforcement agency" means the city department in which the enforcement officer is employed.

G. "Individual cart identification number" means a number unique to each cart owned or provided by a cart owner.

H. "On-site cart containment program" means one or more of the following measures:

1                   1.       Disabling devices on all shopping carts which prevent  
2 them from being removed from the business premises by locking the wheels or  
3 otherwise preventing the movement of the carts.

4                   2.       An on-site security guard to deter customers who attempt  
5 to remove carts from the business premises.

6                   3.       Bollards and chains around the business premises to  
7 prevent cart removal, if permitted by the Fire Marshal.

8                   4.       Obtaining a security deposit from customers for the on-site  
9 use of shopping carts.

10                  5.       The rental or sale of utility carts that can be temporarily or  
11 permanently used for the transport of goods

12                  6.       Any other measure approved by the Director of Planning  
13 and Building as a means to contain carts on premises.

14                  I.       "Parking area" means a parking lot or other property provided by  
15 a commercial establishment for use by a customer for parking an automobile or  
16 other vehicle. In a multi-store complex or shopping center, "parking area" includes  
17 the entire parking area used by or controlled by the complex or center.

18                  J.       "Physical containment system" means one of the following, as  
19 approved by the Director of Planning and Building:

20                   1.       Disabling devices on all shopping carts which prevent them  
21 from being removed from the business premises by locking the wheels or  
22 otherwise preventing the movement of the carts.

23                   2.       Any other system of equipment approved by the Director of  
24 Planning and Building which physically contains shopping carts on premises.

25                  K.       "Qualified cart retrieval service" means a commercial service,  
26 operated by a third party and paid by a cart owner to retrieve and return shopping  
27 carts. The Director of Planning and Building shall develop minimal service  
28 standards by which a cart retrieval service may be designated as a qualified

1 cart retrieval service and maintain a list of all such services.

2 L. "Shopping cart" means a basket which is mounted on wheels or a  
3 similar device provided by the operator of a commercial establishment for the use  
4 of customers for the purpose of transporting goods of any kind. A cart sold by a  
5 commercial establishment to a retail customer for that customer's personal use is  
6 not a shopping cart for the purposes of this chapter.

7 8.61.020 Cart containment system--required; exception.

8 A. Every cart owner shall operate and maintain an on-site cart  
9 containment program. A cart owner may be exempted from this requirement if he  
10 or she provides proof of contracting with a qualified cart retrieval service and  
11 submits an operations plan which demonstrates to the satisfaction of the Director  
12 of Planning and Building that the qualified cart retrieval service will both actively  
13 locate shopping carts within a one-mile radius of the cart owner's business  
14 premises and respond to complaints from the public in a manner which results in  
15 the retrieval of shopping carts within twenty-four (24) hours after receiving  
16 complaint(s) notice.

17 B. Each cart owner must contain all shopping carts on the business  
18 premises at all times.

19 C. Any instance in which a shopping cart owned or provided by a  
20 cart owner is found off of the business premises shall be considered a violation by  
21 the cart owner of section 8.61.020 subsection (B). ~~A cart owner who, after~~  
22 ~~receiving notice of the violation, fails to cure such violation within twenty-four~~  
23 ~~(24) hours is subject to administrative citation.~~

24 1. Each twenty-four (24) hour period ~~thereafter~~ that the cart  
25 remains off the business premises shall be considered a separate violation of  
26 section 8.61.020 subsection (B).

27 2. A civil fine shall be assessed by means of an administrative  
28 citation issued by an enforcement officer and shall be payable directly to the

1           city of Long Beach.

2                       3.       Fines shall be assessed at one hundred dollars (\$100) for  
3                       each violation.

4                       4.       Following the issuance of more than ten section 8.61.020  
5                       subsection (B) administrative citations to the same cart owner within a thirty (30)  
6                       day period, in addition to administrative penalty set forth in this chapter,  
7                       subsequent violations by that cart owner shall be referred by the enforcement  
8                       agency for criminal prosecution pursuant to section 1.32.010 subsection (E) of  
9                       the municipal code.

10       8.61.030       Cart removal warnings.

11               A.       Every cart owner shall post and maintain cart removal warnings  
12               which meet all of the following minimum specifications:

13                       1.       Meet or exceed 18 inches in width and 24 inches in height.  
14                       2.       Using block lettering not less than one-half inch in width  
15                       and two (2) inches in height, contain a statement in two or more languages to the  
16                       effect that unauthorized removal of a shopping cart from the business  
17                       premises, or possession of a shopping cart in a location other than on the  
18                       business premises, is a violation of state law and City ordinance.

19                       3.       List a local or toll-free telephone number for cart retrieval.

20                       4.       Be affixed to an interior wall of the building or otherwise  
21                       permanently and prominently displayed within two (2) feet of all customer  
22                       entrances and exits.

23               B.       Cart removal warnings on the exterior of the building are not  
24               considered "signs" for the purpose of calculating maximum allowable signage  
25               under title 21 of the municipal code.

26       8.61.040       Employee training--cart removal prevention.

27               Each cart owner shall conduct ongoing employee training to educate new  
28               and existing employees about procedures to prevent cart removal, including

1 the operation of the cart containment system.

2 8.61.050 Cart identification signs for shopping carts.

3 A. Each shopping cart owned or used within the City shall have,  
4 permanently affixed and easily visible, a cart identification sign or engraved  
5 surface which includes all of the following information: the name, ~~the site-specific~~  
6 ~~street address and telephone number of the cart owner, the telephone number of~~  
7 the cart owner and/or commercial establishment to which the cart belongs ~~or both~~,  
8 the individual cart identification number, a valid toll-free phone number for cart  
9 retrieval, the procedure (if any) to be followed to obtain permission to remove the  
10 cart from the business premises, and a notice to the public that unauthorized  
11 removal of the cart from the business premises is a violation of state law and City  
12 ordinance.

13 B. It shall be the responsibility of each cart owner to comply with  
14 subsection (A) of this section, and to continuously maintain, or cause to be  
15 maintained, the cart identification sign so that all of the required information is  
16 accurate and clearly legible.

17 8.61.060 Cart removal from business premises--written permission required.

18 No person shall be deemed to be authorized to remove a cart unless he or  
19 she possesses written authorization from the cart owner. This section shall not  
20 apply the possession of a shopping cart removed from the business premises at  
21 the direction of the cart owner for the purposes of repair or maintenance.

22 8.61.070 Physical containment system.

23 A. A cart owner shall be required to install a physical containment  
24 system to the satisfaction of the Director of Planning and Building when the cart  
25 owner establishes a facility consisting of more than five thousand square feet of  
26 new construction.

27 B. A cart owner may be required to install a physical containment  
28 system to the satisfaction of the Director of Planning and Building and the city

1 prosecutor following the issuance of more than ten section 8.61.020 subsection  
2 (B) administrative citations in a thirty (30) day period.

3 8.61.080 Regulatory fee authorized.

4 A regulatory fee shall be established to enforce this regulation and to  
5 fairly apportion the cost of mitigating the negative effects of off-site shopping carts.  
6 A business which installs a physical containment system to the satisfaction of the  
7 Director of Planning and Building, or which does not provide any shopping carts to  
8 its customers, shall be exempted from this fee.

9 8.61.090 Service procedures.

10 An administrative citation subject to this chapter shall be issued on a form  
11 approved by the city manager or his/her designee, and may be served upon any  
12 cart owner by an enforcement officer in the following manner:

13 A. Service of citation by mail.

14 1. The administrative citation or duplicate thereof shall be  
15 mailed to the cart owner(s); and

16 2. A proof of service of the notice shall be made by declaration  
17 of the enforcement officer effecting the service.

18 8.61.100 Contents of notice.

19 Each administrative citation issued pursuant to this chapter shall contain  
20 the following information:

21 A. The date of service of the citation and the date, time, address or  
22 description of the location where the violation(s) was observed;

23 B. The code section(s) and condition(s) violated and a description  
24 of the violation(s);

25 C. A photographic image depicting the cart at the location of the  
26 violation(s);

27 D. The amount of the fine for the violation(s);

28 E. An explanation of how the fine shall be paid and the fine payment

1 due date;

2 F. Notice of the right to appeal the citation, the time within which the  
3 citation may be appealed and the place to obtain a Request for Hearing form to  
4 appeal the administrative citation; and

5 G. The name and signature of the enforcement officer.

6 8.61.110 Satisfaction of administrative citation.

7 Upon service of an administrative citation issued pursuant to this  
8 chapter, the cart owner shall do the following:

9 A. Pay the fine no later than thirty (30) days from the date of  
10 issuance of the citation as specified on the administrative citation. Payment of a  
11 fine shall not bar further enforcement action by the city. Late charges shall be  
12 imposed for fine payments made after the fine payment due date. The late charge  
13 shall be calculated at a rate of 25% of the fine, and will be imposed in addition to  
14 any outstanding fine.

15 B. Failure of the cart owner(s) to pay the civil fine and any accrued  
16 late penalties in a timely manner may result in the imposition of a special  
17 assessment and/or lien against the real property on the business premises,  
18 and/or filing of an action with the Small Claims Court for recovery of the fine and  
19 any late penalty. The only issue to be adjudicated by the Small Claims Court  
20 shall be whether or not the fines and possible late fees were paid. A cart owner  
21 may only obtain judicial review of the validity of the citation by first requesting and  
22 participating in an administrative appeal hearing before a hearing officer. In the  
23 Small Claims Court action, the city may also recover its costs, according to proof.

24 C. The City may also refuse to issue, extend, or renew to any cart  
25 owner who has unpaid delinquent fines, interest, penalties, liens, or assessments,  
26 any city permit, license, entitlement, or other city approval pertaining to the  
27 business premises that is the subject of the fine and administrative citation.

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1           D. Any permit, license, entitlement, or land use approval issued by the  
2           city may be subject to suspension or revocation of the permit, license, entitlement,  
3           or land use approval in accordance with the procedures set forth in the respective  
4           Long Beach Municipal Code if any unpaid fine, interest or penalties remain  
5           delinquent for a period of more than thirty (30) days.

6           8.61.120 Appeal of administrative citation.

7           A. Any recipient of an administrative citation issued pursuant to this  
8           chapter may appeal said citation by completing a written Request for Hearing form  
9           from the enforcement agency designated on the citation, and returning it to said  
10           city agency within thirty (30) calendar days from the date the administrative  
11           citation was served or deemed to have been served, together with a deposit in the  
12           total amount of the fine.

13           B. A failure to file a timely appeal of the administrative citation shall  
14           be deemed a waiver of the right to appeal and to seek judicial review.

15           C. The administrative appeal hearing shall be set for a date not sooner  
16           than fifteen (15) calendar, and not more than sixty (60) calendar days from the  
17           date the request for hearing is completed and submitted in accordance with the  
18           provisions of this Chapter. The cart owner requesting the hearing shall be notified  
19           in writing of the time and place set for the hearing at least ten (10) calendar days  
20           prior to the date of the hearing.

21           D. The hearing provided for in this chapter shall be conducted by a  
22           hearing officer or hearing body appointed by the city manager or his/her  
23           authorized designee.

24           E. The hearing officer/body shall only consider evidence that is  
25           relevant to whether the appellant is the bona fide cart owner, and whether  
26           appellant created, committed, or maintained the violation(s). Courtroom rules of  
27           evidence shall not apply. Relevant hearsay evidence and written reports may be  
28           admitted whether or not the speaker or author is present to testify, if the hearing



1 officer/body determines that such evidence is reliable. Admission of evidence and  
2 the conduct of the hearing shall be controlled by the hearing officer/body in  
3 accordance with the fundamentals of due process. The hearing officer/body may  
4 set reasonable limits on the length of the hearing, and shall allow the appellant at  
5 least as much time to present his/her case as is allowed to the city.

6 F. The appellant contesting the administrative citation shall be given  
7 the opportunity to testify and present witnesses and evidence concerning the  
8 citation. The city's case shall be presented by any person designated by the city  
9 manager. The appellant and city may be represented by counsel.

10 G. The failure of the appellant to appear at the hearing shall  
11 constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

12 H. The administrative citation and any additional documents  
13 prepared by the city in connection with the violation(s) may be submitted and shall  
14 constitute prima facie evidence of the respective facts contained in those  
15 documents.

16 I. If the enforcement officer or his/her designee submits any additional  
17 documents concerning the administrative citation to the hearing officer for  
18 consideration at the hearing, then, whenever possible, a copy of such document(s)  
19 shall be served by mail on the appellant at least five (5) calendar days prior to the  
20 date of the hearing.

21 J. The hearing officer/body may continue the hearing or request  
22 additional information from the enforcement officer, his/her designee or the  
23 appellant prior to issuing a written decision.

24 K. After considering all of the testimony and evidence submitted at  
25 the hearing, the hearing officer/body shall issue a written decision within fifteen  
26 (15) business days of the hearing. The decision of the hearing officer shall be  
27 final.

28 L. If the hearing officer/body denies the appeal, then the deposit

1           shall be retained by the city.

2           M.     If the hearing officer/body grants the appeal, then the city shall  
3           refund the deposit within thirty (30) business days from the date of the final written  
4           decision.

5           N.     The hearing officer/body shall serve the appellant and city with a  
6           copy of the written decision.

7           8.61.130     Dismissal of citation.

8           The enforcement officer, with the approval of the director of the  
9           respective enforcement agency, may dismiss an administrative citation issued  
10          pursuant to this chapter at any time if it is determined to have been issued in  
11          error, in which event any deposit will be refunded.

12          8.61.140     Right to judicial review.

13          A.     Either the city or the appellant aggrieved by a decision of a  
14          hearing officer/body on an administrative citation issued pursuant to this chapter,  
15          may obtain review of the decision by filing a petition for review with the Los  
16          Angeles Superior Court in accordance with the time lines and provisions as set  
17          forth in California Government Code Section 53069.4(b). Said procedure shall be  
18          available for all judicial review under this Chapter, notwithstanding that the term or  
19          condition being enforced pursuant to this Chapter may not be a matter covered by  
20          Section 53069.4(a). Judicial review of a citation shall not be available unless all  
21          administrative remedies have been exhausted as provided in this Chapter.

22          8.61.150     Recovery of abatement costs.

23          The administrative citation process described in this Chapter does not  
24          preclude the city from recovering any other code violation or nuisance abatement  
25          costs incurred by the city in performing its code enforcement efforts.

26          8.61.160     City powers not limited by this chapter.

27                    Nothing in this section is intended to limit the ability of the city to  
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remove or dispose of any cart to which a cart identification sign is not attached, or to remove or dispose of any cart which impedes the provision of emergency services, or which is an immediate threat to public health and safety, to the full extent permitted by state law.

8.61.170 Additional non-administrative penalty.

The procedures established in this Chapter shall be in addition to any criminal, civil or other legal remedy established by law for violation of the sections defined in this chapter of the Municipal Code.

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
LONG BEACH AMENDING THE LONG BEACH MUNICIPAL  
CODE BY AMENDING AND RESTATING IN ITS ENTIRETY  
CHAPTER 8.61 RELATING TO ADMINISTRATIVE CITATIONS

WHEREAS, the City Council of the City of Long Beach finds that shopping  
carts are an eyesore, a potential hazard, and a nuisance; and

WHEREAS, the City Council of the City of Long Beach intends that the  
owners of shopping carts should be held responsible for containing their shopping carts  
on their respective business premises;

WHEREAS, the City Council of the City of Long Beach finds that use of an  
administrative citation program and the establishment of appropriate fines are intended to  
act as a reasonable deterrent in preventing violations of Chapter 8.61.

NOW THEREFORE, the City Council of the City of Long Beach ordains  
as follows:

Section 1. The Long Beach Municipal Code Chapter 8.61 entitled  
"Shopping Carts" is amended and restated in its entirety to read as follows:

Section 1. The Long Beach Municipal Code Chapter 8.61 entitled "Shopping Carts" is  
amended and restated in its entirety to read:

Chapter 8.61  
SHOPPING CARTS

8.61.010 Definitions.

For purposes of this chapter only, and unless the context clearly requires a  
different meaning, the words, terms and phrases set forth in this Section are defined as  
follows:

////

- 1           A.     "Business premises" means the interior of a cart owner's  
2 commercial establishment, adjacent walkways, any loading area, and the parking  
3 area, as defined herein.
- 4           B.     "Cart identification sign" means a sign or engraved surface  
5 which is permanently affixed to a shopping cart containing all of the information  
6 specified in section 8.61.050 of this chapter.
- 7           C.     "Cart owner" means the owner or operator of a commercial  
8 establishment which provides carts for use by its customers for the purpose of  
9 transporting goods of any kind.
- 10          D.     "Cart removal warning" means a placard, sign or painted text  
11 which meets the requirements of section 8.61.030 of this chapter.
- 12          E.     "Enforcement officer" means any officer or employee of the city  
13 designated with the authority to enforce the applicable provisions of the Long  
14 Beach municipal code.
- 15          F.     "Enforcement agency" means the city department in which the  
16 enforcement officer is employed.
- 17          G.     "Individual cart identification number" means a number unique  
18 to each cart owned or provided by a cart owner.
- 19          H.     "On-site cart containment program" means one or more of the  
20 following measures:
- 21                1.     Disabling devices on all shopping carts which prevent  
22 them from being removed from the business premises by locking the wheels or  
23 otherwise preventing the movement of the carts.
- 24                2.     An on-site security guard to deter customers who attempt  
25 to remove carts from the business premises.
- 26                3.     Bollards and chains around the business premises to  
27 prevent cart removal, if permitted by the Fire Marshal.
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4. Obtaining a security deposit from customers for the on-site use of shopping carts.

5. The rental or sale of utility carts that can be temporarily or permanently used for the transport of goods

6. Any other measure approved by the Director of Planning and Building as a means to contain carts on premises.

I. "Parking area" means a parking lot or other property provided by a commercial establishment for use by a customer for parking an automobile or other vehicle. In a multi-store complex or shopping center, "parking area" includes the entire parking area used by or controlled by the complex or center.

J. "Physical containment system" means one of the following, as approved by the Director of Planning and Building:

1. Disabling devices on all shopping carts which prevent them from being removed from the business premises by locking the wheels or otherwise preventing the movement of the carts.

2. Any other system of equipment approved by the Director of Planning and Building which physically contains shopping carts on premises.

K. "Qualified cart retrieval service" means a commercial service, operated by a third party and paid by a cart owner to retrieve and return shopping carts. The Director of Planning and Building shall develop minimal service standards by which a cart retrieval service may be designated as a qualified cart retrieval service and maintain a list of all such services.

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1           8.61.020     Cart containment system--required; exception.

2                   A.     Every cart owner shall operate and maintain an on-site cart  
3 containment program. A cart owner may be exempted from this requirement if he  
4 or she provides proof of contracting with a qualified cart retrieval service and  
5 submits an operations plan which demonstrates to the satisfaction of the Director of  
6 Planning and Building that the qualified cart retrieval service will both actively locate  
7 shopping carts within a one-mile radius of the cart owner's business premises and  
8 respond to complaints from the public in a manner which results in the retrieval of  
9 shopping carts within twenty-four (24) hours after receiving complaint(s).

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11 premises at all times.

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13 cart owner is found off of the business premises shall be considered a violation by  
14 the cart owner of section 8.61.020 subsection (B).

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16 the business premises shall be considered a separate violation of section 8.61.020  
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19 citation issued by an enforcement officer and shall be payable directly to the city of  
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22 each violation.

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24 subsection (B) administrative citations to the same cart owner within a thirty (30)  
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1. Meet or exceed 18 inches in width and 24 inches in height.
2. Using block lettering not less than one-half inch in width and two (2) inches in height, contain a statement in two or more languages to the effect that unauthorized removal of a shopping cart from the business premises, or possession of a shopping cart in a location other than on the business premises, is a violation of state law and City ordinance.
3. List a local or toll-free telephone number for cart retrieval.
4. Be affixed to an interior wall of the building or otherwise permanently and prominently displayed within two (2) feet of all customer entrances and exits.

B. Cart removal warnings on the exterior of the building are not considered "signs" for the purpose of calculating maximum allowable signage under title 21 of the municipal code.

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Each cart owner shall conduct ongoing employee training to educate new and existing employees about procedures to prevent cart removal, including the operation of the cart containment system.

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1 unauthorized removal of the cart from the business premises is a violation of state  
2 law and City ordinance.

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4 subsection (A) of this section, and to continuously maintain, or cause to be  
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1           8.61.090     Service procedures.

2                   An administrative citation subject to this chapter shall be issued on a form  
3 approved by the city manager or his/her designee, and may be served upon any  
4 cart owner by an enforcement officer in the following manner:

5           A.     Service of citation by mail.

6                   1.     The administrative citation or duplicate thereof shall be  
7 mailed to the cart owner(s); and

8                   2.     A proof of service of the notice shall be made by declaration  
9 of the enforcement officer effecting the service.

10          8.61.100     Contents of notice.

11                  Each administrative citation issued pursuant to this chapter shall contain  
12 the following information:

13                 A.     The date of service of the citation and the date, time, address or  
14 description of the location where the violation(s) was observed;

15                 B.     The code section(s) and condition(s) violated and a description  
16 of the violation(s);

17                 C.     A photographic image depicting the cart at the location of the  
18 violation(s);

19                 D.     The amount of the fine for the violation(s);

20                 E.     An explanation of how the fine shall be paid and the fine payment  
21 due date;

22                 F.     Notice of the right to appeal the citation, the time within which the  
23 citation may be appealed and the place to obtain a Request for Hearing form to  
24 appeal the administrative citation; and

25                 G.     The name and signature of the enforcement officer.

26          8.61.110     Satisfaction of administrative citation.

27                  Upon service of an administrative citation issued pursuant to this  
28 chapter, the cart owner shall do the following:

1           A.     Pay the fine no later than thirty (30) days from the date of  
2 issuance of the citation as specified on the administrative citation. Payment of a  
3 fine shall not bar further enforcement action by the city. Late charges shall be  
4 imposed for fine payments made after the fine payment due date. The late charge  
5 shall be calculated at a rate of 25% of the fine, and will be imposed in addition to  
6 any outstanding fine.

7           B.     Failure of the cart owner(s) to pay the civil fine and any accrued  
8 late penalties in a timely manner may result in the imposition of a special  
9 assessment and/or lien against the real property on the business premises,  
10 and/or filing of an action with the Small Claims Court for recovery of the fine and  
11 any late penalty. The only issue to be adjudicated by the Small Claims Court  
12 shall be whether or not the fines and possible late fees were paid. A cart owner  
13 may only obtain judicial review of the validity of the citation by first requesting and  
14 participating in an administrative appeal hearing before a hearing officer. In the  
15 Small Claims Court action, the city may also recover its costs, according to proof.

16           C.     The City may also refuse to issue, extend, or renew to any cart  
17 owner who has unpaid delinquent fines, interest, penalties, liens, or assessments,  
18 any city permit, license, entitlement, or other city approval pertaining to the  
19 business premises that is the subject of the fine and administrative citation.

20           D.     Any permit, license, entitlement, or land use approval issued by the  
21 city may be subject to suspension or revocation of the permit, license, entitlement,  
22 or land use approval in accordance with the procedures set forth in the respective  
23 Long Beach Municipal Code if any unpaid fine, interest or penalties remain  
24 delinquent for a period of more than thirty (30) days.

25     8.61.120     Appeal of administrative citation.

26           A.     Any recipient of an administrative citation issued pursuant to this  
27 chapter may appeal said citation by completing a written Request for Hearing form  
28 from the enforcement agency designated on the citation, and returning it to said

1 city agency within thirty (30) calendar days from the date the administrative  
2 citation was served or deemed to have been served, together with a deposit in the  
3 total amount of the fine.

4 B. A failure to file a timely appeal of the administrative citation shall  
5 be deemed a waiver of the right to appeal and to seek judicial review.

6 C. The administrative appeal hearing shall be set for a date not sooner  
7 than fifteen (15) calendar, and not more than sixty (60) calendar days from the  
8 date the request for hearing is completed and submitted in accordance with the  
9 provisions of this Chapter. The cart owner requesting the hearing shall be notified  
10 in writing of the time and place set for the hearing at least ten (10) calendar days  
11 prior to the date of the hearing.

12 D. The hearing provided for in this chapter shall be conducted by a  
13 hearing officer or hearing body appointed by the city manager or his/her  
14 authorized designee.

15 E. The hearing officer/body shall only consider evidence that is relevant  
16 to whether the appellant is the bona fide cart owner, and whether appellant created,  
17 committed, or maintained the violation(s). Courtroom rules of evidence shall not  
18 apply. Relevant hearsay evidence and written reports may be admitted whether or  
19 not the speaker or author is present to testify, if the hearing officer/body determines  
20 that such evidence is reliable. Admission of evidence and the conduct of the  
21 hearing shall be controlled by the hearing officer/body in accordance with the  
22 fundamentals of due process. The hearing officer/body may set reasonable limits  
23 on the length of the hearing, and shall allow the appellant at least as much time to  
24 present his/her case as is allowed to the city.

25 F. The appellant contesting the administrative citation shall be given the  
26 opportunity to testify and present witnesses and evidence concerning the citation.  
27 The city's case shall be presented by any person designated by the city manager.  
28 The appellant and city may be represented by counsel.

1           G.     The failure of the appellant to appear at the hearing shall  
2 constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

3           H.     The administrative citation and any additional documents  
4 prepared by the city in connection with the violation(s) may be submitted and shall  
5 constitute prima facie evidence of the respective facts contained in those  
6 documents.

7           I.     If the enforcement officer or his/her designee submits any additional  
8 documents concerning the administrative citation to the hearing officer for  
9 consideration at the hearing, then, whenever possible, a copy of such document(s)  
10 shall be served by mail on the appellant at least five (5) calendar days prior to the  
11 date of the hearing.

12           J.     The hearing officer/body may continue the hearing or request  
13 additional information from the enforcement officer, his/her designee or the  
14 appellant prior to issuing a written decision.

15           K.     After considering all of the testimony and evidence submitted at  
16 the hearing, the hearing officer/body shall issue a written decision within fifteen  
17 (15) business days of the hearing. The decision of the hearing officer shall be  
18 final.

19           L.     If the hearing officer/body denies the appeal, then the deposit  
20 shall be retained by the city.

21           M.     If the hearing officer/body grants the appeal, then the city shall  
22 refund the deposit within thirty (30) business days from the date of the final written  
23 decision.

24           N.     The hearing officer/body shall serve the appellant and city with a  
25 copy of the written decision.

26 **8.61.130     Dismissal of citation.**

27           The enforcement officer, with the approval of the director of the respective  
28 enforcement agency, may dismiss an administrative citation issued pursuant to

1 this chapter at any time if it is determined to have been issued in error, in which  
2 event any deposit will be refunded.

3 8.61.140 Right to judicial review.

4 A. Either the city or the appellant aggrieved by a decision of a  
5 hearing officer/body on an administrative citation issued pursuant to this chapter,  
6 may obtain review of the decision by filing a Petition for Review with the Los  
7 Angeles Superior Court in accordance with the time lines and provisions as set  
8 forth in California Government Code Section 53069.4(b). Said procedure shall be  
9 available for all judicial review under this Chapter, notwithstanding that the term or  
10 condition being enforced pursuant to this Chapter may not be a matter covered by  
11 Section 53069.4(a). Judicial review of a citation shall not be available unless all  
12 administrative remedies have been exhausted as provided in this Chapter.

13 8.61.150 Recovery of abatement costs.

14 The administrative citation process described in this Chapter does not  
15 preclude the city from recovering any other code violation or nuisance abatement  
16 costs incurred by the city in performing its code enforcement efforts.

17 8.61.160 City powers not limited by this chapter.

18 Nothing in this section is intended to limit the ability of the city to  
19 remove or dispose of any cart to which a cart identification sign is not attached, or  
20 to remove or dispose of any cart which impedes the provision of emergency  
21 services, or which is an immediate threat to public health and safety, to the full  
22 extent permitted by state law.

23 8.61.170 Additional non-administrative penalty.

24 The procedures established in this Chapter shall be in addition to any  
25 criminal, civil or other legal remedy established by law for violation of the sections  
26 defined in this chapter of the Municipal Code.

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council of the City of Long Beach and cause it to be posted in three conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of \_\_\_\_\_, 2007, by the following votes:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor

CM:ikm 07-00902  
10/9/07 - 00111762.DOC