

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 06, 2017
NUMBER: 6.24 - PATROL
SUBJECT: HANDLING OF SHOPPING AND LAUNDRY CARTS
RELATED POLICY: 3.02
ORIGINATING DIVISION: OPERATIONAL SUPPORT
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 6.24 – 11/23/2011

I. PURPOSE

This Department procedure establishes guidelines for the proper handling of seized shopping and laundry carts.

II. SCOPE

This Department procedure applies to all members of the Department.

III. BACKGROUND

NEW

- A. One consideration concerning shopping carts in the public right-of-way is whether they pose a hazard or obstruction to the free use of the right-of-way. This includes carts interfering with the use of a private entryway accessible from the public right-of-way (see San Diego Municipal Code, Sections 54.0105, and 54.0110 below):

54.0105 SDMC - It is unlawful for any person to place, or allow to remain, any goods, wares, baggage, personal property or merchandise on any sidewalk or curb, between the outer edge of the sidewalk or curb and the property line.

54.0110 SDMC - It is unlawful for any person to erect, place, allow to remain, construct, establish, plant, or maintain any vegetation or object

on any public street, alley, sidewalk, highway, or other public property or public right-of-way, except as otherwise provided by this Code.

NEW

- B. In addition to the laws pertaining to the public right-of-way, Officers should also consider the potential criminal violations associated with shopping carts and investigate such violations.

NEW

- C. Laws specific to the illegal possession of shopping carts or laundry carts

1. According to Business and Professions Code (BP) 22435.1, a shopping cart or laundry cart must have a permanently affixed sign containing the following information:
 - a. Identifies the owner or retailer;
 - b. Notifies the public that the unauthorized removal of the cart is a violation of the law;
 - c. Lists a telephone number or address for return of the cart; and
 - d. Notifies the public of how to lawfully possess the cart off the business's premises.
2. It is generally illegal to:
 - a. Remove the cart from the business premises (BP 22435.2(a));
 - b. Be in possession of a cart off the business premises (BP 22435.2(b), (f));
 - c. Leave or abandon a cart off the business premises (BP 22435.2(d)); or,
 - d. Alter, convert, or tamper with a cart or parts thereof (BP 22435.2(e)).
3. Carts are marked and identified in a variety of ways. Most have plastic plates which bear the information required by the Business and Professions Code. Most also have engraved metal plates near the rear wheels, which bear only the store name of the owner. The metal plates generally do not bear the information required by the Business and Professions Code.

D. Operation of Retrieval Companies

1. Any person who engages in cart retrieval must retain records showing written authorization from the cart owner, or agent, to retrieve the cart or carts and to be in possession of the carts retrieved. Further, a copy of the authorization must be maintained in each vehicle used for cart retrieval and each vehicle employed must clearly display a sign identifying the name of the retrieval company (see BP sections 22435.11 and 22435.12).
2. Officers should utilize the services of a cart retrieval company only when the cart to be seized is properly marked, as specified above. Officers may contact a cart retrieval company directly at 1(800) 252-4613.

E. City of San Diego Environmental Services Department Procedures

1. The Environmental Services Department (ESD) is authorized to enforce certain laws relating to carts (see Municipal Code Section 54.0203). ESD procedure provides for disposing of waste and property left unattended in the public right-of-way. These procedures apply to carts, as well as to other property.

NEW

2. Officers should contact ESD to inquire the most current procedures regarding carts and unattended property directly at (858) 694-7000.

F. Downtown Partnership Clean and Safe Program

NEW

1. The Clean and Safe Program has agreed to assist the Police Department when Officers need help with the transportation of lawfully seized shopping carts within their jurisdiction.
2. The Downtown Partnership Clean and Safe Program operates only in the Downtown San Diego area.
3. Officers may contact the Clean and Safe Program anytime at (619) 414-2698 or (619) 234-8900.

IV. PROCEDURES

A. General principles governing enforcement and the seizure of carts

NEW

1. Officers should not only consider the potential hazards posed by shopping carts in the public right-of-way, but also the property rights of the cart owners. Officers should consider conducting an investigation into shopping cart theft violations in addition to the Business and Professions

Code violations. For example, an immediate complaint from a storeowner that a person has taken a cart may be the basis for a 484/488 PC (theft) violation. Or, if a person other than the owner or an authorized user possesses a shopping cart and does not intend to return the cart to the owner, that person may be in violation of 485 PC (Misappropriation of Found Property). These are basic examples only; any enforcement of such sections requires due diligence to ensure the violations meet all elements.

NEW

2. If probable cause exists to believe a theft, or other crime, has occurred, officers may exercise their discretion to enforce the applicable law (or laws). Officers conducting enforcement should do the following:
 - a. Obtain photographs of the shopping cart or laundry cart (including all placards affixed to them);
 - b. Attempt to obtain a statement from the subject of the investigation;
 - c. Seize the cart as evidence pursuant to Department Procedure 3.02, release the cart to a cart retrieval service or ESD, or facilitate transport of the shopping cart to the San Diego Facilities Department located at 1245 Caminito Centro, San Diego, 92102 (20th St. and B St.).
 - d. Issue a citation to or affect a custodial arrest of the suspect.

NEW

3. If a cart is seized incident to citation or arrest, the carts shall be:
 - a. Impounded as evidence pursuant to Department Procedure 3.02: Impound, Release, and Disposal of Property, Evidence, and Articles Missing Identification Marks, or
 - b. Released to the lawful owner or an authorized cart retrieval service, or
 - c. Released to an authorized representative of the Environmental Services Department, or
 - d. Deposited at the San Diego Facilities Department located at 1245 Caminito Centro, San Diego, 92102 (20th St. and B St.).
 - i. Officers are only required to facilitate transport of the carts to the Facilities Department. As shopping carts may be large and cumbersome, Officers may consider requesting assistance from entities such as the Environmental Services Department, Park Rangers, or (if in the Downtown area) the Clean and Safe Program to facilitate transport

- ii. Once deposited at the Facilities Department, Facilities personnel will follow established procedures for processing, returning, and disposing of the carts.

- NEW 4. Any police seizure and disposition of a cart should be documented appropriately.
- NEW 5. If a seized cart contains personal property, a reasonable effort should be made to leave those items with the owner, if that can be done safely. Officers may choose to provide a large plastic bag or other receptacle to the property owner. If there are no such receptacles available, officers should allow the owner a reasonable amount of time to obtain a bag or other such device to collect his or her property.

V. GUIDELINES FOR COMMON SCENARIOS

A. Carts on Private Property (attended or unattended)

In general, private property should not be entered to seize a cart, unless a request to do so is made by the lawful possessor of the private property, or probable cause exists to believe a separate violation of the law is occurring.

- NEW B. Unattended Carts in the Public Right-of-Way Containing Personal Property
 - 1. Officers should defer the collection of such carts to the Environmental Services Department.
 - 2. Any private citizen may report an unattended cart containing personal property in the public right-of-way to the Environmental Services Department by phone at (858) 694-7000, via the San Diego Get it Done application, or submit a work request online at <https://www.sandiego.gov/environmental-services>.

- NEW C. Unattended Carts in the Public Right-of-Way Without Personal Property
 - 1. If a cart has the proper markings as previously described, or it is reasonable to believe a cart should have such markings (i.e., indications that markings were intentionally removed) officers may collect any empty carts in the public right-of-way. Officers should transport or facilitate transport of the cart to the San Diego Facilities Department location as previously outlined.

- NEW 2. If carts do not have the required markings as outlined above, officers should defer to the Environmental Services Department.

D. Unattended Carts in the Public Right-of-Way in the Downtown Area Without Personal Property

1. Shopping cart removal and retrieval in the downtown area of San Diego is a shared responsibility of the Environmental Services Department, shopping cart retrieval services, and the Clean and Safe program.
2. Officers requiring assistance with the transportation of carts in the downtown area may call the Clean and Safe program at (619) 414-2698. Once an officer requests assistance from the Clean and Safe program, he or she should wait for a Clean and Safe representative to arrive and take possession of the cart. Clean and Safe will then transport the carts to 1245 Caminito Centro (20th St. and B St.) San Diego Facilities location.

NEW

E. Attended Carts in the Public Right-of-Way

1. As previously stated, one consideration regarding carts is free use of the public right-of-way. Officers have discretion and may choose to make a simple request to the person in possession of the cart to move the obstruction from the public space.
2. A cart should not be seized from a person unless clear, probable cause exists indicating a violation has occurred.
3. The possessor of a cart should be afforded the opportunity to show proof of ownership or permission to possess the cart. However, if the possessor has no proof of ownership or does not provide a reasonable basis for lawfully possessing the cart, officers may attempt to obtain voluntary compliance to surrender the cart.
4. Officers are encouraged to investigate all crimes and violations pertaining to the illegal possession of carts. Whereas simple possession of a cart is not illegal in and of itself, if reasonable suspicion or probable cause exists, officers should investigate and ultimately address the criminal violations associated with unlawful possession of a cart (i.e., 488 PC, 485 PC, 22435.2(a) – (f)).
5. Officers may also investigate cart possession as evidence of incidental violations (i.e., 54.0105, 54.0110 SDMC – Encroachment, 647(e) PC – Illegal Lodging).
6. If a cart is seized from an individual, officers shall follow the guidelines previously outlined in this section regarding its disposition.

NEW

F. For a visual diagram of these common scenarios, see attached flow chart (Attachment A).

VI. RESPONDING TO CALLS FOR ASSISTANCE

- A. Officers may, if requested by a shopping cart retrieval agency, Environmental Services Department personnel, or the Clean and Safe Program, stand by and preserve the peace while a cart is seized.
- B. Officers should be aware of, and enforce, the provisions of the Business and Professions Code sections 22435.10-22435.13, governing the operation of private retrieval companies, as outlined previously in this procedure.

Attachment A – Guidelines for Common Scenarios Flow Chart

