

June 23, 2007

Memorandum

To: Alderman Bob Donovan

From: Brandon Scholz, President & CEO - Wisconsin Grocers Association
William Dowling, Vice President, Corporate Counsel, Roundy's Supermarkets, Inc.
Chris Tackett, President - Wisconsin Merchants Federation

Subject: Abandoned Shopping Cart Ordinance

The purpose of this memorandum is to review a number of conditions set forth in the proposed Abandoned Shopping Cart Ordinance Number 060341, to request clarification of certain sections, and to make recommendations to modify the ordinance as it is currently proposed.

Our intent is to provide you with the collective feedback from the broad-based retail community in the City with regard to the proposed ordinance. We want to work with you, members of the Committee and City Council, the Department of Public Works and the Mayor to help solve this problem in certain areas in the city.

We have reviewed and analyzed the proposed ordinance and the following are issues we have identified, our recommendation, and our rationale for each item.

81-105.5 Shopping Cart Retrieval Fee: While we appreciate the extension of five (5) working days following notice by first class mail, we believe the fee of \$25 for the first three carts and \$40 for each following cart is beyond excessive and is a significant economic harm on small and large businesses.

Request/Recommendation: We request that the fee be reduced to \$10 per cart for all carts after the five working days notice by first class mail. Further, we would ask that a billing system be set up as opposed to a cash/COD or check payment be put in place.

Rational: We believe it will be easy for the Department of Public Works to manage a one-fee structure and would cause less dispute determining which fee to apply to which carts. Our understanding is that there is no software program developed for this and that these calculations are currently maintained by hand written notes. The additional record keeping could increase the cost of the Department to manage this program. An invoice payment program would provide a better record keeping tracking system to resolve any disputes.

81-105.6 Shopping Cart Storage Fee: Currently the fee is \$1.50 per cart. This ordinance not only triples the fee, but activates it on a daily basis. This will require greater record keeping and increased costs on the part of the Department of Public Works and could increase the internal costs of managing the program.

The language is not clear and concise as to when the fee begins; at the point of collection or after the three days in which the notice is sent to advise the owner that they have five days in which to pick up the cart.

Request/Recommendation: Increase the fee to \$5 per cart with no daily accumulation and have the fee start at the end of the five day notice.

Rational: This structure would make record keeping simpler and streamlined as for the Department and would save on costs associated with monitoring and reporting on this project.

110-36 Shopping Cart Retention Section 1 Definitions (a): As written, the definition of a “Business establishment” leaves open the determination that could include multiple retail locations into one entity based on ownership.

Request/Recommendation: As the word “single” to read “Business establishment means a single grocery store, supermarket, etc.

Rational: This would better define which individual retail location would be subject to the count by DPW as opposed to consolidating multiple stores in the abandoned tally.

110-36 Shopping Carts Retention Section 1 Definitions (f) and Section 2: The definition regarding Permanent Identity Tags impacts those store operations that transfer carts from one location to another.

Request/Recommendation: Modify the definition so that it lowers the threshold from 350 carts for 2 stores to 200 carts for two stores. Further that the carts be allowed to have one central phone number as the point of contact with a temporary tag noting the location that could be affixed if carts are transferred from premise to premise. We would propose the language be modified to read, “Permanent Identity Tag means a tag, label, plate or other form of identification that is affixed to a shopping cart. The permanent identity tag shall state the name of the business establishment.” The remaining of this section would be deleted.

Rational: Virtually all multiple store locations are managed by one central office whether they are at a corporate headquarters or at one of the retail locations. By maintaining one central point of contact, the Department of Public Works will have an easier time notifying owners of the carts that have been retrieved.

110-36 Shopping Carts Retention Section 5 On-Site Retention: As written, the draft seems to offer two approaches for retailers to develop a plan and whether or not the plan has to be submitted to the Commissioner of the Department of Public Works. If the retail operation incorporates one of the examples in the ordinance, are they then exempted from communicating and submitting that plan to the Commissioner? Does implementation of an example plan mean that the Commissioner does not have to approve the plan in writing?

Further in the larger context of the proposed ordinance, if the plan adopted by the retailer is one of the examples and does not have to be submitted, who then determines if the retailer is or is not in compliance with the ordinance. Who has the authority to investigate and make the determination if the retailer is in compliance with the ordinance? And looking forward to Section 10, who issues the fine and under what authority?

Finally, the data management, maintaining information on the plans in place and determining if retailers are in compliance goes to the issue of increased costs for the Department of Public Works.

Request/Recommendation: We would recommend that the ordinance would go into effect for any single retail location that has more than 150 carts stolen from its property in a twelve (12) month period. Section 7 would be deleted from the proposed draft.

Rational: By have the DPW maintain collection data, they would know after a twelve month period which retail locations exceed the 150 cart trigger mechanism. At that time, one of the examples listed in Section 5 (a-e) could be put in place, working with the Commissioner to determine the best possible course of action and then the Commissioner would approve the plan in writing. With this approach, many of the small retail operations would not be forced to submit a plan, nor would the Commissioner be burdened with monitoring small retail operations. They would still be paying a fee for retrieval and that, along with the trigger mechanism would provide strong encouragement to them to keep carts maintained on the property. Under this approach, there would be no need for Section 7. Furthermore, other methods could be proposed and approved by the Commissioner which would work to solve the matter.

110-30 Section 10 Penalty: We believe the fines in this section for retailers who have made a good faith effort to retain or prevent the theft of their property is beyond excessive. While we understand the need for a fine structure, a fine that is greater than the fine levied against the thief or thieves who steal shopping carts does not make sense.

Request/Recommendation: Adjust the fines in Section (a) to equal the warning and fines assessed those who break the law in Section (b).

Rational: By setting fines higher for honest hardworking business people than for those individuals who break the law with little or no regard simply is not fair. Retailers want to work with the City to do the right thing while those who randomly, callously and carelessly break the law have no interest in improving their neighborhoods and city.

110-36 General: There is no provision in the ordinance that would address dispute with the Department of Public Works and what redress or appeal process would be in place to resolve any issues between the parties.

Request/Recommendation: All parties should meet to discuss what this process would entail and the steps to deal with disagreements or disputes should be clearly laid out.

Rational: Leaving the matter with no dispute resolution in place could mean significant accumulated fines and fee for retailers and a significant administrative matter for the DPW.

We appreciate your consideration of our concerns and requests and hope that you will agree to our requests and recommendations so that we can support the ordinance and move forward on this matter.

Please contact Brandon Scholz at (608) 244-7150 to discuss these items and as to your willingness to include these changes in the proposed ordinance.