

MEMORANDUM OF LAW

DATE: August 21, 1991

TO: Councilmember Bruce Henderson, District Six

FROM: City Attorney

SUBJECT: Laws Against Loitering and Laws Dealing with Shopping Carts

This responds to your memorandum of July 2, 1991, requesting information on laws against loitering and laws dealing with shopping carts.

You stated that you have received numerous calls from constituents regarding transients loitering on the corner of Grand Avenue and Noyes Avenue. The question you posed is whether there are laws now on the books which are enforceable and which would address this problem.

Mere presence by the transients on the corner of Grand Avenue and Noyes Avenue or simply remaining in an area for no obvious reason violates no laws. There appears to be no constitutional way to prohibit their mere presence. Transients at that location may also be engaged in unlawful activity. Such unlawful activity must be defined so that men of common intelligence need not guess at its meaning and differ as to its application. *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).

San Diego already has enforceable laws prohibiting littering, (San Diego Municipal Code section 44.0107; California Penal Code section 374.4), urinating in public, (San Diego Municipal Code section 56.55), vandalism, (California Penal Code section 594(a)), trespassing (California Penal Code section 602; San Diego Municipal Code section 52.80.01), being drunk in public, (California Penal Code section 647(f)), begging, (California Penal Code section 647(c)), fighting in public, (California Penal Code section 415(1)) and using offensive words in public if these words are likely to provoke an immediate violent reaction, (California Penal Code section 415(3)). The transients in question may be in violation of one or more of these illegal activities.

Your second question resulted from numerous complaints to your office regarding shopping carts being taken from the Vons supermarkets in Pacific Beach. Such carts are being taken allegedly by transients who abandon them in residential areas and alleys. You asked whether there are any laws that deal with shopping carts which would prohibit this type of activity, separate and apart from actions which can be brought by supermarket owners.

Laws on the ownership and possession of shopping carts are covered in California Business and Professions Code sections 22435 through 22435.5, a copy of which is attached.

It is a misdemeanor separate from the offense of theft to violate any provision of the article relating to the ownership and possession of shopping carts. (California Business and Profession Code section 22435.3.) Unlawful acts relating to the possession, abandonment, or tampering with any shopping cart are specifically enumerated in subparagraphs (a) through (f) of California Business and Professions Code section 22435.2.

In summary, the California Business and Professions Code provides misdemeanor penalties for unlawful acts involving shopping carts separate and apart from actions which can be brought by supermarket owners.

Please contact me if I can be of further assistance on these issues.

JOHN W. WITT, City Attorney

By

Joseph M. Battaglino

Deputy City Attorney

JMB:mk:520.1(x043.2)

Attachment

ML-91-64