

**ORDINANCE NO. 2015-012**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AZUSA ADDING ARTICLE XI TO CHAPTER 62 OF THE AZUSA MUNICIPAL CODE RELATING TO PROHIBITING SMOKING, CAMPING, AND THE STORAGE OF PERSONAL PROPERTY IN OR UPON PUBLIC PROPERTY OF THE CITY OF AZUSA**

**WHEREAS**, pursuant to article XI, section 7, of the California Constitution, the City of Azusa (“City”) may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, pursuant to California Government Code section 37359, the City Council for the City may, for any property owned or controlled by the City, at any time withdraw the property from the personal access and use by members of the public, or limit the access or use in area or time or in any other reasonable manner deemed necessary. Any person thereafter using the property without permission, in a manner other than that prescribed, or pursuant to a private right in the property is a trespasser; and

**WHEREAS**, pursuant to California Penal Code section 647c, the City has the power to regulate conduct on a street, sidewalk, or other public place or on or in a place open to the public; and

**WHEREAS**, pursuant to California Public Resources Code section 5193, the City is expressly authorized to adopt ordinances governing the use of municipal parks; and

**WHEREAS**, pursuant to California Health & Safety Code Section 118875 *et seq.*, local governments are authorized to completely ban the smoking of tobacco in any manner that is not inconsistent with state or federal law. Specifically, California Health & Safety Code section 118910 provides that “[t]he [California] Legislature declares its intent not to preempt the [entire] field of regulation of the smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate smoking in a manner not inconsistent with this . . . or any other provision of state law.”; and

**WHEREAS**, the City Council of the City (“City Council”) wishes to promulgate laws that enhance the quality of life for its residents and visitors, especially laws that promote public health, safety and welfare of families living in the City; and

**WHEREAS**, to further promote the quality of life for its residents, visitors and families, the City Council intends to adopt regulations prohibiting smoking, camping, and the storage of personal property in public facilities, public parks, and other public property of the City in order to enhance the quality of life of its residents and visitors by enhancing the quality of their experiences when using such public places. The inappropriate uses of all public property, including smoking, camping and storage of personal property impact the preservation of the public peace, health or safety of residents and visitors. The City recognizes that when public property is disorderly, unkempt, unavailable or contains harmful byproducts of smoking, trash and dangerous personal belongings (i.e. illegal drugs, prescription medicine, syringes), the City’s residents and visitors avoid these areas, thereby making them inviting areas for crime and other nuisances and public peace, health, or safety impacts. As a result, the City Council seeks to adopt regulations to enhance the quality of life of its residents and visitors and intends to adopt the following additional findings in support of the regulations in this Ordinance:

- A. Scientific studies have concluded that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, cancer of the lungs, and other cancers.<sup>1</sup> In fact, an estimated 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;<sup>2</sup> and
- B. The U.S. Surgeon General has concluded that exposure to secondhand tobacco smoke has been causally linked to cancer, respiratory, and cardiovascular diseases, and to adverse effects on the health of infants and children and the burden of death and disease from tobacco use in the United States is overwhelmingly caused by cigarettes and other combusted tobacco products; rapid elimination of their use will dramatically reduce this burden;<sup>3</sup> and
- C. The California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm.<sup>4</sup> Notably, the total cost of smoking in California was estimated to be \$487 per resident and \$4,603 per smoker, for a total of nearly \$18.1 billion in smoking-related costs in 2009 alone;<sup>5</sup> and
- D. The use of electronic smoking devices is a recent trend that is proliferating. Electronic smoking devices, commonly referred to as “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” or “e-hookahs,” are electronic devices often made to look like conventional tobacco products in shape, size, and color. Electronic smoking devices are designed to be used in the same manner as conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products. The use of electronic smoking devices in smoke-free locations threatens to reverse the progress that has been made in establishing the social norm that smoking is not permissible in public places or places of employment

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<sup>1</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Targeting Tobacco Use: The Nation's Leading Cause of Preventable Death 2008* (2008), available at <http://www.cdc.gov/nccdphp/publications/aag/pdf/osh.pdf> (last accessed July 30, 2015).

<sup>2</sup> *Ibid.*

<sup>3</sup> U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *The Health Consequences of Smoking—50 Years of Progress* (2014), available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html#execsumm> (last accessed July 30, 2015).

<sup>4</sup> Cal. Env'tl. Prot. Agency, Office of Env'tl. Health Hazard Assessment, *Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*, (June 19, 2015), available at [http://oehha.ca.gov/prop65/prop65\\_list/files/P65single061915.pdf](http://oehha.ca.gov/prop65/prop65_list/files/P65single061915.pdf) (last accessed July 30, 2015).

<sup>5</sup> Max W, Rice DP, Zhang X, Sung H-Y, Stark B., *The Cost of Smoking in California, 2009*; Institute for Health & Aging, School of Nursing University of California, San Francisco (2014), available at <http://qa.trdrp.org/files/cost-smoking-ca-final-report.pdf> (last accessed July 30, 2015).

- E. A study published in the Journal of Environment and Public Health suggests that electronic smoking devices "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously."<sup>6</sup> Additionally, a study published in the American Journal of Public Health found similar results to those identified in United States Food and Drug Administration ("FDA") testing and concluded that the electronic smoking devices tested demonstrated poor quality control, toxic contaminants, misrepresentation of the nicotine delivered and insufficient evidence of the overall public health benefit;<sup>7</sup> and
- F. The FDA has not yet issued regulations regarding electronic cigarettes. Notwithstanding, California Health and Safety Code section 119405 prohibits the sale of electronic cigarettes to minors. While state law prohibits sales to minors, such state law is not comprehensive enough to prohibit the use of electronic smoking devices in City facilities, parks, and other City property. This Ordinance shall not apply to any activity already regulated by Health and Safety Code Section 119405 or pre-empted by any State or Federal law or regulation; and
- G. In Tobe v. City of Santa Ana (9 Cal.4th 1069 (1995)), the California Supreme Court upheld a city ordinance that prohibited camping and the storage of personal property in designated public areas, similar to the regulations proposed in this ordinance.
- H. When public property appears and is clean, orderly, welcoming and comfortable, the law-abiding public takes them as their own and crime goes down, and the public peace, health and safety tend to be preserved; and
- I. The City has invested millions of dollars in its parks and enhanced public buildings and spaces and desires to preserve general public access and the clear and orderly appearance and health of those areas.

**NOW, THEREFORE**, the City Council of the City of Azusa does ordain as follows:

**SECTION 1.** In order to protect the public the public peace, health and safety, the City Council of the City of Azusa finds as follows:

- A. The Recitals stated above are true and correct and are incorporated herein by reference.

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<sup>6</sup> McMillen R, Maduka J and Winickoff J. "Use of Emerging Tobacco Products in the United States." *Journal of Environmental and Public Health* (2012), available at <http://dx.doi.org/10.1155/2012/989474> (last accessed July 30, 2015).

<sup>7</sup> Cobb NK, Byron J, Abrams DB, et al. "Novel Nicotine Delivery Systems and Public Health: The Rise of the 'E-Cigarette'" *American Journal of Public Health*, (2010) available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2978165/> (last accessed July 30, 2015).

- B. Based upon the Recitals, the City Council finds it necessary to amend the Azusa Municipal Code (“AMC”) to adopt measures to regulate the use of public property, including smoking, camping, and the storage of personal property on public property, as a means to preserve the public peace, health and safety.
- C. The proposed amendments to Chapter 62 of the AMC are consistent with all of the objectives, policies, general land uses, programs and actions of all elements of the Azusa General Plan, and none of the proposed regulations conflict with current General Plan.
- D. The proposed amendments to Chapter 62 of the AMC are not detrimental to, and instead are necessary to preserve and protect, the public peace, health, safety and general welfare of the City, its residents and businesses, since the regulations establish reasonable public property usage restrictions while preserving the rights of individuals to use public property to exercise their first amendment and other constitutional rights in a matter not in conflict with federal or state laws.
- E. All legal prerequisites to the adoption of this Ordinance have occurred.

**SECTION 2.** Article XI is hereby added to Chapter 62 of the Azusa Municipal Code to read as follows:

**“ARTICLE XI. – REGULATION OF SMOKING, CAMPING, AND STORAGE OF PERSONAL PROPERTY IN OR UPON PUBLIC FACILITIES, PUBLIC PARKS, AND PUBLIC PROPERTY OF THE CITY**

**Sec. 62-500. – Declaration of Policy and Purpose.**

City facilities, parks and recreational facilities, and other public property of the City are established for the use and enjoyment of all persons in the City. Public property within the city should be readily accessible and available to residents and the public at large. It is the City’s responsibility to promote the health, peace, safety, welfare and convenience of all persons using and enjoying any City facility, park and/or recreational facility, and other City property. The use of these areas for smoking, camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended without risk of physical harm, and is deleterious to the public peace, health, safety and welfare, in that it obstructs intended uses for the public at large, contributes to blight, causes damage to public property, and causes damage to the health of the City’s residents and visitors. The purpose of this article is to maintain public property within the city accessible to the public at large, to keep such areas in a safe, clean and accessible condition, and to promote the public peace, health, safety and welfare of persons using public property.

**Sec. 62-501. – Definitions.**

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning and application of words and phrases used in this article. To the extent conflicts exist between definitions herein and elsewhere in this Code, the definitions in this section shall control for purposes of this article:

(a) “Camp” means to pitch or occupy a camp facility and/or to use camp paraphernalia on public property for one or more nights for living accommodation purposes, such as overnight sleeping activities or making preparations to sleep (including the laying down of bedding for the purpose of sleeping) overnight, or storing personal belongings overnight or during daytime hours (including but not limited to clothing, sleeping bags, bedrolls, blankets, sheets, luggage, backpacks, kitchen utensils, cookware, and similar material), or making any fire in unauthorized areas of a park or using any tents, or regularly cooking meals. These activities constitute camping when it reasonably appears, in light of all the circumstances, that a person is using public property as a living accommodation for one or more nights, with the intent to camp.

(b) “Camp facility” includes, but is not limited to, tents, huts, or other temporary shelters, as well as, cots, beds, sleeping bags, hammocks or bedrolls.

(c) “Camp paraphernalia” includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, hammocks, or non-city designated cooking facilities and similar equipment.

(d) “Public property” means any publicly owned property in the city, improved or unimproved, including, but not limited to, any of the following: public alleyways; public parking lots; public passageways; public streets; public rights-of-way; publicly owned, maintained or operated parks; publicly owned, maintained or operated landscaped areas or greenbelts; publicly owned, maintained or operated open spaces, including, but not limited to, public facilities or buildings of any kind; public sidewalks, curbs and gutters; public educational institutions; or other government owned, maintained or operated properties located within the city.

(e) “Sidewalk” means that portion of a street between the curbline and the adjacent property line, or an easement or right-of-way held by the City across the front of private property, and intended for the use of pedestrians.

(f) “Smoke” shall mean to engage in an act that generates gases, particles or vapors released into the air as a result of combustion, electrical ignition, or vaporization, including from a lighted pipe, a lighted hookah pipe, a lighted cigar, a lighted cigarette, or an electronic or battery operated smoking device that delivers vapors for inhalation, when the purpose of the combustion, electrical ignition, or vaporization is human inhalation of the gases, particles or vapors. To smoke does not include the combustion of material solely for olfactory purposes that does not contain any tobacco or nicotine. Smoke shall include smoking from every variation and type of electronic or battery operated smoking device that delivers vapors for inhalation whether they are manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah or any other product name or descriptor.

(g) “Store” means to put aside or accumulate for use when needed, to put for safekeeping, to place or leave in a location.

(h) “Street” means and includes all streets, highways, avenues, boulevards, alleys, courts, places, squares or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the State.

**Sec. 62-502. – Smoking on Public Property.**

It shall be unlawful for any person to smoke on any public property within the city, except as otherwise provided herein or mandated by applicable law or in areas designated as smoking areas by the City.

**Sec. 62-503. – Camping on Public Property.**

It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

**Sec. 62-504. – Storage of Personal Property on Public Property.**

It shall be unlawful for any person to store personal property, including camp facilities and camp paraphernalia on any public property within the city, except as otherwise provided herein or mandated by applicable law.

**Sec. 62-505. – Exceptions.**

This article shall not apply to any person smoking, camping, or storing personal property on any public property designated by the city for such purposes. The City Council may, by resolution or ordinance, establish one or more specified areas of public property for any or all of such purposes, either on a temporary or permanent basis. Notwithstanding the regulations in this article, the City Manager and Chief of Police are hereby authorized to promulgate additional rules and policies for the implementation of this ordinance in a manner consistent with state and federal law. ”

**SECTION 3.** Except as expressly amended and repealed hereby, all other provisions of Chapter 62 of the City of Azusa Municipal Code shall remain in full force and effect.

**SECTION 4.** Based on the entire record before the City Council, and all written and oral evidence presented to the City Council, the City Council hereby finds that this ordinance is exempt from review under the California Environmental Quality Act (“CEQA”), pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**SECTION 5.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof. By enacting this Ordinance, the City ordains that nothing herein shall be deemed to conflict with or duplicate federal or state law, or otherwise or to license any activity that is prohibited thereunder except as mandated by such laws.

**SECTION 6.** The City Clerk shall certify the passage of this Ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

**SECTION 7.** This Ordinance shall become effective thirty days from and after its adoption.

**PASSED, APPROVED and ADOPTED** this 2<sup>nd</sup> day of November, 2015.

/s/Joseph Romero Rocha  
Mayor

**ATTEST:**

/s/Jeffrey Lawrence Cornejo, Jr.  
City Clerk

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       ) ss.  
CITY OF AZUSA                    )

**I HEREBY CERTIFY** that the foregoing Ordinance No. 2015-O12, was duly introduced and placed upon its first reading at a regular meeting of the Azusa City Council on the 19<sup>th</sup> day of October, 2015 and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the Azusa City Council on the 2<sup>nd</sup> day of November, 2015 by the following vote to wit:

AYES:            COUNCILMEMBERS: GONZALES, CARRILLO, MACIAS, ALVAREZ, ROCHA  
NOES:            COUNCILMEMBERS: NONE  
ABSENT:          COUNCILMEMBERS: NONE

/s/Jeffrey Lawrence Cornejo, Jr.  
City Clerk

**APPROVED AS TO FORM:**

/s/Best Best & Krieger, LLP  
City Attorney