

ORDINANCE NO. 912

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, AMENDING PROVISIONS OF THE DUARTE MUNICIPAL CODE TO COMPLY WITH STATE LAW, IMPROVE CITY ENFORCEMENT OF MUNICIPAL CODE VIOLATIONS AND DUE PROCESS, AND TO ENHANCE PUBLIC SAFETY, HEALTH AND WELFARE

WHEREAS, the City of Duarte (“City”) is authorized by California Constitution, Article XI, Section 7 to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws and that serve and protect the health, safety or welfare of the public; and

WHEREAS, Government Code section 38771 authorizes the City to declare what constitutes a public nuisance; and

WHEREAS, Government Code section 38772 authorizes the City to provide for the abatement of graffiti in the City, as well as penalties for such nuisances and a method to recover costs of clean up and the abatement process; and

WHEREAS, the preservation of City community safety, health, welfare, aesthetics and character requires amendments to the Duarte Municipal Code to regulate and provide for enforcement of behaviors and conditions that negatively impact community health, safety and welfare, as well as public peace; and

WHEREAS, disturbances to public peace and safety, and damage to public and private property through vandalism and other behaviors diminish enjoyment of the community and public spaces, harm residents and businesses, and cause the City and its residents damage and financial costs, as well as emotional harm; and

WHEREAS, the City Council finds and declares that current provisions of the Duarte Municipal Code do not adequately provide tools to enable the City to address current problems facing the community, as well as protecting public peace, health and safety, requiring specific amendments to the Duarte Municipal Code in order to accomplish these goals; and

WHEREAS, changes in state and federal statutes and case law require updates to the Duarte Municipal Code in order to comply with changes in the law; and

WHEREAS, the City desires to continue improving its processes to provide for effective, fair and efficient enforcement of the Duarte Municipal Code to enhance public health, safety and welfare, and to preserve the community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DUARTE, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The Recitals above are true and correct and incorporated herein by this reference.

SECTION 2: The following sections of the Duarte Municipal Code are amended to read as follows:

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9.24.025 – Possession of open container of an alcoholic beverage container

- (a) No person who has in his or her possession any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, shall enter, be, or remain in any public area, including, but not limited to, any roadway, sidewalk, parking lot, or on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, or on any area immediately adjacent to the licensed and posted premises, or on the premises of, or immediately adjacent to, any business not licensed to sell or consume alcoholic beverages.
- (b) As used in this section, “posted premises” means those premises which are subject to licensure under any retail package off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises and any public sidewalk immediately adjacent to the licensed premises on which clearly visible notices indicate to the patrons of the licensee and parking lot and to persons on the public sidewalk, that the provisions of this section are applicable. This section does not apply to possession an alcoholic beverage on-site of a properly licensed facility in compliance with State law.

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9.24.090 – Enforcement

Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

SECTION 3: Chapter 9.18 of the Duarte Municipal Code is amended to read in its entirety as follows:

Chapter 9.18 – DAMAGE TO PROPERTY

9.18.010 – Legislative purpose

The City Council finds that there is a threat to the public health, safety and welfare in that local property owners and public facilities are experiencing incidents of graffiti and other damage to property which are costly to remove and create a negative image of the City. Neither the City nor private property owners have sufficient resources to constantly remove the graffiti

or repair other damage, and the measures contained in this chapter are necessary to reduce the negative impact of increased graffiti and other damage, and to deter such violations.

9.18.020 - Definitions

For the purposes of this chapter the following definitions shall apply:

“Bona fide evidence of majority and identity” means any document evidencing the age and identity of an individual which has been issued by a federal, state or local government entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued by a member of the armed forces.

“Etchers” means any tool, device and/or other mechanism including, but not limited to, glass etchers, metal etchers, cutting instruments, drill bits or any other instrument that is capable of permanently scratching or otherwise marking any surface including, but not limited to, glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface.

“Graffiti” means any unauthorized inscription, symbol, design and/or configuration of letters and/or numbers written, drawn, scribed, etched, marked, painted, stained, stuck on or adhered by any means whatsoever, to any surface whether publicly or privately owned, including but not limited to, trees, signs, mailboxes, poles, fixtures, utility boxes, trash containers, walls, windows, roofs, paths, fences, walks, streets or pavement, under/overpasses, tunnels, bridges, trestles, drainage facilities, buildings and/or the interior or exterior of any other structure or surface. The term “graffiti” shall include the commonly used term “tagging” and those two terms shall be interchangeable as used in this Chapter.

“Minor” means any person under the age of eighteen (18) years old.

“Paint stick” means any device which contains any substance, solid or liquid, including, but not limited to, any form of any substance commonly known as paint, stain, ink, wax, epoxy and/or any other similar substance which can be applied to any surface by such means as applying pressure to and/or contacting any surface in such a way as to leave any visible mark, which at its broadest width is greater than one-eighth (1/8) inch or which leaves a mark of at least one-eighth (1/8) inch.

9.18.030 – Damaging property in the City

It is unlawful and a public nuisance to willfully mar, injure, damage, destroy or deface, or aids in the marring, injuring, damaging, destroying or defacing of any building or structure whether publicly or privately owned within the City.

9.18.040 – Graffiti prohibited

No person shall place or caused to be placed graffiti on any public or privately-owned property, building or structure, including natural and manmade objects, within the City.

9.18.050 – Determination of liability

Liability of a minor or of any other person for placement of graffiti may be determined by any confession or admission, or any guilty plea, nolo contendere plea, or conviction regarding any violation of the Penal Code relating to graffiti or any other federal, state or local graffiti law relating to graffiti.

9.18.060 – Removal of graffiti

Graffiti may be removed by any of the following methods:

A. Any person who applies graffiti within the City shall have the duty to remove the same within forty-eight (48) hours after notice by the City or the owner of the property involved. The failure of any person to so remove said graffiti shall constitute a violation of this chapter. Where graffiti is applied by anyone under the age of eighteen (18) years, the parent, parents, or legal guardian shall be responsible for such removal or for the payment for removal.

B. The Director of Public Safety or designee is authorized to remove graffiti or other inscribed material from any and all structures and property owned or maintained by the City.

C. Whenever the Director of Public Safety or designee determines that graffiti is located on property within the City and is within view of the public or adjoining properties, he or she is authorized to provide for the removal of the graffiti at the City's sole expense, without reimbursement from the property owner upon whose property the graffiti has been applied, after securing consent from the property owner.

D. If the City is unable to obtain the property owner's consent to remove the graffiti pursuant to subsection C of this section, the City may commence abatement proceedings pursuant to chapter 9.32 of this Code, including seeking costs as provided in that chapter.

9.18.070 – Parental and minor liability

Pursuant to California Civil Code Section 1714.1(b) and Government Code Section 38772, each parent or legal guardian having custody and control of a minor who places graffiti on any public or privately owned structure, building, or property, including natural and manmade objects within the City, shall be jointly and severally liable with such minor for any and all costs incurred in connection with the removal of any graffiti caused by the minor, including all abatement costs, attorneys' fees, court costs, removal costs, costs of repair and/or replacement, and the law enforcement costs incurred by the City in identifying and apprehending the minor. The liability of each parent or guardian shall not exceed the amount set by the California Judicial Council in accordance with California Civil Code Section 1714.1(c). Such liability shall be a

personal obligation of each parent or guardian and shall constitute a lien or special assessment on property owned by each parent or guardian pursuant to chapter 9.32 of this Code. The City is authorized to initiate legal action to enforce this section, or to recover these costs by any other means provided by law. Disposition of a criminal prosecution relating to placement of graffiti does not preclude the City from seeking full cost recovery as provided herein.

9.18.080 – Liability of nonminors

Pursuant to Government Code Section 38772, any person who places graffiti on any public or privately owned structure, building, or property, including natural and manmade objects within the City, shall be personally liable for any and all costs incurred in connection with the removal of any graffiti caused by that person, including all abatement costs, attorneys' fees, court costs, removal costs, costs of repair and/or replacement, and the law enforcement costs incurred by the City in identifying and apprehending the person. Such liability shall be a personal obligation and shall constitute a lien or special assessment on property owned by such person pursuant to chapter 8.50 of this Code. The City is authorized to initiate a legal action to enforce this section, or to recover these costs by any other means provided by law.

9.18.090 – Enforcement

A. Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

B. Any person who violates this chapter, shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000.00) for each violation. The civil penalty prescribed may be sought in addition to any other remedy, including administrative fines. The City is authorized to seek recovery by any means authorized by law. The parent or legal guardian having custody and control of the minor offender shall be jointly and severally liable with the minor.

C. The remedies provided in this chapter are intended to be cumulative. Nothing in this chapter shall be deemed to prevent the City from commencing any other action or proceeding to enforce this chapter in addition to or as alternatives to the proceedings set forth herein.

9.18.100 – Treble damages for second or subsequent judgment.

Upon entry of a second or subsequent civil, administrative or criminal judgment within a two (2) year period finding an owner of property, minor or other person is responsible for a violation of this chapter, the City shall be entitled to treble damages pursuant to Government Code section 38773.7.

9.18.110 – Rewards

The City Council may, in its sole discretion, by resolution, establish a reward for information leading up to the identification, apprehension and conviction of any person who violates this chapter. Said resolution may require that the offender reimburse the City for any

reward paid, and place responsibility for reimbursement upon the parent(s) or legal guardian(s) of any minor so convicted.

SECTION 4: Sections 11.04.061 and 11.04.062 of the Duarte Municipal Code are deleted in their entirety.

SECTION 5: Chapter 12.22 of the Duarte Municipal Code is added to read as follows:

CHAPTER 12.22 – STORAGE OF PERSONAL PROPERTY IN PUBLIC AREAS

12.22.010 – Storage of personal property.

It is unlawful for any person to dump, place, deposit, or store personal property in or on any public space, property or right-of-way including, but not limited to, sidewalks, easements, private and public City streets and highways and parks, except as otherwise expressly permitted by this Code or state law.

12.22.020 – Definitions

For the purposes of this chapter the following definitions shall apply:

- (a) “Abandoned personal property” means any personal property that the owner surrenders, relinquishes, or disclaims, or, to a reasonable person, appears to be personal property that the owner surrenders, relinquishes, or disclaims.
- (b) “Park” means any park, reservation, playground, recreation center or any other area in the City owned, maintained, or used by the City for the purpose of public rest, play, enjoyment, active or passive recreation, or assembly, and shall include all buildings, parking spaces, and structures located thereon or therewith.
- (c) “Personal property” means tangible personal belongings. Tangible personal belongings include any movable or tangible thing that is subject to ownership; property or chattels that can be seen, weighed, measured, felt, or touched, such as tents, tarpaulins, bedding, sleeping bags, carts, hammocks, household items, luggage, backpacks, cooking utensils, money, legal or prescribed medication, documents, clothing, and books.
- (d) “Public area” means and includes all property that is owned, managed or maintained by the City and shall include, but is not limited to, any street, alley, park, public right-of-way, recreational area, any place open to the public view or other place to which the public has access.
- (e) “Public property” means any building, parking structure, parking lot, utility lot, right-of-way, park, or space, owned or maintained by the City, the County of Los Angeles, the State of California, the United States government or other public entity.

- (f) “Right of way” means the surface and space in, on, above, through and below any real property in which the City has a legal or equitable interest, whether held in fee or any other estate or interest, or as a trustee for the public, including, but not limited to, any street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, curb, parkway, river, tunnel, viaduct, bridge, public easement, or dedicated easement.
- (g) “Store,” “stored,” “storing” or “storage” means to put personal property aside or accumulate for use when needed, to put for safekeeping and/or to place or leave in a public area. Personal property is stored if, on a daily or regular basis, the property is within 500 feet of the same location, including the former location of the personal property.
- (h) “Street” shall include every highway, avenue, lane, alley, court, place, square, sidewalk, parkway, curb, bikeway, or other public way in this City which has been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.
- (i) “Unattended” means no person is present with the personal property who asserts or claims ownership over the personal property. Conversely, property is considered “attended” if a person is present with the personal property and the person claims ownership over the personal property.
- (j) “Unclaimed personal property” means personal property that is within the custody of the City and that has not been claimed within a period of ninety days by its owner or finder.

12.22.030 – Prohibition on the storage of personal property

- (a) It is unlawful and a public nuisance for any person to store personal property in any of the following areas, except as otherwise approved by the City manager or designee or as permitted by this Code or state law:
 - (1) Any public or private street or right-of-way, including sidewalks, bus stops, and public landscaping; or
 - (2) Any public property improved or unimproved; or
 - (3) Any parking lot, yard, building setback, vacant land, open space, park, or any other area open to, accessible to, or controlled by the public.
- (b) Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.
- (c) Personal property stored in violation of this section is subject to impoundment and disposal as provided in this chapter.

12.22.040 – Notice, impound, reclamation, and disposal process

- (a) Any personal property identified by any law enforcement officer, Code enforcement officer, or the City Manager or designee, that is unattended or stored in violation of this chapter may be seized, impounded, and stored in accordance with the following procedure:
 - (1) Pre-Removal Notice: Pre-removal notice will be deemed as provided if a written notice is provided to the person who is storing or claims ownership of the personal property, or is posted conspicuously on or near the personal property. The notice shall contain the following:
 - (A) A general description of the personal property to be removed;
 - (B) The location from which the personal property will be removed;
 - (C) The date and time the notice was posted;
 - (D) A statement that the personal property is being stored in violation of section 12.22.030;
 - (E) A statement that the personal property will be removed and impounded if not removed within 24 or 48 hours;
 - (F) A statement that moving the personal property to another location in the public area will not constitute a removal of the personal property;
 - (G) The contact information for any City designee to answer questions regarding the stored personal property, including claiming such property; and
 - (H) A statement warning the owner that the personal property may be discarded if not claimed within 90 days of removal.
 - (2) 24/48-Hour Pre-Removal Notice: Any personal property stored in any right-of-way will be subject to removal 24 hours after the pre-removal notice is posted. Any personal property stored in any prohibited area not in a right-of-way will be subject to removal 48 hours after the pre-removal notice is posted.
 - (3) Post-Removal Notice: Upon removal of personal property stored in violation of this chapter, written notice of the removal and impoundment of the personal property shall be conspicuously posted in the area where the personal property was removed or provided to the owner of the personal property. The written notice shall contain the following:
 - (A) A general description of the personal property removed;

- (B) The date and approximate time the personal property was removed;
 - (C) A statement that the personal property was stored in violation of section 12.22.030;
 - (D) The location where the removed personal property can be retrieved, including the address, telephone number, and an internet website address, if available, from which the owner may obtain information as to the removal and reclamation of the personal property; and
 - (E) A statement that the personal property may be discarded if not reclaimed within 90 days of the removal and impoundment.
- (b) The owner of personal property that has been removed and impounded will be permitted to retrieve the impounded personal property.
- (1) The owner of impounded personal property is permitted to reclaim their personal property by contacting the City through one of the contact methods provided in the Pre-Removal and Post-Removal Notices to make arrangements for the retrieval of their property.
 - (2) The owner of the personal property may repossess the personal property upon submitting satisfactory proof of ownership during the 90 day holding period. A person may establish ownership by, among other methods, describing the location where the personal property was found and providing a specific and detailed description of the personal property, and providing valid proof of identity if that is required to determine ownership. If ownership cannot be determined to the satisfaction of the Director of Public Safety or designee, he or she may refuse to return the personal property until ordered to do so by a court of competent jurisdiction; however, the City shall continue to hold the personal property until such a determination is made.
 - (3) Reasonable accommodations will be made if the owner of impounded personal property is unable to reclaim their personal property within the 90 day period provided in this chapter.
- (c) The City may impound personal property seized in any manner designed for safe keeping of such personal property.
- (d) After the passage of 90 or more days, the property may be appropriated to the City for the City's use upon order of the City manager or designee, or the City may dispose of unclaimed personal property. The City shall not be required to undertake any search for, or return, any impounded personal property stored for longer than ninety days. The City shall maintain records of the dates impounded personal property was removed and discarded.

12.22.050 – Evidence of crimes, contraband, and hazardous waste

- (a) Section 12.22.040 does not apply to any personal property that constitutes evidence in a crime, such as weapons, ammunition, controlled substances, stolen property, or any other property which constitutes evidence of a crime, and such property may be seized without notice. The nature of the property and its location will be documented, and possession of such property may be transferred to local law enforcement for processing and investigation.
- (b) Section 12.22.040 does not apply to any unattended personal property which presents an immediate threat to public health or safety, is contraband, is hazardous waste, or which clearly constitutes waste, refuse or trash, and may be disposed of without notice.
- (c) Section 12.22.040 does not apply to any unattended personal property that is reasonably believed to be intentionally abandoned or discarded, or reasonably believed to be trash, refuse, waste, litter, junk, debris, detritus or rubbish, and such property may be disposed of without notice.
- (d) Section 12.22.040 does not apply to any medical waste, including, but not limited to, syringes, medical waste, medical cutting instruments, or any items whose cleanliness or condition of sanitation pose a threat to the health and safety of individuals in contact with such material.

12.22.060 – Costs of seizure and disposal

The City may require the owner of impounded personal property to pay the reasonable costs of storage of such personal property seized pursuant to this chapter. The owner of impounded personal property may submit a request for a waiver of such costs due to a financial hardship. Payment of any reasonable costs pursuant to this section is not a prerequisite for the return of impounded personal property.

SECTION 6: Chapter 9.21 of the Duarte Municipal Code is added to read in its entirety as follows:

Chapter 9.21 – AGGRESSIVE PANHANDLING

9.21.010 – Purpose and Intent

(a) It is the intent of the Council in enacting the ordinance codified in this chapter to preserve and improve the quality of life for those in the City, and to protect the safety of the general public against certain abusive conduct of persons engaged in aggressive panhandling by imposing reasonable restrictions on aggressive, intrusive, or unsafe panhandling while respecting the constitutional rights of free speech for all citizens.

(b) This ordinance is not intended to, and does not, prohibit non-aggressive panhandling and is limited to aggressive panhandling on public property.

(c) Aggressive and intrusive panhandling includes unwanted physical contact of pedestrians and others or the intentional blocking of pedestrian and vehicular traffic. The City Council finds that an increase in aggressive panhandling in the City has become extremely disturbing and disruptive to residents and businesses, and contributes to the loss of access to and enjoyment of public places, and to an enhanced sense of fear, and disorder. Aggressive panhandling unquestionably threatens the public's safety and welfare. Aggressive panhandling also undermines the public's inherent right to use and enjoy public places without being accosted by or be in reasonable apprehension of persons demanding money or goods in a forceful manner. The actions of individuals engaged in aggressive panhandling likewise can create a climate of intimidation and anxiety among members of the public, who when confronted, reasonably and legitimately fear harm if they refuse to give in to the solicitations of individuals engaged in this type of conduct. Aggressive panhandling also reflects behaviors that are otherwise illegal, such as assaulting persons, and is unrelated to the content of speech, or are these regulations intended to regulate in any manner the content of speech.

(d) Aggressive panhandling usually includes approaching or following pedestrians, the use of abusive language, unwanted physical contact, or the intentional blocking of pedestrians. Such activity often carries with it an implicit threat to both person and property.

(e) The City Council further finds that restricting aggressive panhandling on public property will provide a balance between the rights of panhandlers and the rights of persons who wish to decline or avoid such aggressive panhandlings and will help avoid or diminish the threat of violence in such unwarranted and unavoidable confrontations while allowing all members of the public to peacefully utilize and enjoy public property.

(f) The restrictions contained herein are neither overbroad nor vague and are narrowly tailored to very specific conduct occurring on public property and focused to serve a substantial governmental interest. Furthermore, in enacting this legislation, the City Council recognizes the inherent availability of warnings and alternative administrative and civil remedies which may be appropriate remedies for violations of this law.

9.21.020 – Definitions

For the purpose of this chapter, the words set out in this section shall have the following meanings:

- (a) "Aggressive panhandling" means any of the following:
 - (1) Approaching or speaking to a person, or following a person before, during or after soliciting, if that conduct is likely to cause a reasonable person to:
 - a. Fear bodily harm to oneself or to another, damage to or loss of property, or
 - b. Otherwise be intimidated into giving money, goods, or other things of value;

- (2) Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;
 - (3) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact in the course of soliciting, asking or begging;
 - (4) Using violent or threatening gestures toward a person before, during or after soliciting; or
 - (5) Persisting in closely following or approaching a person, after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the panhandler.
- (b) "Bona fide charity" or "charity" means any social, religious, educational, sports, arts, or other similar bona fide non-profit organization not engaged in any criminal activity or enterprise for which financial donations are collected.
 - (c) "Panhandling" means to ask for or solicit money, property, or other favor, regardless of value.

9.21.030 – Aggressive panhandling

- (a) It shall be unlawful for any person to engage in any aggressive panhandling on any public property, including any City park, City building, and public street, highway, sidewalk, or public right of way.
- (b) This chapter does not apply to any bona fide charity or person that engages in panhandling that is not aggressive, as defined in this chapter.
- (c) This chapter does not apply to protected speech activities or other activity protected by law.

9.21.040 – Enforcement

Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

SECTION 7: Chapter 9.22 of the Duarte Municipal Code is added to read in its entirety as follows:

Chapter 9.22 – PUBLIC NUDITY

9.22.010 – Definitions

For the purposes of this chapter, the following additional definitions shall apply:

- (a) “Nudity,” “nude,” and “nudity” means exposure of the genitals, pubic area, anus, or buttocks with less than a fully opaque covering; or exposure of a female breast below a horizontal line across the top of the areola at the areola’s highest point with less than a fully opaque covering.
- (b) “Public property” means any property owned or controlled by the City, including, but not limited to, any building, street, sidewalk, right of way, bike path, alley, parking lot, plaza, park, playground, pool, body of water, open space or other place open to the public owned or maintained by the City, the County of Los Angeles, the State of California, the United States government, or other public entity.

9.22.020 – Public nudity prohibited

- (a) No person shall be nude upon public property or upon any portion of private property that is visible from public property.
 - (1) Exceptions. This section shall not apply to:
 - (2) Children under the age of ten (10) years;
 - (3) The exposure of a breast while breastfeeding a nursing child;
 - (4) Nudity within a fully enclosed structure intended to allow brief nudity, such as a bathroom, locker room, dressing room, or changing room;
 - (5) As expressly approved in writing by the City in conformance with this Code; and
 - (6) Otherwise as permitted by applicable law.

9.22.030 – Enforcement

Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

SECTION 8: Chapter 9.23 of the Duarte Municipal Code is added to read in its entirety as follows:

Chapter 9.23 – TRESPASSING AND FIGHTING

9.23.010 – Definitions

For the purposes of this chapter, the following additional definitions shall apply:

- (a) “Public property” means any building, parking structure, parking lot, utility lot, right-of-way, park, or open space, owned or maintained by the City, the County of

Los Angeles, the State of California, the United States government, or other public entity.

- (b) “Trespass” and “trespassing” means to enter, occupy, or encroach upon any building, structure, open space, enclosed or unenclosed land, without the consent of the owner or person in lawful possession of said property.

9.23.020 – Trespassing Prohibited

- (a) No person shall remain upon any private property or business premises, after being notified by the owner, owner’s agent, lessee, or by a peace officer acting at the request of any of the above to remove themselves and their possessions therefrom. For purposes of this section a lessee includes a tenant in lawful possession of real property and a licensee.
- (b) No person, without permission from the owner, owner’s agent, or lessee, shall enter upon the private property or business premises after having been notified by the owner, owner’s agent, or lessee to keep off or keep away therefrom.
- (c) No person shall enter or remain upon posted private property without the permission of the owner, owner’s agent, or lessee of such posted property or premises.
- (d) No person shall enter or remain upon any City property, building, yard, parking lot, or other City owned or operated facility except during business hours, or upon request or invitation of any City employee or agent acting within the capacity of a City employee or agent, or after being informed by any City employee or a peace officer acting on behalf of the City to remove themselves and their possessions therefrom.
- (e) Exceptions. This section shall not apply in any of the following instances:
 - (1) Where its application results in a violation of law or where preempted by law;
 - (2) Where its application would result in an interference with or inhibition of lawful peaceful labor picketing or other lawful labor activities;
 - (3) Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech such as (but not limited to) peaceful expressions of political or religious opinions, not involving dangerous or hazardous personal conduct;
 - (4) Where the person who is in or upon another’s private property or business premises is there under a legal right, including but not limited to landlord-tenant disputes, marital disputes, child custody disputes or visitation disputes; or

- (5) Public camping, which is separately regulated by this Code and State law.
- (f) As used in this section, “posted property” means any property at each corner of which, at each entrance to which, a sign is posted three feet above grade and said sign is composed of wood, metal or other equally substantial material, the face of which is not less than one square foot in area, and upon which, in legible letters not less than one inch in height, appear the words “PRIVATE PROPERTY – NO TRESPASS.” In addition, the sign may contain such other words as may be desired, indicating that trespassers are subject to prosecution. Where the area of such property exceeds one acre, the notice shall also be posted at multiple locations which are at intervals of not more than 300 feet along or near the boundaries thereof.

9.23.030 – Continuing Trespass Enforcement Authorization

The owner or responsible party of real property located within the City may request continuing enforcement of section 9.23.010 in their absence. Such request shall be made in writing to the Los Angeles County Sheriff’s Office or Duarte Public Safety Department pursuant to that office’s procedures.

9.23.040 – Fighting in Public Prohibited

It is unlawful for any person to engage in any physical fight, disorderly conduct, or altercation with any other person on any public property or upon the premises of another within the City, while in immediate physical possession or any concealed firearm, knife, dirk, bludgeon, or other weapon.

9.23.050 – Fighting on Public Property Prohibited

It is unlawful within the City for any person to engage in fighting on public property.

9.23.060 – Enforcement

Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

SECTION 9: Chapter 9.25 of the Duarte Municipal Code is added to read in its entirety as follows:

Chapter 9.25 – PUBLIC URINATION AND DEFECATION

9.25.010 – Prohibited

It is unlawful for any person to urinate or defecate in a public place or publicly owned property other than a restroom, or in a place open to public view, or upon the private property of another without the consent of the owner or person in lawful possession.

9.25.020 – Enforcement

Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

SECTION 10: Chapter 9.26 of the Duarte Municipal Code is added to read in its entirety as follows:

Chapter 9.26 – POSSESSION OF CATALYTIC CONVERTERS

9.26.010 – Purpose

Federal law requires catalytic converters on all motor vehicles, and due to their high costs, catalytic converters have been the subject of significant theft and an attractive target for thieves. The victims of catalytic converter theft in the City experience significant financial hardship, a loss of security, and the inconveniences of not having access to their automobile while their catalytic converters are replaced. The purpose and intent of this chapter is to prohibit unlawful possession of catalytic converters within the City to protect citizens and their vehicles from potential damage and loss of their use and enjoyment of their vehicles stemming from this criminal activity.

9.26.020 – Unlawful possession of catalytic converters prohibited

- (a) It is unlawful to possess any catalytic converter that is not attached to a vehicle unless the possessor has valid documentation or other proof to verify they are in lawful possession of the catalytic converter.
- (b) For purposes of this section, “lawful possession” includes being the lawful owner of the catalytic converter, the vehicle from which it came, or in possession of the catalytic converter with the lawful owner’s written consent. It is not required to prove the catalytic converter was stolen to establish the possession is not a “lawful possession.”
- (c) For purposes of this section, “documentation or other proof” means written document(s) that clearly identify the vehicle from which the catalytic converter originated and includes but is not limited to the following document types: bill of sale from the original owner identifying the catalytic converter, documentation from an auto-body shop proving the owner relinquished the catalytic converter to the auto-body shop, verifiable electronic communication from the previous owner to the possessor relinquishing ownership of the catalytic converter, vehicle registration associated with the catalytic converter containing an etched associated license plate number or vehicle identification number. The validity of documentation or other proof is based on the totality of the circumstances.

9.26.030 – Enforcement

- (a) Any violation of this chapter is a public nuisance that may be abated by any means provided in this Code, including administrative citations, civil action and injunctive relief, and is also punishable as provided in sections 1.04.090 and 1.04.100 of this Code.

- (b) Each and every violation of this chapter, including each catalytic converter that is unlawfully possessed, shall constitute a separate violation, a public nuisance, and shall be subject to all remedies and enforcement measures authorized by this Code.

SECTION 11: If any section or provision of this Ordinance is for any reason held to be invalid, unconstitutional, illegal, or unenforceable by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, then such section or provision shall be severed and shall be inoperative, and the remainder of this Ordinance shall remain in full force and effect. The City Council declares that it would have adopted each section of this Ordinance independent of the other sections.

SECTION 12: The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections 15060(c)(2) and 15060(c)(3) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, the activity is not a project as defined in Section 15378 of the CEQA Guidelines , and the ordinance has no potential for resulting in physical change to the environment, directly or indirectly. Therefore, no environmental assessment is required or necessary.

SECTION 13: This Ordinance shall become effective thirty (30) days following its second reading.

THE FOREGOING ORDINANCE IS PASSED, APPROVED, AND ADOPTED by a vote of no less than a majority of City Council at a regular meeting of the City Council of the City of Duarte held on the 25th day of October, 2022.

Margaret Finlay
Mayor

APPROVED AS TO FORM:

Thai Viet Phan
City Attorney

ATTEST:

Annette Juarez
City Clerk

