

## ORDINANCE NO. 2314

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA AMENDING SECTIONS 16-17 AND 16-18 OF THE WEST COVINA MUNICIPAL CODE TO PROHIBIT SMOKING IN PUBLIC PARKS AND PUBLIC PLACES

- WHEREAS,** pursuant to Article XI, Section 7 of the California Constitution the City of West Covina has the authority to enact and enforce ordinances for the protection of the health, safety and welfare of its residents;
- WHEREAS,** subdivision (a) of Section 7597 of the California Government Code prohibits smoking in public buildings and extends the smoking ban to an outdoor area within twenty feet of a main exit, entrance, or operable window of public buildings;
- WHEREAS,** subdivision (b) of Section 7597 of the California Government Code authorizes cities to enact bans on smoking that are more restrictive than those provided for in subdivision (a); and
- WHEREAS,** Section 11362.79(a) provides that a qualified patient or holder of a medical marijuana card may not engage in the smoking of medical marijuana in any place where smoking is prohibited by law;
- WHEREAS,** on November 8, 2016, the People of the State of California enacted Proposition 64, the Adult Use of Marijuana Act (“AUMA”) allowing for the cultivation and use of marijuana for recreational purposes;
- WHEREAS,** tobacco use causes death and disease and continues to be an urgent public health challenge;
- WHEREAS,** secondhand smoke has been repeatedly identified as a health hazard by the United States Surgeon General, the California Air Resources Board, and the California Environmental Protection Agency;
- WHEREAS,** secondhand smoke causes death and disease;
- WHEREAS,** tobacco use and exposure to secondhand smoke impose great social and economic costs, while laws restricting the use of tobacco products have recognizable benefits to public health and medical costs;
- WHEREAS,** exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur at significant levels outdoors;

**WHEREAS,** studies have shown that a person may have to move nearly twenty-three (23) feet away from the source of the smoke to be completely free from exposure to secondhand smoke in outdoor places;

**WHEREAS,** cigarette butts are a major and persistent source of litter, and pose a health threat to young children;

**WHEREAS,** existing studies on electronic smoking devices' (also referred to herein as "e-cigarettes") vapor emissions and cartridge contents have found a number of dangerous substances, and concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;

**WHEREAS,** the State of California's Tobacco Education and Research Oversight Committee opposes the use of e- cigarettes in all areas where tobacco products are prohibited;

**WHEREAS,** use of e-cigarettes undermines compliance with smoking regulations;

**WHEREAS,** the City Council of the City of West Covina intends to provide for public health, safety, and welfare by: a) discouraging the inherently dangerous behavior of smoking; b) protecting the public from exposure to secondhand smoke; c) reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and d) affirming and promoting a healthy environment in the City of West Covina;

**WHEREAS,** this ordinance does not constitute a "project" as defined under the California Public Resources Code section 21065 and Title 14 California Code of Regulations section 15378 in that the code provision will not result in a direct physical change in the environment nor in a reasonably foreseeable indirect physical change in the environment.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of West Covina as follows:

**SECTION 1.** Section 16-17 (Definitions) of the West Covina Municipal Code is hereby amended to include the following terms and definitions:

*Electronic smoking device* means an electronic or battery- operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances, whether as a vapor or a gas. Electronic Smoking Device includes any such device, whether manufactured, distributed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, or any other product name or descriptor. Electronic Smoking Device does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

*Maintenance district open spaces* means the hillsides adjacent to residential developments that are maintained by the City with tax funds provided by the residential developments and that are open to the public.

*Marijuana* shall have the same meaning as that set forth in California Health & Safety Code Section 11018.

*Medical marijuana* means marijuana used for medical purposes in accordance with California Health and Safety Code section 11362.5.

*Open spaces* means the paseos, maintenance district open spaces and green spaces, with or without walking paths, accessible to the public, and that are owned, operated or maintained by the City of West Covina or any of its related bodies, or over which the public has an easement, license or other right to access and use.

*Paseos* means the sidewalk/green belt systems that connect parts of communities and city parks within the Woodside Village Master Plan.

*Public facility* means any building or structure that is owned, leased or operated by the City of West Covina, and shall include the building or structure's outdoor areas and parking.

*Smoke* or *smoking* means and includes any of the following:

(1) The consumption of tobacco, marijuana, medical marijuana, or any other weed, plant, or substance by intentionally burning, inhaling, or ingesting the tobacco, marijuana, medical marijuana or other weed, plant or substance. The definition of smoking also includes the intentional consumption of gases, particles or vapors released into the air as a result of combustion, electrical ignition or vaporization, including from an electronic smoking device, when the purpose of the combustion, electrical ignition or vaporization is the intentional inhalation of the gases, particles or vapors for the consumption of tobacco, marijuana, or any other weed, plant, or substance. Smoke does not mean the combustion of material solely for olfactory purposes that does not contain any tobacco, nicotine or marijuana. It also does not mean the emissions from a product specifically approved by the United States Food and Drug Administration for use in mitigating, treating or preventing disease.

(2) The holding or carrying of a lighted smoking device; or

(3) Emitting or exhaling the smoke directly from a cigar, cigarette, pipe, any other lighted smoking device or an electronic smoking device.

**SECTION 2.** The following definitions in Section 16-17 (Definitions) of the West Covina Municipal Code are hereby repealed and replaced with the following definitions:

*Public place* shall include but not be limited to the West Covina Civic Center, open spaces and public facilities.


**SECTION 3.** Section 16-18 (Unlawful Acts) of the West Covina Municipal Code is hereby amended to add a subsection as follows:

m) Smoking is prohibited in public parks and public places within the City of West Covina, which have been designated and posted as a No Smoking area by the city by signs of sufficient number and posted in such locations as to be readily seen by persons within such area, except for areas which have been designated by the City Council and posted as "Smoking Area."

**SECTION 4.** If any part of this Ordinance, or its application to any person or circumstance, is held to be invalid, the remainder of the ordinance, including the application or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

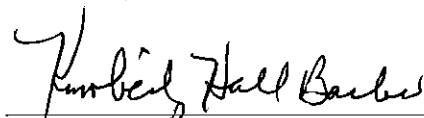
**SECTION 5.** The City Clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) days after its final adoption.

**PASSED, APPROVED AND ADOPTED** on this 7<sup>th</sup> day of March, 2017.



Corey Warshaw  
Mayor

**APPROVED AS TO FORM:**



Kimberly Hall Barlow  
City Attorney

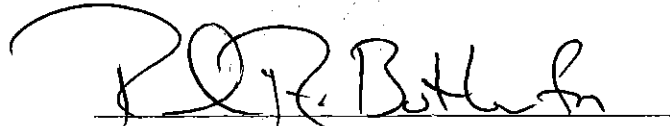
**ATTEST:**



Nickolas S. Lewis  
City Clerk

I, NICKOLAS S. LEWIS, CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 21<sup>st</sup> day of February, 2017. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 7<sup>th</sup> day of March, 2017, by the following vote:

AYES: Toma, Wu, Warshaw  
NOES: Johnson, Spence  
ABSENT: None  
ABSTAIN: None



Nickolas S. Lewis  
City Clerk