

ORDINANCE NO. _

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, ADDING CHAPTER 19 ENTITLED "SMOKING IN MULTI-FAMILY DWELLINGS" TO DIVISION 4 OF THE TORRANCE MUNICIPAL CODE ENTITLED "PUBLIC HEALTH AND WELFARE"

RECITALS

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat; and

WHEREAS, secondhand smoke has repeatedly been identified as a health hazard; and

WHEREAS, exposure to secondhand smoke causes death and disease; and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke; and

WHEREAS, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "third hand smoke" a potential health hazard; and

WHEREAS, smoking is a leading cause of fire deaths and fire-related injury, and contributes to fire-related health inequities; and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposures; and

WHEREAS, several studies have confirmed that smoke free multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing; and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities; and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children; and

WHEREAS, there are significant savings from adopting a smoke free multi-unit housing policy; and

WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smoke free policies in multi-unit residences; and

WHEREAS, secondhand smoke can seep under doorways and through wall cracks; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

WHEREAS, California law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking within rental units is not prohibited by California law; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance.

NOW, THEREFORE, the City Council of the City of Torrance does hereby ordain as follows:

SECTION 1

The City Council of the City of Torrance hereby finds and determines that all the above Recitals are true and correct and incorporates such Recitals into this Ordinance.

SECTION 2

Chapter 19 is added to Division 4 of the Torrance Municipal Code to read in its entirety as follows:

“CHAPTER 19

SMOKING IN MULTI-FAMILY DWELLINGS

419.1.010 PURPOSE AND INTENT.

It is the purpose and intent of the City Council of the City of Torrance to prohibit smoking in and around Multi-Unit Residences to protect the health, safety, and general welfare of residents within the City of Torrance.

419.1.020 DEFINITIONS.

Except as otherwise expressly set forth herein, the following words and terms as used in this Chapter shall have the following meanings:

- a) "Adjacent Unenclosed Property" means any Unenclosed Area of property, publicly or privately owned, that abuts a Multi-Unit Residence, but does not include a Lot containing a single-family home.
- b) "Cannabis" has the meaning set forth in California Business and Professions Code section 26001, as that section may be amended from time-to-time.
- c) "City" means the City of Torrance or its designated representative.
- d) "City Manager" means the City Manager of the City of Torrance, or his or her designee.
- e) "Common Area" means every Enclosed Area and every Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, balconies, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.
- f) "Department" means the Community Development Department of the City of Torrance and its authorized representatives, designees, or agents.
- g) "Director" means the Community Development Director of the City.
- h) "Electronic Smoking Device" means any product containing or delivery nicotine or any other substance, whether natural, synthetic, or analogue, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic smoking device includes but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, e-cigarillos, vaping devices, mods, tank systems, e-hookah, or under any other product name or descriptor. Electronic smoking device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.
- i) "Enclosed Area" means all space between a floor and a ceiling that is bounded by walls, doorways, vegetation, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes but is not limited to any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

- j) "Enforcement Officer" means any Police Officer, Code Enforcement Officer, Environmental Quality Officer, or other personnel employed by the City and designated by the City Manager.
- k) "Landlord" means any Person or agent of a Person who owns, manages, or is otherwise legally responsible for a Unit in a Multi-Unit Residence that is leased to a residential tenant, except this term does not apply to a tenant who sublets their Unit.
- l) "Lot" means a separate parcel of land shown and identified as such on the records of the county recorder or on the final map of an approved and recorded subdivision.
- m) "Multi-Unit Residence" means a Lot with two or more Units, including, but not limited to, apartments, townhomes, condominium complexes, senior and assisted living facilities, and long-term health care facilities; or a Lot with a Unit attached to another Unit on an adjacent Lot, including but not limited to attached townhomes. For the purpose of determining whether a property is a Multi-Unit Residence, the following do not constitute "Units": hotels; single-family homes; duplexes on a single-family Lot, accessory dwelling units, as defined by Torrance Municipal Code Section 92.2.10(b)(1); junior accessory dwelling units, as defined by Torrance Municipal Code Section 92.2.11(b)(1); and, mobile homes in a mobile home park, as defined by California Civil Code Section 798.3.
- n) "Nonsmoking Area" means any Enclosed Area or Unenclosed Area in which Smoking is prohibited by this Chapter or other law.
- o) "Person" means any individual, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- p) "Smoke-Free Residence" means a multi-unit residence that complies with the requirements of this Chapter as of 60 days from the effective date of this Chapter.
- q) "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any other device that delivers to a Person nicotine or other substances, including substances derived from Cannabis. "Smoking" includes using an electronic device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral device for the purpose of circumventing the prohibition of Smoking.
- r) "Unenclosed Area" means any area that is not an Enclosed Area.
- s) "Unit" means a personal dwelling space, even one lacking cooking facilities or private plumbing facilities, and includes any associated exclusive use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment unit; a condominium unit; a townhouse; a room in a senior facility; a room in a long-term health care facility, assisted living

facility, or hospital; a room in a hotel or motel; a dormitory room; a room in a single-room occupancy ("SRO") facility; a room in a homeless shelter, residential treatment facilities. This definition does not include a room in an unlicensed group living facility with 6 or fewer residents. This definition does not include accessory dwelling units, as defined by Torrance Municipal Code Section 92.2.10(b)(1); junior accessory dwelling units, as defined by Torrance Municipal Code Section 92.2.11(b)(1); and, mobile homes in a mobile home park, as defined by California Civil Code Section 798.3.

419.1.030 SMOKING PROHIBITION IN MULTI-UNIT RESIDENCE UNITS.

Smoking is prohibited in all Units of a Multi-Unit Residence, including any associated exclusive use Enclosed Areas or Unenclosed Areas, such as a private balcony, porch, deck, or patio.

419.1.040 SMOKING PROHIBITION IN MULTI-UNIT RESIDENCE COMMON AREAS EXCEPT IN DESIGNATED SMOKING AREAS.

- a) Smoking is prohibited in Common Areas of a Multi-Unit Residence, except within a designated Smoking area meeting the following requirements:
 - 1) The designated Smoking area is established by Persons with legal control over a Common Area, such as a Landlord or homeowners' association.
 - 2) The designated Smoking area is:
 - A. An Unenclosed Area;
 - B. At least twenty-five (25) feet from Unenclosed Areas primarily used by children, Unenclosed Areas of K-12 school campuses, and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, and swimming pools, including any accessory features (e.g., seating, water fountains) but not including parking facilities;
 - C. At least twenty-five (25) feet from any doorway, window, opening, or other vent into an Enclosed Area, including an Enclosed Area not regulated by this Chapter.
 - D. No more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
 - E. Clearly marked with a perimeter;
 - F. Identified by conspicuous signs; and

G. Not within any Enclosed or Unenclosed Area where Smoking is otherwise prohibited by this Chapter or other law.

- b) No Person with legal control over a Common Area in which Smoking is prohibited by this Chapter or other law shall permit the presence of ashtrays, ashcans, or other receptacles primarily used for disposal of Smoking waste within the Common Area.

419.1.050 DESIGNATED SMOKING AREA.

- a) No person shall permit Smoking anywhere other than a designated Smoking area.
- b) Smoking is prohibited within twenty-five (25) feet of any doorway, window, opening, or other vent into an Enclosed Area of a Multi-Unit Residence.

419.1.060 TEMPORARILY EXEMPTION

Existing smokers who reside in a Multi-Unit Residence will be temporarily exempted and thus allowed to continue smoking within their unit exclusively (which would not include private balcony, porch, deck, patio, or any other related area attached to the unit), until such a time that the unit becomes vacant, change in occupancy, or two years from the effective date of this Chapter, at which time the unit must be converted to a Nonsmoking unit.

No later than 60 days from the effective date of this Chapter, every Landlord/Person responsible for a Multi-Unit Residence must provide the unit number and name(s) of the person(s) on the lease that will remain as smoking units to the City's Community Development Director. Only those units provided within the required timeframe will be temporarily exempted. Thereafter, by June 30th of each year, until termination of the temporarily exemption, every Landlord/Person responsible for a Multi-Unit Residence must provide an updated list on those units certifying whether they are still designated as smoking units or have converted to smoke-free status. For those units still designated as smoking units, the Landlord/Person must also certify that there has been no change in occupancy to the temporarily exempt unit. If such verification is not provided by June 30th, the originally designated smoking unit will be considered smoke-free unit and thus any continued smoking in the unit will be construed as a violation of this Chapter.

While a Multi-Unit Residence is transitioning to smoke-free status, a Landlord is required to address complaints about second-hand smoke infiltrating units from any temporarily exempted unit. Additionally, all new tenants must be notified in writing that the Multi-Unit Residence still has units that allow smoking within them.

419.1.070 RESPONSIBILITY OF PERSONS WITH LEGAL CONTROL OF NONSMOKING AREAS.

No Person with legal control over any Nonsmoking Area, including property owners, tenants, and subtenants, shall permit Smoking in a Nonsmoking Area in violation of this Chapter.

419.1.080 NOTICE AND SIGNAGE REQUIREMENTS.

- a) No later than 60 days from the effective date of this Chapter, every Person responsible for establishing rules in a Multi-Unit Residence shall deliver to each Unit of a Multi-Unit Residence a written notice meeting the requirements of Section 419.1.080(d).
- b) Beginning 60 days from the effective date of this Chapter, prior to the signing of a lease agreement every Landlord shall provide prospective tenants written notice meeting the requirements of Section 419.1.070(d).
- c) Beginning 60 days from the effective date of this Chapter, prior to any sale every seller of a Multi-Unit Residence or Unit within shall provide the buyer a written notice meeting the requirements of Section 419.1.070(d).
- d) Written notice must provide the following information:
 - 1) Beginning 60 days from the effective date of this Chapter, Smoking is prohibited in all Units, including any associated exclusive use Enclosed Area or Unenclosed Area, such as a private balcony, porch, deck, or patio; and
 - 2) Beginning 60 days from the effective date of this Chapter, Smoking is prohibited in all Common Areas except within specifically designated Smoking areas, if applicable.
- e) Beginning 60 days from the effective date of this Chapter, Persons with legal control over Common Areas shall post and maintain clear and unambiguous “No Smoking” signs in sufficient numbers and locations in Common Areas where Smoking is prohibited by this Chapter or other law. Additionally, signs shall be posted in sufficient numbers and locations in the Multi-Residence to indicate that Smoking is prohibited in all Units. Such signs shall be maintained by the Persons with legal control over the Common Areas. The absence of signs shall not be a defense to a violation of any provision of this Chapter. “No Smoking” signs are not required inside or on doorways of Units.
- f) No Person with legal control over any Nonsmoking Area shall permit Smoking in the Nonsmoking Area, except as provided in Section 419.1.040(a).

419.1.090 LEASE AGREEMENT REQUIREMENTS.

- a) Beginning 60 days from the effective date of this Chapter, every Landlord shall cause all lease agreements for a Multi-Unit Residence regulated by this Chapter to meet the following requirements:
 - 1) The agreement must contain a provision stating all requirements in Section 419.1.070(d).
 - 2) For an agreement in effect on or before the effective date of this Chapter, the agreement shall be amended at the time the unit becomes vacant, is subleased, the original tenant(s) included in the lease no longer occupy the unit, or the original tenant(s) lease ends.
- b) Whether or not a Landlord complies with Section 419.1.080(a), this section shall be implied and incorporated by law into every agreement to which Section 418.1.080 (a) applies and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to said section.
- c) A tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence, or who knowingly permits any other Person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to the Landlord and liable to any occupant of the Multi-Residence who is exposed to Smoke or who suffers damages as a result of the breach.
- d) This Chapter shall not create additional liability for a Landlord to any Person for a tenant's breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Multi-Unit Residence if the Landlord has fully complied with this Section.

419.1.100 EXCEPTION FOR DRUG, DEVICE, OR COMBINATION PRODUCT AUTHORIZED BY UNITED STATES FOOD AND DRUG ADMINISTRATION.

Notwithstanding any provision to the contrary, nothing in this Chapter shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This exception does not apply to tobacco products regulated by the United States Food and Drug Administration.

419.1.110 SMOKING AND SMOKE GENERALLY.

- a) The provisions of this Chapter are restrictive only and establish no new rights for a Person who engages in Smoking. Notwithstanding (1) any provision of this Chapter, (2) any failure by any Person to restrict Smoking under this Chapter, or (3) any explicit or implicit provision of this Chapter that allows Smoking in any place, nothing in the Chapter shall be interpreted to limit any Person's legal rights

under other laws with regard to Smoking, including for example, rights in nuisance, trespass, property damage, personal injury or other legal or equitable principles.

- b) Nonconsensual exposure to Smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of Smoke on residential property is a nuisance and a trespass.

419.1.120 PROHIBITIONS APPLY TO CANNABIS.

California Health and Safety Code Section 11362.3(a)(2) and 11362.79(a), as may be amended or renumbered from time-to-time, prohibits Smoking cannabis wherever Smoking tobacco is prohibited. Notwithstanding Section 419.1.120, the prohibitions on Smoking in Multi-Unit Residence found in this chapter expressly apply to the Smoking of Cannabis.

419.1.130 EDUCATION.

- a) The City shall educate community members about the requirements in this Chapter.
- b) The City shall establish and implement a process for issuing warnings. Each warning shall be accompanied by educational materials explaining the requirements of this Chapter.

419.1.140 PENALTIES AND ENFORCEMENT.

- a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- b) Enforcement of this Chapter shall be the responsibility of City Manager or his/her designee. In addition, the Director or any Enforcement Officer may also enforce this Chapter.
- c) Any violation of this Chapter shall be punishable by administrative citation, or infraction, and subject to fines as prescribed in Section 12.8.050 of the Torrance Municipal Code.
 - 1) The City shall not issue any administrative penalties upon a Person unless they have been issued at least three Notice of Violations. Such notice shall be provided by any means deemed adequate to the City, which includes but is not limited to, physical delivery, delivery by first class mail, delivery by overnight carrier service, or delivery by digital and shall include a copy of this Chapter and a statement describing the section(s) found to be violated.

- 2) The City, at its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid administrative penalties, interest and penalties (e.g., private collection agencies, Franchise Tax Board (FTB) Interagency Intercept Collection (IIC) Program, etc.).
- d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- e) No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this Chapter.
- f) Any Person acting for the interests of itself, its members, or the general public may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this Chapter. Upon proof of the violations, a court shall grant all appropriate relief including awarding actual or statutory damages including court costs and attorney fees and issuing an injunction or conditional judgement.
- g) Enforcement of this Chapter is at the sole discretion of the City. Under no circumstances shall the City have any responsibility or obligation to enforce or seek any legal redress, at law or in equity, for any violation of this Chapter. Nothing in this Chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this Chapter against private parties.

419.1.150 TERMINATION OF TENANCY; REQUIREMENTS.

No Landlord may terminate a tenancy for a Multi-Unit Residence regulated by this Chapter based on a tenant's violation of this Chapter prohibiting Smoking unless the Landlord has included a no-smoking policy in the tenant's lease or rental agreement and the tenant has violated the associated agreement.

419.1.160 AUTHORITY TO ADOPT REGULATIONS TO IMPLEMENT THIS CHAPTER.

The Department may adopt rules and regulations that are necessary or appropriate to implement, administer, and enforce the provisions of this Chapter."

SECTION 3

Any provisions of the Municipal Code or its appendices, or any other ordinances of the City of Torrance inconsistent with this ordinance to the extent of inconsistencies and no further, are repealed.

SECTION 4

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council of the City of Torrance hereby declares that it would

have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or other portions might subsequently be declared invalid or unconstitutional.

SECTION 5

This ordinance was reviewed pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, et seq., "CEQA") and the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000, et seq., the "CEQA Guidelines"). This ordinance is exempt pursuant to CEQA Guidelines 15378, because the activity undertaken involves general text amendments that would not cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and does not meet the definition of a "Project" under CEQA. The proposed Ordinance is also exempt from CEQA Guidelines under Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. The ordinance consists only of bolstering public nuisance regulations. Adoption of this ordinance will not have the effect of deleting or substantially changing any regulatory standards or required findings.

SECTION 6

This ordinance will take effect thirty days after the date of its adoption. Within fifteen days following adoption, this ordinance or a summary of this ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

INTRODUCED and **APPROVED** this _____ day _____ 2023.

ADOPTED and **PASSED** this _____ day of _____ 2023.

Mayor George Chen

APPROVED AS TO FORM:
PATRICK Q. SULLIVAN, City Attorney

ATTEST:

by _____
Tatia Y. Strader, Assistant City Attorney

Rebecca Poirier, City Clerk