ORDINANCE NO. 15-0019

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH REGULATING SMOKING IN MULTI-UNIT HOUSING AND ADDING CHAPTER 4.117 (REGULATION OF SMOKING IN MULTI-UNIT HOUSING) TO TITLE 4 (PUBLIC WELFARE, MORALS AND CONDUCT) OF THE MANHATTAN BEACH MUNICIPAL CODE

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council hereby finds, determines and declares that:

A. Tobacco use and exposure to secondhand smoke cause death and disease and impose great social and economic costs; and

B. More than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death; and

C. The World Health Organization estimates that by 2030, tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide; and

D. The United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen; and

E. Secondhand smoke is responsible for an estimated 38,000 deaths among non-smokers each year in the United States, which includes 3,000 lung cancer deaths and 35,000 deaths due to heart disease; and

F. 87.9% of non-smokers showed detectable levels of cotinine (a metabolite of nicotine) in their blood, the most likely source of which is secondhand smoke exposure; and

G. Secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome in infants of mothers who smoke; and

H. Secondhand smoke exposure causes as many as 300,000 children in the United States under the age of 18 months to suffer lower respiratory tract infections, such as pneumonia and bronchitis; exacerbates childhood asthma; and increases the risk of acute, chronic, middle-ear infections in children; and

I. Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States; and

J. 84% of Californians are non-smokers; and

K. There is no Constitutional right to smoke; and

L. According to the National Fire Protection Association, smoking is the primary cause of fire-related injuries and deaths in the home; and

M. According to the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke through doorways, cracks in walls, electrical lines, plumbing and ventilations systems; and

N. 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 exposure; and

O. It is the intent of the City Council of the City of Manhattan Beach to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of tobacco use around non-consenting individuals, protecting children from exposure to smoking where they live and play and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

SECTION 2. Title 4 (Public Welfare, Morals and Conduct) is hereby amended to add a new Chapter 4.117, Regulation of Smoking in Multi-Unit Housing, as follows:

"Chapter 4.117
REGULATION OF SMOKING IN MULTI-UNIT HOUSING

4.117.010 Purpose

4.117.020 Definitions

4.117.030 Smoking Prohibited by Law in Certain Areas

4.117.040 Required and Implied Lease Terms for All Units in Rental Complexes

4.117.050 Required Terms to be Included in Rules and Regulations for All Units In Common Interest Complexes

4.117.060 Remedies Not Exclusive

4.117.070 Penalties and Enforcement

4.117.080 Private Enforcement

4.117.090 Conflict of Provisions

4.117.010 – Purpose.

It is the intent of the City Council of the City of Manhattan Beach, in enacting this Chapter, to provide for the public's health, safety, and welfare by discouraging the

inherently dangerous activity of tobacco use around non-consenting individuals, protecting children from exposure to smoking where they live and play and protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

4.117.020 – Definitions.

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Common Area" shall mean every area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

"Common Interest Complex" shall mean a Multi-Unit Residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code Section 4100.

"HOA" shall mean an organization or entity established for the purpose of managing and/or maintaining a Common Interest Complex.

"Landlord" shall mean any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that "Landlord" does not include a master tenant who sublets a Unit as long as the master tenant sublets only a single Unit of a Multi-Unit Residence.

"Multi-Unit Residence" shall mean residential property containing three or more Units and shall include a Rental Complex and a Common Interest Complex. The following types of housing are specifically excluded from this definition:

1. A hotel or motel;

2. A mobile home park;

3. A single-family home; and

4. A single-family home with a detached or attached accessory dwelling unit when permitted pursuant to Section 10.52.020 of this Code.

"Rental Complex" shall mean a Multi-Unit Residence for which 50 percent or more of Units are let by or on behalf of the same Landlord.

"Smoke" shall have the meaning ascribed in Section 4.116.020 of this Code, except that "smoke" does not include marijuana smoke when the person smoking marijuana holds a valid current "identification card", as that term is defined in Section 10.60.160 of this Code.

"Smoking" shall have the meaning ascribed in Section 4.116.020 of this Code.

"Unit" shall mean a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes, without limitation, an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, hospital and a room in a homeless shelter.

4.117.030- Smoking Prohibited by Law in Multi-Unit Residences.

A As of May 5, 2017, Smoking in a Multi-Unit Residence, including but not limited to all Units and Common Areas, is prohibited and a violation of this Chapter.

B. As of May 5, 2017, No Person with legal control over a Common Area in which Smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of Smoking waste within the area.

C. As of May 5, 2017, Clear and unambiguous "No Smoking" signs shall be posted in sufficient numbers and locations in each Multi-Unit Residence to make it obvious to a reasonable person that Smoking is prohibited by this Chapter throughout the Multi-Unit Residence. The signs shall have letters of no less than one inch in height or contain the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar). Such signs shall be maintained by the Person or Persons with legal control over the Multi-Unit Residence. The absence of signs shall not be a defense to a violation of any provision of this Chapter.

4.117.040- Required Lease Terms for All Units in Rental Complexes.

A Prior to the effective date of a new lease, or of an amendment that extends the term, a Landlord shall provide each tenant and prospective tenant in a Rental Complex with:

1. A written notice clearly stating that as of May 5, 2017, Smoking is prohibited in the rental complex, including but not limited to within the Unit and all Common Areas; and

2. A copy of this Chapter.

B. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex entered into, renewed, or continued month-to-month after November 5, 2016, shall include, or be amended to include, the following provisions:

1. A clause providing that as of May 5, 2017, or an earlier date if the Landlord so determines, it is a material breach of the lease or other rental agreement to allow or engage in Smoking in the Unit. Such clause shall be substantially consistent with the following: "It is a material breach of this agreement for tenant or any other

person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit."

2. A clause providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in Smoking in any Common Area of the property. Such clause shall be substantially consistent with the following: "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property."

3. A clause providing that it is a material breach of the lease or other rental agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating Smoking while anywhere on the property. Such clause shall be substantially consistent with the following: "It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property."

C. This Chapter shall not create additional liability in 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 Rental Complex if the Landlord has fully complied with this Section and subsections Band C of Section 4.117.030.

D. Failure to enforce any Smoking provision required by this Chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

4.117.050- Required Terms to be included in Rules and Regulations for All Units in Common Interest Complexes.

A. At least six months before May 5, 2017, the HOA board of a common interest complex shall provide each homeowner with the following:

1. A written notice clearly stating that the Smoking is prohibited in the common interest complex, including but not limited to all Units and Common Areas; and

2. A copy of this Chapter.

B. All rules and regulations for a Common Interest Complex shall include the provisions set forth in Section 4.117.050.C below on the earliest possible date such rules and regulations may be amended in accordance with applicable law, including providing the minimum legal notice.

C. All rules and regulations for a Common Interest Complex shall include, or be amended to include, the following provisions:

1. A clause providing that as of May 5, 2017, or an earlier date if the HOA board so determines, it is a violation of the rules and regulations to allow or

engage in Smoking in a Unit. Such clause shall be substantially consistent with the following: "It is a violation of these rules and regulations for a homeowner or any other person subject to the control of the homeowner or present by invitation or permission of the homeowner to engage in smoking in the unit as of May 5, 2017 [or an earlier date if the HOA board so determines]."

2. A clause providing that it is a violation of the rules and regulations for the homeowner or any other person subject to the control of the homeowner or present by invitation or permission of the homeowner to engage in Smoking in any Common Area of the property. Such clause shall be substantially consistent with the following: "It is a violation of these rules and regulations for a homeowner or any other person subject to the control of the homeowner or present by invitation or permission of the homeowner to engage in smoking in any common area of the property."

3. A clause providing that it is a violation of the rules and regulations for homeowner or any other person subject to the control of the homeowner or present by invitation or permission of the homeowner to violate any law regulating Smoking while anywhere on the property. Such clause shall be substantially consistent with the following: "It is a violation of these rules and regulations for a homeowner or any other person subject to the control of the homeowner or present by invitation or permission of the homeowner to violate any law regulating smoking while anywhere on the property."

D. This Chapter shall not create additional liability in an HOA board to any person for a homeowner's violation of any Smoking provision in the rules and regulations for a Common Interest Complex if the HOA board has fully complied with this Section and subsections B and C of Section 4.117.030.

E. Failure to enforce any Smoking provision required by this Chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

4.117.060 – Remedies not Exclusive.

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 or other provisions of this Code, (2) any failure by any person to restrict Smoking under this Chapter, or (3) any explicit or implicit provision of this Code that allows Smoking in any place, nothing in this Code 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, and personal injury or other legal or equitable principles.

4.117.070- Penalties and Enforcement.

For a violation of this Chapter 4.117, the following provisions shall apply:

A. Except as otherwise provided in Section 4.117.070.8 below, a violation of this Chapter is not a misdemeanor or an infraction. The enforcement of this Chapter shall be by the private parties involved.

B. In the discretion of the City Prosecutor, a violation of Sections 4.117.030.B, 4.117.030.C 4.117.040.A, 4.117.040.B, 4.117.050.A and 4.117.050.B of this Chapter may be prosecuted as an infraction or misdemeanor. The penalties for a violation of the aforementioned Sections shall be consistent with the penalties set forth in Section 1.04.010 of this Code, but in no event shall such penalties exceed the maximum penalties permitted under State law.

C. The remedies provided by this Section 4.117.070 and in Section 4.117.080 are cumulative and in addition to any other remedies available at law or in equity.

D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

E. Any violation of this Chapter is hereby declared to be a public nuisance.

F. No person shall intimidate, harass, or otherwise retaliate against any person who seeks compliance with this Chapter. Moreover, no person shall intentionally or recklessly expose another person to Smoke in response to that person's effort to achieve compliance with this Chapter.

G. Any person acting for the interests of itself, its members, or the general public may bring a civil action to enforce this Chapter in accordance with the provisions in Section 4.117.080.

4.117.080- Private Enforcement.

A. Pursuant to California Civil Code Section 3501 et seq, any person injured by a violation of this Chapter may bring a civil action to enforce this Chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

B. Notwithstanding any legal or equitable bar against a person seeking relief on its own behalf, a person may bring an action to enforce this Chapter solely on behalf of the general public. When a person brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the person from bringing a subsequent action based upon the same facts but seeking relief on his, her or its own behalf.

C. Nothing in this Chapter prohibits a person from bringing a civil action in small claims court to enforce this Chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of that court.

4.117.090- Conflict of Provisions.

In the event of any conflict between this Chapter and any other provision of this Code, this Chapter shall control."

SECTION 3. The introductory sentence of subsection B of Section 4.116.030 of Chapter 4.116 of Title 4 is hereby revised as follows:

"Smoking is permitted in the following locations within the City, unless otherwise provided by state or federal law or this Code:"

SECTION 4. The City Council hereby directs that, 12 months after full implementation of the Ordinance, the City Manager, or designees, shall review the effectiveness of the private and limited City enforcement of this Ordinance and provide an informational memorandum to the City Council regarding the City Manager's findings.

SECTION 5. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED 20th day of October, 2015.

AYES: Powell, Howorth, and Mayor Burton
NOES: Lesser, D'Errico
ABSENT: None.
ABSTAIN: None.

MARK BURTON
Mayor

ATTEST:

LIZA TAMURA
City Clerk