

SUNBROOK CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

RESOLUTION OF THE MANAGEMENT COMMITTEE – NO SMOKING POLICY

WHEREAS, the Management Committee (“Management Committee” or “Committee”) of the Sunbrook Condominium Homeowners Association, Inc. (the “Association”) is authorized to administer the affairs of the Association and provide for the enforcement of its covenants and rules and to further establish general guidelines for the Committee to follow in order to discharge its duties to the Association members;

WHEREAS, Article III, Section 8(c) of the Condominium Declaration for Sunbrook Condominiums (“Declaration”) prohibits noxious or offensive activities from being carried on about the Project, whether in the Unit or the Common Areas, nor shall any activity which might be or become an annoyance or nuisance to Owners or occupants be permitted to interfere with their rights of quiet enjoyment;

WHEREAS, pursuant to Utah Code Annotated §78B-6-1105:

(1) The Utah Legislature finds:

(a) the Federal Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Group A carcinogen, in the same category as other cancer-causing chemicals such as asbestos;

(b) the EPA has determined that there is no acceptable level of exposure to Class A carcinogens; and,

(c) the EPA has determined that exposure to environmental tobacco smoke also causes an increase in respiratory diseases and disorders among exposed persons.

(2) The Utah Legislature finds that environmental tobacco smoke generated in a rental or condominium unit may drift into other units, exposing the occupants of those units to tobacco smoke, and that standard construction practices are not effective in preventing this drifting of tobacco smoke.

(3) The Utah Legislature further finds that persons who desire to not be exposed to drifting environmental tobacco smoke should be able to determine in advance of entering into a rental, lease, or purchase agreement whether the subject unit may be exposed to environmental tobacco smoke;

WHEREAS, pursuant to Utah Code Annotated §78B-6-1101, a nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action and includes, among other types of smoke, tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential unit and the smoke drifts in more than once in each of two or more consecutive seven-day periods;

WHEREAS, the Management Committee hereby establishes that tobacco (or other similar) smoke that drifts into a residential unit is a nuisance pursuant to Utah Code, §78B-6-1101 and a violation of Article III, Section 8(c) of the Declaration;

WHEREAS, the Federal Fair Housing Act protects persons with severe breathing problems which are exacerbated by secondhand smoke from having to endure tobacco smoke that drifts into a residential unit from a neighboring unit;

WHEREAS, smoking is not a protected right or activity and an individual's status as a smoker is not a protected category of persons;

WHEREAS, in addition to the obvious health benefits from the adoption of a smoking policy that so nuisances are avoided as much as possible, there are additional financial benefits, including but not limited to the following: increased demand for smoke-free housing; avoiding offensive odors in the resale of units; saving Association funds from dealing with damages from tobacco smoke; reduction in a known fire hazard; possible insurance discounts; and, avoiding legal risks;

WHEREAS, the Management Committee adopts the position of the State of Utah and finds that tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit is a nuisance; accordingly, the Management Committee has determined that it is in the best interests of the Association to prohibit smoking in units to the extent it causes a nuisance as defined above;

WHEREAS, the Management Committee also adopts the position of the State of Utah Indoor Clean Air Act that smoking and the creation of second-hand smoke must not occur within twenty-five feet (25') of any common area buildings in an effort to prevent nuisances to other Owners or Residents within the Association;

NOW, THEREFORE, IT IS RESOLVED that the following policy is adopted by the Association by and through its Management Committee:

Smoking Policy – No Nuisances

(a) **Nuisance Defined.** Pursuant to Utah Code Annotated §78B-6-1101, a nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential unit and the smoke drifts in more than once in each of two or more consecutive seven-day periods;

(b) **Smoking Nuisances Prohibited.** Smoking is prohibited to the extent it causes a nuisance as defined above. Smoking is defined to include carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, e-cigarettes, vape pens (or the like), cigars, hookahs, or pipes. Each Owner is

responsible for the compliance with this rule by the Owner and all occupants within the Owner's unit, and for all guests and invitees of such Owner. Violations of this rule may result in a fine pursuant to the Association's schedule of fines.

(c) **Private Right of Action.** This section does not abrogate or otherwise alter an Owner or occupant's rights under Utah Code Ann. § 78B-6-1011, including the right, if any, to bring a private civil action for nuisance against another Owner or occupant.

(d) **Association Enforcement; Complaint and Process.** If an Owner/Occupant believes that smoking or similar behavior is causing a nuisance in violation of the definition above, then the Owner/Occupant shall file a written complaint indicating the nature of the alleged violation and the dates of occurrences.

Smoking Policy – No Smoking on Common Areas or within 25' of buildings

(a) Smoking is not permitted within twenty-five feet (25') of any residential dwelling, building or within twenty-five feet (25') of the clubhouse. Smoking is prohibited on or within all indoor and/or enclosed common areas of the Property.

(b) Smoking is not permitted within the clubhouse, recreation areas, the tennis courts, or within twenty-five feet of any outside amenities.

(c) Smoking is not permitted on any Common Area, whether enclosed or not enclosed of the Property.

(d) The Management Committee may, but is not required, to designate certain areas within the Property as smoking areas.

NOW THEREFORE, IT IS ALSO RESOLVED:

Review of Complaint. The Management Committee will then review the complaint to determine if it justifies Association involvement or not. The Management Committee may deem the matter to be an Owner/Occupant issue, not an Association issue and will inform the complaining party if the Association is not going to pursue the matter further.

Warning. If the Management Committee deems the matter an Association issue, it will contact the offending Owner/Occupant and indicate that a complaint has been received and provide a warning describing the behavior and indicate that the behavior must cease to not cause a nuisance or that fines will be levied without further warning if the behavior repeats itself within the next twelve (12) months.

Fines. If repeat violations of this smoking and nuisance policy occur, after warning, a first fine in the amount of \$100 shall be levied. For the next repeat violation, a \$200 fine shall be levied; thereafter, the fine shall be \$500 per violation. However, a fine may not exceed \$500 per month per

violation. Fines may be subject to change pursuant to any separately adopted schedule of fines established by the Management Committee.

Other Action. Nothing shall limit or restrict the Association from exercising all remedies under the law should the nuisance not stop.

IN WITNESS WHEREOF, the undersigned hereby certify and attest that this Resolution has been duly adopted by the Management Committee for the Sunbrook Condominiums Homeowners Association, Inc.:

Brett P. Maugh
President

3-3-21
Date

Marla Hamilton
Secretary

Mar. 3, 2021
Date