

CARLETON CONDOMINIUM CORPORATION NO. 184
("the Corporation")

CONDOMINIUM RULES respecting SMOKING
[Date of Board Resolution] May 20, 2021

Introduction

The following Rules respecting the use of the common elements and units are made to promote the safety, security and welfare of the Owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of other units. The Corporation may pass additional Rules or amend or delete existing Rules from time to time in accordance with the *Condominium Act, 1998*.

Definitions

Any words and phrases which are defined in the *Condominium Act, 1998* (as amended from time to time), or the Regulations thereunder or any successor thereto, ("the Act") shall have ascribed to them the meanings set out in the Act.

1. Recitals

WHEREAS:

- (a) Second-hand smoke is known to drift through walls, openings in walls and through ventilation systems, and to contaminate air in common areas and individual units. It is not reasonably possible to completely prevent this migration of smoke.
- (b) Second-hand smoke is known to be harmful to human health and/or to cause disturbance to many people. Furthermore, smoke is known to linger in contents and fixtures for significant periods of time.
- (c) Smoking can also increase the risk of fire; and smoking can also result in added debris (such as butts) on the property.
- (d) Growing of Cannabis can create odours that are bothersome and/or harmful to residents. Furthermore, growing of Cannabis can involve excessive consumption of electricity and/or water; and can cause excessive humidity. In addition, growing of Cannabis increases the risk that the Cannabis in question may be smoked.
- (e) Smoke from Cannabis also has known impacts upon a person's perception and can have a distinct odour that is particularly bothersome to some persons.

- (f) Condominium corporations have a duty to take reasonable steps to address risks of second-hand smoke; and condominium corporations may otherwise pass Rules for the purposes set out in the Act.
- (g) The Board has concluded that controlling smoking, and controlling the growing of Cannabis, as set out in these Rules, is a reasonable way to protect residents (and their guests) from the above-noted risks.

2. Effective Date of These Rules

The effective date of these Rules is July 1st, 2021.

3. General

3.1 Any losses, costs or damages incurred by the Corporation by reason of a breach of these Rules by any Owner, his or her family, guests, servants, agents, tenants or occupants of his or her unit shall be borne by such Owner and may be recovered by the Corporation against such Owner in the same manner as common expenses **in accordance with Article 9 of the Declaration**. Without limiting the generality of the foregoing, such losses, costs or damages shall include, but shall not necessarily be limited to, the following:

- (a) All legal costs incurred by the Corporation in order to enforce, or in attempting to enforce, the Act, Declaration, By-laws or Rules;
- (b) An administration fee in the amount of \$75.00*, to be payable to the Corporation for any violation that continues after initial notice has been sent, and further administration fees of \$75.00* per month, for each month during which the violation continues or is repeated.

[*NOTE: This administration fee represents actual costs reasonably estimated to be incurred by the Corporation as a result of a violation of the Act, Declaration, By-laws or Rules; and may be reasonably increased, from time to time, by Board resolution.]

3.2 No restriction, condition, obligation or provision contained in any Rule or Rules of the Corporation shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

3.3 Each of these Rules shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of these Rules shall not impair or affect in any manner the validity, enforceability, or effect of the remaining part of that Rule (if appropriate) or of the Rules, and in such event, the other part of the Rule (if appropriate) or the other Rules shall continue in full force and effect as if such invalid Rule or part of a Rule had never been included herein.

4. Additional Definitions

4.1 Smoking

Smoking includes the inhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of Tobacco, Cannabis, shisha, incense or other smoke-producing substance, or any other similar heated or lit product, and includes vaping with electronic devices or any other activities that create smoke or chemical fumes.

4.2 Cannabis

Cannabis has the common meaning of that term under Ontario law, and includes any plant belonging to the genus *Cannabis* as well as any of the preparations (such as marijuana or hashish) derived from a Cannabis plant, or any other substance containing chemicals (such as THC - *Tetrahydrocannabinol*) that are derived from a Cannabis plant.

4.3 Tobacco

Tobacco has the common meaning of that term under Ontario law, and includes any plant belonging to the genus *Nicotiana* as well as any of the preparations derived from a Tobacco plant, or any other substance containing chemicals (such as nicotine) that are derived from a Tobacco plant.

5. No Smoking on Common Elements

5.1 Smoking is not permitted in, on, or around any part of the common elements, **subject to the following exceptions:**

5.2 **Exceptions: Smoking is only permitted on the exclusive-use patios, balconies and driveways, and immediately in front of the garage units.**

6. No Smoking in Units

6.1 Smoking is not permitted in any unit, except for those units whose residents have been grandfathered in accordance with the following terms and conditions:

GRANDFATHERING

- A. Subject to Paragraphs B through G, the prohibition with respect to smoking **of Tobacco** set out in this Rule 6.1 does not apply to any resident who is a **Tobacco** smoker and was residing in one of the units on the effective date of these Rules.
- B. For the within grandfathering to apply, the resident must register with the Corporation on or before the Thirtieth (30th) day following the effective date of these Rules. To register with the Corporation, the resident must provide the Corporation with the following information:
 - a) Full Name;
 - b) Proof, satisfactory to the corporation, that the resident was residing in a unit on the effective date of these Rules;

- c) Confirmation of Age of Majority (where required); and
 - d) The unit Number.
- C. All guests or visitors of Registered Residents (residents who have registered with the Corporation in accordance with paragraph B above) shall also be exempt from the smoking prohibition **(in relation to Tobacco smoking)** described in this Rule 6.1.
- D. The grandfathering only applies to smoking **of Tobacco** in the units. A grandfathered resident is not permitted to smoke on any portion of the common elements where smoking is prohibited by this Rule. **For clarity, the grandfathering also does NOT apply to the smoking of Cannabis.**
- E. Grandfathered residents must take reasonable steps to ensure that the smoke does not migrate to the common elements or to other units (which could cause nuisance, disturbance or harm to other residents of the building, or their guests). Without limiting the generality of the foregoing, the smoker must ensure that:
- a) all windows and exterior doors are closed when smoking takes place inside the unit;
 - b) the unit's exhaust fans are turned on, while anyone is smoking in the unit; AND
 - c) appropriate air filtering and/or purifying is installed to prevent second-hand smoke from entering neighbouring units or the common elements. **Within ten (10) days following any request for such from the Corporation, the smoker must provide proof satisfactory to the Corporation that the smoker has installed an air purifier that is reasonably satisfactory to the Board.**
- F. Grandfathered residents are responsible for all costs incurred by the corporation to prevent migration of smoke or odours from the resident's unit to other units or the common elements. **ALSO: Any grandfathering may be canceled / revoked if the Board determines (acting reasonably) that smoke from that grandfathered resident (or from the grandfathered resident's unit) is a nuisance or disturbance to other residents of the condominium.**
- G. The grandfathering shall continue only until the earlier of:
- (a) The date on which the grandfathered resident ceases to reside on the property;
 - (b) 1, 2, 3, 5, etc... years. **[Note to our client: There is no current Court decision which confirms the required period for grandfathering. Some Corporations are choosing no grandfathering, others a few years, and still others for the duration of the smoker's occupancy of the unit.]**

Thereafter, the said Rule 6.1 will apply fully to all occupants of the unit, and their guests.

7. Cannabis

CANNABIS GROWING

- 7.1 No one is permitted to grow Cannabis anywhere on the property (whether on the common elements or in any of the units), except as permitted by this Rule.
- 7.2 No one is permitted to grow Cannabis on the common elements, without consent of the Board.
- 7.3 A resident (meaning a specific resident who is permitted – not their guests or other occupants of the unit) may grow Cannabis in the resident’s unit, but only subject to the following:
- (a) A resident is permitted to grow Cannabis only if the resident has a medical need, and therefore a physician’s prescription, for Cannabis use. If requested by the Corporation, the resident will provide the Corporation with a copy of the prescription as well as such additional written evidence of the resident’s medical need as may be reasonably requested by the Corporation.
 - (b) The Cannabis growing must only be as necessary to meet the resident’s personal needs for Cannabis.
 - (c) The resident must give the Corporation prompt written notice that the resident is growing Cannabis in the resident’s unit.
 - (d) The Cannabis growing must not create any risk of expense, harm or injury to the property or to other residents [whether because of excessive humidity, excessive heat, excessive light, excessive consumption of **water and/or electricity (which are bulk-metered in this condominium)**, or for any other cause related to the Cannabis growing]; and the Cannabis growing must also not cause or result in any unreasonable nuisance or disturbance to other residents in the condominium.
 - (e) The Cannabis growing must otherwise be in compliance with all federal, provincial and municipal laws dealing in any way with the licensing and/or regulation of the growing of Cannabis.
 - (f) In accordance with the Corporation’s rights to access the units (set out in the Act and/or the Declaration), the corporation may enter the resident’s unit, at any reasonable time or times, and in each case on reasonable notice, in order to inspect the growing of the Cannabis.

CANNABIS SMOKING

- 7.4 The resident must in any event comply with this rule respecting smoking on the property (including smoking in the units). However, the Board may give written permission for a resident (meaning a specific resident who is permitted – not their guests or other occupants of the unit) to smoke Cannabis in the unit, after receiving proof, reasonably satisfactory to the Board, that (for Human Rights reasons) the resident needs to be able to smoke Cannabis in the unit in order to reside in the unit. [For this purpose, the resident

may be asked to provide written evidence from a physician or other health care professional, sufficient to explain the medical need, including why it is necessary for the resident to smoke the Cannabis in the unit (rather than somewhere else); and also sufficient to explain why the Cannabis must be smoked (rather than ingesting it or receiving it by some other means).]

- 7.5 If permitted to smoke Cannabis in a unit (as noted above), the smoker must take reasonable steps to ensure that the smoke does not migrate to the common elements or to other units (which could cause nuisance, disturbance or harm to other residents of the building, or their guests). Without limiting the generality of the foregoing, the smoker must ensure that:
- (1) all windows and exterior doors are closed when smoking takes place inside the unit;
 - (2) the unit's exhaust fans are turned on, while anyone is smoking in the unit; AND
 - (3) appropriate air filtering and/or purifying is installed to prevent second-hand smoke from entering neighbouring units or the common elements. **Within ten (10) days following any request for such from the Corporation, the smoker must provide proof satisfactory to the Corporation that the smoker has installed an air purifier that is reasonably satisfactory to the Board.**

Cannabis smokers are responsible for all costs incurred by the corporation to prevent migration of smoke or odours from the resident's unit to other units or the common elements.

GENERAL

- 7.6 If the resident is not in compliance with any of the provisions of this Rule, or if the Board, acting reasonably, determines that the Cannabis smoking is a nuisance or a disturbance or a source of harm, the smoker will, upon written request from the Corporation, immediately stop smoking in the unit.
- 7.7 If the resident is not in compliance with any of provisions of this Rule, or if the Board, acting reasonably, determines that the growing of Cannabis in the unit is a nuisance or a disturbance or a source of harm, the grower will, upon written request from the Corporation, immediately stop growing Cannabis in the unit and will immediately remove all Cannabis plants from the unit.
- 7.8 Any permission to grow and/or smoke Cannabis (as described above) ceases as soon as the need to do so (as also described above) comes to an end.

8. Previous Rules

Where any provision in this Rule is inconsistent with the provisions of any previous Rule, the provisions of this Rule shall prevail, and the previous Rule shall be deemed to be amended accordingly.