

**HIGHPOINTE AT RIPPON LANDING CONDOMINIUM UNIT  
OWNERS' ASSOCIATION**

**POLICY RESOLUTION NO. - 3**

**Relating to Banning Smoking in the Common Elements and Within Units**

**WHEREAS**, Article 3, Section 3.1 of the Bylaws (hereinafter "Bylaws") of Highpointe at Rippon Landing Condominium (hereinafter "Association") provides that the Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are not by the Condominium Act or the condominium instruments required to be exercised and done by the Association; and,

**WHEREAS**, Article 3, Section 3.1(6) of the Bylaws provides that the Board of Directors has the power to adopt and amend any rules and regulations in accordance with Subsection 5.8(b); provided however, that such rules and regulations shall not be in conflict with the Condominium Act or the condominium instruments; and,

**WHEREAS**, Article 5, Section 8(b) of the Bylaws provides that each unit and the common elements shall be occupied and used in compliance with the rules and regulations which may be promulgated and changed by the Board of Directors. The Board of Directors shall furnish copies of the rules and regulations to each unit owner. Changes to the rules and regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each unit owner upon request; and,

**WHEREAS**, Article 3, Section 3.8 of the Bylaws provides that any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors; and,

**WHEREAS**, Article 5, Section 5.5(c)(1) of the Bylaws provides that each unit owner shall keep the unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition. Each unit owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other unit owners; and,

**WHEREAS**, Article 9, Section 9.1 of the Bylaws provides that each unit owner shall be governed by, and shall comply with, all of the terms of the Condominium Act, condominium instruments and rules and regulations, as any of the same may be amended from time to time; and,

**WHEREAS**, Article 9, Section 9.1(a) of the Bylaws provides that each unit owner shall be liable to the Association or to any affected unit owner for the expense of

all maintenance, repair or replacement rendered necessary by such unit owner's act, neglect or carelessness or the act, neglect or carelessness of any member of such unit owner's household or such unit owner's guests, invitees, tenants, agents or employees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors; and,

**WHEREAS**, Article 9, Section 9.1(b) of the Bylaws provides that in any proceeding arising out of any alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court; and,

**WHEREAS**, Article 9, Section 9.1(e) of the Bylaws provides that the violation of the rules and regulations adopted by the Board of Directors, the breach of any portion of the condominium instruments or the Condominium Act shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: ... (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach ...; and,

**WHEREAS**, Article 9, Section 9.1(f) of the Bylaws provides that failure to comply with any of the terms of the condominium instruments and the rules and regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief ... any other relief provided for in the Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the managing agent or, if appropriate, by any aggrieved unit owner and shall not constitute an election of remedies; and,

**WHEREAS**, Article 9, Section 9.1(g) of the Bylaws provides that in accordance with section 55-79.80:2 [§ 55.1-1959] of the Condominium Act, the Board of Directors and the Covenants Committee may levy reasonable charges against unit owners for violation of the Condominium Act, the condominium instruments or the rules and regulations by the unit owner, the members of such unit owner's household, or such unit owner's guests, invitees, tenants, agents or employees. No charge may be levied for a single violation in an amount more than the lesser of (i) the maximum amount permitted by subsection 55-79.80:2B [§ 55.1-1959C] of the Condominium Act or (ii) one percent of such unit owner's annual assessment. Each day a violation continues, after notice is given to the unit owner, is a separate violation. If a unit owner requests in writing a hearing before the charge is imposed, the imposition of the charge shall be suspended until the hearing is held. Charges are special assessments and shall be collectible as such; and,

**WHEREAS**, Va. Code Ann. § 55.1-1955A provides that each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities; and,

**WHEREAS**, Va. Code Ann. § 55.1-1960.1 provides that except to the extent that the condominium instruments provide otherwise, the executive board may establish reasonable rules that restrict smoking in the condominium, including rules that prohibit smoking in the common elements and within units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1959; and,

**WHEREAS**, for the protection of the Property from secondhand smoke, to protect the value of the Property and for the health, safety, and welfare of all residents, the Board of Directors believes it is in the best interest of the Association for the Board to adopt reasonable rules and regulations and enforcement procedures governing banning smoking in the common elements and within units. Areas to be made nonsmoking include but are not limited to all interior common areas, all interior portions of the units and any external appurtenances (such as balconies and decks), the hallways, the lobby entrance, the garage, the stairwells, and the elevators. Smoking includes but is not limited to the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, e-cigarettes, JUUL, or other vaping products. Smoking shall be construed broadly to include, nonexclusively, any tobacco or cannabis product. The lawful nature of a given smoking product shall in no way excuse it from the provisions of this Policy Resolution.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Board of Directors adopts the following rules and regulations and enforcement procedures for the Association, which shall be binding upon all owners and their family members, tenants, occupants, successors, heirs, and assigns who currently or in the future may possess any sort of property interest in a unit within the Condominium, and which shall supersede any current restrictions of record or previously adopted rules on the same subject matter:

**A. Smoking Prohibition**

1. All persons who enter Highpointe at Rippon Landing Condominium will refrain from smoking, as defined above, in any of the interior common spaces or the units themselves. Unit owners will be responsible for the actions of their units' occupants and any visitors to the unit which they own.
2. Unit Owners and residents are responsible for informing their visitors of the Association smoking restriction.
3. Smoking is permitted in designated areas as designated by the Board of Directors. Currently the designated areas are at the end of the sidewalks at each building entrance with all cigarette butts or residuals to be placed in the furnished receptacles. The Board has the discretion to change the designated areas.
4. The Unit Owner shall be responsible for all damages caused by smoking in prohibited areas, including, but not limited to, cleaning, disinfecting, deodorizing, painting, and repairs to the affected areas.
5. If the common area is affected because of smoke odor the Unit Owner will, in addition to the cost of cleaning, disinfecting and deodorizing, be charged an amount for a single violation not to exceed the lesser of (i) the maximum amount permitted by subsection 55-79.80:2B [§ 55.1-1959C] of the Condominium Act or (ii) one percent of such unit owner's annual assessment, pursuant to Article 9, Section 9.1(g) of the Bylaws.

## **B. Enforcement**

1. Notice of Violation. In the case of a perceived violation of the above Rules and Regulations, the Association or its duly appointed Management Agent shall:
  - a. Send a written 1st Notice of Violation to the Unit Owner requesting that the Unit Owner correct the violation by providing proof of compliance within thirty (30) days of the date of the written 1st Notice of Violation.
  - b. Send a written Notice of Hearing to the Unit Owner by certified mail, return receipt requested, informing the Unit Owner that the Unit Owner has not come into compliance as requested in the 1st written Notice of Violation, that the Board has scheduled a hearing in accordance with Va. Code Ann. §55.1-1959C and that the Owner may be represented by counsel at the hearing, and that the Association, in accordance with Article 9, Section 9.1(f) of the Bylaws and Va. Code Ann. § 55.1-1959, after the hearing assess violation charges not to exceed the lesser of (i) the maximum amount permitted by subsection 55-79.80:2B [§ 55.1-1959C] of the Condominium Act or (ii) one percent of such unit owner's annual assessment for each single violation or up to \$10 per day, for a maximum of 90 days (or \$900) for violations of a continuing nature and will file an action for damages and injunctive relief, which damages shall be treated as an assessment against such unit owner's condominium unit for the purpose of Va. Code Ann. § 55.1-1966 pursuant to Va. Code Ann. § 55.1-1959.
2. Failure to Correct Violation. If the Unit Owner fails to correct the violation and fails to request a hearing, the Association may:
  - a. In accordance with Article 9, Section 9.1(e) and as provided by Va. Code Ann. § 55.1-1955, the Association or its delegate, may enter any Unit when necessary, in connection with any repairs or maintenance for which any Unit Owner is responsible and abate and remove, at the expense of the defaulting unit owner, any and all smoking-related structures, things or conditions therein that are contrary to the intent and meaning of the provisions of this Policy Resolution.
  - b. File suit to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach, recovery of damages, recovery of attorney's fees and costs in accordance with

Article 9, Section 9.1(b) of the Bylaws, and such other relief as may be awarded by the court.

- c. Take any action permitted to be taken by the Association in accordance with the condominium instruments and the Condominium Act.
  
- 3. Violation Charges. In addition to the charges set forth in Section A.5, the Association may, pursuant to § 55.1-1959 and Article 9, Section 9.1(g) of the Bylaws, after providing notice and an opportunity for a hearing and the right to be represented by counsel in front of the Board of Directors or its authorized committee (and in accordance with Board's adopted enforcement procedures, if any), assess violation charges not to exceed the lesser of (i) the maximum amount permitted by subsection 55-79.80:2B [§ 55.1-1959C] of the Condominium Act or (ii) one percent of such unit owner's annual assessment for each single violation or up to \$10 per day, for a maximum of 90 days (or \$900) for violations of a continuing nature.
  
- 4. Non-Exclusive Remedies. The remedies set forth above are not the Association's exclusive remedies for violations of these rules, regulations, and Policy Resolution, but rather are in addition to any other remedies available to the Association as provided by law or the condominium instruments.

BE IT FURTHER RESOLVED that a copy of this Policy Resolution shall be sent to all homeowners at their last known addresses.

NOW THEREFORE, the Board of Directors has voted by unanimous consent to approve and adopt this Policy Resolution.

This Policy Resolution was adopted by the board of directors on July 28, 2021 and shall be effective on August 1, 2021.

**HIGHPOINTE AT RIPPON LANDING  
CONDOMINIUM UNIT OWNERS ASSOCIATION**

By: \_\_\_\_\_  
President Date

Attest:

\_\_\_\_\_  
Secretary Date

