

## EXHIBIT “A”

### Chapter 6.XX

#### SMOKING REGULATIONS FOR MULTI-UNIT RESIDENCES

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**Section 6.XX.010 Findings.**

The City Council of the City of Riverside finds as follows:

A. Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke. Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States<sup>1</sup>. Secondhand smoke kills more than 400 infants every year<sup>2</sup>. Secondhand smoke exposure adversely affects fetal growth with an increased risk of low birth weight and of Sudden Infant Death Syndrome in infants of mothers who smoke<sup>3</sup>. Just 30 minutes of exposure to secondhand smoke is sufficient to damage blood vessels in a healthy nonsmoker<sup>4</sup>.

B. Secondhand aerosol emitted from electronic smoking devices has been identified as a health hazard<sup>5,6,7</sup> as evidenced by research finding at least ten chemicals known to the State of

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<sup>1</sup> Centers for Disease Control and Prevention. Secondhand Smoke (SHS) Facts. Available at:

[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/)

<sup>2</sup> Centers for Disease Control and Prevention (CDC). Secondhand Smoke: An Unequal Danger. CDC Vital Signs. 2015. Available at: [www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf](http://www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf).

<sup>3</sup> J. Wagner et al., *Environmental Tobacco Smoke Leakage from Smoking Rooms*, Journal of Occupational and Environmental Hygiene, 1:110-118 (2004).

<sup>4</sup> Christian Heiss, MD, Nicolas Amabile, MD., Andrew C. Lee, MD, et al. *Brief Secondhand Smoke Exposure Depresses Endothelial Progenitor Cells Activity and Endothelial Function: Sustained Vascular Injury and Blunted Nitric Acid Production*, J Am Coll Cardiol (2008).

<sup>5</sup> State of California Office of Environmental Health Hazard Assessment. The Proposition 65 List. January 2017. Available at: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

<sup>6</sup> California Department of Public Health California Tobacco Control Program. *State Health Officer's Report on E-Cigarettes: A Community Health Threat*. Sacramento, CA. (2015). Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/Policy/ElectronicSmokingDevices/StateHealthEcigReport.pdf>.

<sup>7</sup> Grana R, Benowitz N, Glantz S. *Background Paper on E-cigarettes (Electronic Nicotine Delivery Systems)*. Center for Tobacco Control Research and Education. 2013. Available at: <http://escholarship.org/uc/item/13p2b72n>.

California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene to be present in electronic smoking devices<sup>8910</sup>.

C. It is the intent of the City Council of the City of Riverside to provide for the public's health, safety, and welfare by discouraging the inherently dangerous activity of smoking 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 6.XX.020 Purpose.**

It is the purpose of this chapter to protect the public health, safety, and welfare of the residents of the city by regulating the inherently dangerous behavior of smoking around non-tobacco users, by protecting children from exposure to smoking where they live and play, and by protecting the public from nonconsensual exposure to secondhand smoke in and around their homes.

### **Section 6.XX.030 Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Common area* means every interior or exterior area of a multi-unit residence that residents of more than one unit of the multi-unit residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, recreation areas or rooms, playgrounds, gym facilities, swimming pools, spas, jacuzzis, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.

*Effective date of this Chapter* means the date this ordinance is adopted.

*Electronic smoking device* means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately; and includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

*Enclosed* means closed in by a roof and walls with appropriate openings for ingress and egress.

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<sup>8</sup> German Cancer Research Center. "Electronic Cigarettes – An Overview". Red Series Tobacco Prevention and Tobacco Control. Heidelberg. 2013. Available at: <https://www.dkfz.de/en/presse/download/RS-Vol19-E-Cigarettes-EN.pdf>

<sup>9</sup> Goniewicz ML, Knysak J, Gawron M, et al. *Levels of selected carcinogens and toxicants in vapour from electronic cigarettes*. Tob Control. 2013;1:1 8. doi:10.1136/tobaccocontrol-2012-050859.

<sup>10</sup> Schripp T, Markewitz D, Uhde E, Salthammer T. *Does e-cigarette consumption cause passive vaping?* Indoor Air. 2013; 23(1):25-31. doi:10.1111/j.1600-0668.2012.00792.

*Landlord* means any person or entity who owns property let for residential use.

*Multi-unit residence* means a residential property that contains two (2) or more units rented or available to be rented and not occupied by a landlord of the premises. This does not include condominiums, mobile home parks, hotels or motels. The following types of housing are specifically excluded from this definition:

A single-family home;

A detached or attached accessory dwelling unit on a single-family zoned property;

A hotel; and

A mixed hotel/common interest development project.

*Smoke or smoking* means and includes any of the following: (1) the direct burning or indirect heating of any cigar, cigarette, pipe, electronic smoking device, or any similar kind of smoking equipment or article, using any form of tobacco, plant product, or other combustible substance in any form, or (2) the holding or carrying of a lighted or operated cigar, cigarette, pipe, electronic smoking device, or any other lighted smoking equipment or device, or (3) emitting or exhaling the smoke directly from a cigar, cigarette, pipe, electronic smoking device, or any other lighted smoking equipment or device. "Smoke" also means the gaseous or vaporous products or particles created by the use of a lighted or operated pipe, cigar, cigarette, electronic smoking device, or other kind of smoking equipment or article.

*Unit* means any personal dwelling space in a multi-unit residence. A unit shall include any associated exclusive-use area, such as, for example, a private balcony, porch, deck, or patio.

#### **Section 6.XX.040 Smoking prohibited in multi-unit residences; designated smoking area**

A. It shall be unlawful for any person to smoke in any multi-unit residence, including in a unit or common area of the multi-unit residence, unless in a designated smoking area as specified in this Chapter.

B. The landlord or manager of a multi-unit residence may designate a portion of that multi-unit residence where smoking is allowed. Any such designated area must:

1. Not be in any enclosed area;
2. Be located at least twenty-five (25) feet from any enclosed area;
3. Not include and must be at least twenty-five (25) feet from play or recreation areas including, but not limited to, areas improved or designated for swimming or other sports, playgrounds, etc.;

4. Be no more than twenty-five (25) percent of the total outdoor area of the multi-unit residence property;
5. Have a clearly marked perimeter;
6. Be identified by conspicuous signs as provided in Section 6.XX.050 of this Code; and
7. Not overlap with any area in which smoking is otherwise prohibited by this chapter or other law.

**Section 6.XX.050 Posting of signs required.**

A. Except where other signs are required, whenever and wherever smoking is prohibited in this Chapter, “No Smoking” or “Smoke Free” signs shall be conspicuously posted by the landlord, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. Signage required by this section shall be prominently displayed, shall clearly recite the phrase “no smoking” and/or use the international no-smoking symbol and shall cite the appropriate section of the City of Riverside Municipal Code. Such signs shall be posted not less than five feet nor more than eight feet above the floor and shall be of sufficient number and location to cause the message of the signs to be clearly visible and readable.

B. It shall be unlawful for any person to willfully mutilate or destroy any sign required by this section.

**Section 6.XX.060 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 \_\_\_\_\_, 2022, 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 \_\_\_\_\_, 2022, shall include, or be amended to include, the following provisions:

1. A clause providing that as of \_\_\_\_\_, 2022, 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 B and C of Section **6.XX.060**.

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.

E. A unit designated non-smoking by action of the landlord or by the force of this Chapter shall not be subject to the smoking restrictions while the legal tenant(s) in occupancy on the effective date of this Chapter continuously lease(s) the unit.

**6.XX.070 Private enforcement.**

A. Any Person, including a legal entity, organization, or a government agency, acting for the interests of itself, its members, or the general public, may bring a civil action against any person violating the provisions of this Chapter. Upon proof of a violation, a court shall award the following:

1. Damages in the amount of either:

a. Upon proof, actual damages; or

b. With insufficient or no proof of actual damages, \$500 for each violation of this Chapter (hereinafter "Statutory Damages"). Each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no Person suing on behalf of the general public shall recover Statutory Damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public by another Person for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Person bringing the subsequent claim was a party to the prior adjudication.

2. Exemplary damages, where it is proven by clear and convincing evidence that the defendant (i.e. person violating this Chapter) is guilty of oppression, fraud, malice, retaliation, or conscious disregard for the public health.

B. The Person may also bring a civil action to enforce this Chapter by way of a

conditional judgment or an injunction. Upon proof of a violation, the court shall issue a conditional judgment or an injunction.

C. 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.

D. Nothing in this Chapter shall prohibit 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 jurisdiction of that court.

E. No Person may bring an action pursuant to this section unless that Person has first made a good faith attempt to resolve the situation informally with the offending person, including written notice of this section to the offending party and a written request to cease smoking in the multi-unit residence at least thirty (30) days before filing suit.

**6.XX.080 Limitations and exceptions.**

A. Nothing in this Chapter may be used as grounds to terminate a lease agreement or tenancy. Nothing in this section shall render smoking in a multi-unit residence or in a designated “Non-smoking” unit a violation of law pursuant to any lease agreement.

B. Nothing in this Chapter shall limit or preclude the enforcement of any other applicable laws or remedies available for violations of this chapter, including but not limited to, the enforcement provisions of Chapter 1.17 of the Riverside Municipal Code.