

New York Landlord

Smoke-Free Housing TOOLKIT



A Cleaner
Building

Happier
Tenants

A Smart
Investment



Dear Property Owner:

The following toolkit is designed to help you successfully adopt and enforce a no-smoking policy for your residential building or complex. Whether you are launching a new property or changing the policy for an existing one, going smoke-free protects both the value of your property and the health of your residents. **Congratulations on making the decision to go smoke-free.**

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Getting Started

◆ Consider your situation and reasons for adopting a smoke-free policy

While it is easiest to adopt smoke-free policies in new buildings, existing buildings or complexes can also be converted through planning and resident preparation. Clarifying the reasons you wish to implement the policy will assist you as you talk to residents about the upcoming changes.

◆ Prohibiting smoking in your building will:

- **Protect and maintain the value of your property** by lowering the cost of refurbishment and repair, and reducing the risk of cigarette-caused fires.
 - Smoking can cause extensive damage to apartment units, including burn marks on counters, stains on walls and residue on cabinets. Smoking in a residence can increase turnover costs by two to seven times.¹
 - Smoking-related fires are a leading cause of fires in multiunit buildings and a leading cause of fire deaths in the U.S.²
- **Protect all residents** from the proven hazards of secondhand smoke exposure.
 - Secondhand smoke is a known carcinogen with no risk-free level of exposure.³
 - Breathing secondhand smoke places residents at greater risk for lung cancer, heart disease, asthma attack, breathing difficulties, sinus and bronchial illnesses.³
 - Pregnant women, babies, children, the elderly, asthma sufferers and those with other chronic or short term illnesses are especially vulnerable to secondhand smoke dangers.³
 - Secondhand smoke travels from unit to unit and cannot be adequately contained or vented.⁴
- **Attract tenants** by creating a cleaner, healthier building.
 - A majority of New Yorkers favor smoke-free policies where they live.⁵
 - A minority (12.0%) of NYS adults currently smoke.⁶
- **Avoid potential lawsuits** brought by residents exposed to unwanted secondhand smoke.
 - Across the country, tenants are taking legal action against landlords that allow exposure to unwanted secondhand smoke from others.⁷

Smoking material fires are a leading cause of residential fire deaths in the U.S.



“When we made the ‘official’ announcement that the property would be smoke free on January 1, the residents applauded. And that reaction was repeated at the next property and at the next property. We were giving the residents what they wanted.”

- Pamela Berger, Belmont Housing Resources for Western New York



What you should know:

- **Smoke-free policies are legal** in the State of New York and are not discriminatory.
 - There is no constitutional right to smoke and smokers are not a protected class.⁸
 - As long as the policy is not used to target a protected class or minority, smoking can be restricted or prohibited.
 - A smoke-free policy prohibits the act of smoking and does not prevent smokers from living on the premises.
 - As of July 31, 2018, a mandate by the U.S. Department of Housing and Urban Development (HUD) required all federally funded public housing authorities to implement a smoke-free policy.⁹
 - NYS Homes and Community Renewal (HCR) strongly supports smoke-free housing. As of February 2018, the agency removed the grandfather rule, allowing funded properties to apply their smoke-free policies to all residents.

A smoke-free policy prohibits the act of smoking and does not prevent smokers from living on the premises

- **Definition: A smoke-free policy** bans the carrying or use of burning tobacco, or any other plant product intended for inhalation, including hookahs and marijuana, by any resident, relative, visitor, or worker within any common or private area of the building/complex. It is recommended that a smoke-free policy include e-cigarettes through specified lease language.

"Smoking" does not include the use of traditional tobacco as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

- **Smoke-free policies are generally self-enforcing** as long as all residents are clearly informed of the policies.
- The steps and challenges to adopting smoke-free policies will vary by housing type. **Market-rate** apartments and non-profit affordable housing protocols are fairly simple. **Co-ops and condos** change rules through their respective boards and associations (Co-op and Condo guides are available on SmokeFreeHousingNY.org). **Affordable housing** governed by local housing authorities need to abide by the rules of the local authority, and **rent-stabilized** leases currently offer little room for smoke-free policy adoption, although rent-stabilized units can be designated as no-smoking when the apartment turns over, or if existing residents voluntarily sign a smoke-free lease amendment.

The U.S. Department of Housing and Urban Development issued a rule that required public housing authorities to implement a smoke-free policy by July 31, 2018.

- **FR 5597-P-02 Instituting Smoke-Free Public Housing**

NYC Apartments^a

Apartments are required to define their policy on smoking. The policy must be:

- ✓ provided annually to residents
- ✓ incorporated into lease agreements

^aNYC, N.Y., Ord.1585A-2017



Implementation Tips

◆ **Involve tenants and staff**

- Include tenants and building staff in discussions about smoke-free policy adoption.
- Provide them with the health, safety and property value rationale for the policy.
- Discuss implementation ideas.
- Talk to residents about your plan to adopt a smoke-free policy. (Co-ops and Condos should discuss policy adoption at their respective co-op board and condo association meetings.) Chances are the majority of residents would prefer a smoke-free environment.
- Consider conducting a survey to get input from residents about their preferences. (See Appendix for Sample Tenant Surveys)
 - Assess how many residents smoke, smoke inside their residential unit, are bothered by secondhand smoke, or favor a no-smoking policy.
 - Review the findings; responses may show valuable support for the policy and provide insight into successful policy construction and implementation.

Including residents in the process can help build support and help prepare everyone for the transition.

◆ **Define policy details with clear implementation dates** (see Sample Smoke-Free Policy Adoption Timeline)

- Determine **when** to adopt a smoke-free policy:
 - If the current lease specifies that changes can occur between lease renewals, then the property owner may implement the policy for all residents according to the lease terms. Choose a smoke-free date that gives residents reasonable notice, which varies depending on the building's situation.
 - If there is no clause allowing for lease change between renewals, then the no-smoking policy can only be applied at the time of lease renewal unless the tenant volunteers to agree to the policy prior to renewal. In this case, have new residents who move into the building sign a smoke-free lease addendum immediately and have current residents sign at the time of lease renewal.
- Decide exactly where smoking will be prohibited inside and outside of the residential building.
 - **Individual units:** Covering all residential units ensures that smoke cannot drift from one unit to another unit in the building.
 - **Buildings:** One or more buildings in a complex of buildings.
 - **Outdoor areas:** Depending on your location you can choose to prohibit smoking on all outdoor areas connected with your property (balconies, terraces, entryways, entire outdoor property), limit smoking to specified areas, or allow all outdoor smoking. For example, limiting smoking to at least 50 feet from the building can help reduce smoke drifting back into windows and reduce cigarette product litter on your property.

- **Common Areas:** New York State's Clean Indoor Air Act already prohibits smoking in all common areas of residential buildings if they are places of employment (i.e. for property managers, maintenance staff, etc.). In New York City, the NYC Smoke Free Air Act prohibits smoking and e-cigarette use in all common areas of residential buildings with three or more units. Whether or not smoking is prohibited by law in common areas of your building, you should include language addressing common areas in your smoke-free lease addendum.
- Decide **which behavior** the policy will cover:
 - You may want to consider limiting the use of electronic cigarette (e-cigarette) devices in units and common areas, due to concerns about nicotine vapor, the fire hazard from exploding devices and confusion with smoking. In 2017, New York State's Clean Indoor Air Act was expanded to prohibit the use of e-cigarettes everywhere smoking is prohibited. Recommended e-cigarette language is included in the sample lease addendums in this guide.
- Define a **graduated enforcement procedure** that provide multiple steps to obtain compliance and provide the opportunity for residents to change their behavior. The following sample language can be included in a comprehensive smoke-free lease or lease addendum:

"Violation Enforcement

 - (a) The first violation shall result in a verbal warning and reminder of the smoke-free policy
 - (b) The second violation shall result in a verbal warning and provision of smoking cessation resources and materials.
 - (c) The third violation shall result in a written warning and provision of smoking cessation resources and materials.
 - (d) The fourth violation shall result in a notice to vacate with an option to remedy/cure, and provision of smoking cessation resources and materials.
 - (e) The fifth violation may result in a 10-day notice to vacate without the option to remedy or cure."¹⁰
- Write all of these details into the lease and lease addendum. (See No-Smoking Lease Addendum Samples).

◆ Communicate with tenants throughout the implementation process

After you have reviewed the resident survey results and made clear decisions about where, when, and how smoking will be prohibited, begin to let your residents know. It's important to begin communicating with residents both verbally and in writing to give them adequate notice of the upcoming no-smoking policy. This will give people time to adjust and can improve compliance.

- Send a very positive letter to each resident about the new policy. (see Resident Notification Letter Samples)
 - Ensure that all building and maintenance workers are aware of the letters and how to respond to questions.
 - Request a signed confirmation that residents have received and read the letters.
- Send a copy of the new lease addendum to all residents containing the new no-smoking policy. (see No-Smoking Lease Addendum Samples)
- Provide a summary memo/ Q&A of the new rules. (see Resident Memo Samples)
- Provide a follow-up letter to those who have not signed the initial letter or the new lease agreement when it is requested.

See the Appendix for sample letters and lease addendums. You may want to consider checking with your lawyer as you finalize your new no-smoking policy language for residents' leases and/or agreements.

◆ **Post signage**

- Post signs in the lobby and all common areas. (see Appendix for Sign Samples and consider contacting a local partner for signage through www.SmokeFreeHousingNY.org)
- Signs are important for reminding residents, visitors and work personnel that a no-smoking policy exists.

◆ **Identify places where smokers can smoke**

- If an outdoor smoking area is designated in the policy, choose a location at least 50 feet from buildings and clearly identify that outdoor area.

◆ **Promote your building**

- Promote your smoke-free building on the www.SmokeFreeHousingNY.org website.
- Promote your building's smoke-free status in all advertising and with realtors.
- Place signs at the entrance announcing its smoke-free status.
- Encourage your realtor to add a "smoke-free" drop-down selection to their property search web-sites
- Talk about your building at community board and other community meetings.

◆ **Provide resources for quitting**

- Most smokers want to quit. Provide quit resources for residents who smoke. (see Appendix for Quitting Resources)



"One month after designating two of our apartment buildings as smoke free, they were 100% occupied. Non-smokers love to have the option of living smoke free and appreciate having neighbors that also value clean air."

- Emily Modan, Parkwood Village



Strategies to Support Compliance

- ◆ **Put the no-smoking rule in the lease agreement** and read through the rule with tenants as they sign their lease. Smoke-free residence policies are generally self-enforcing as long as all residents are clearly informed of the policies.
- ◆ **Respond promptly to complaints of secondhand smoke incursion**, as you would if one of your residents had requested maintenance. Courts have interpreted responding to secondhand smoke incursion as a duty under New York law. The smoke-free addendum reinforces this obligation of the Property Manager or Owner. If you fail to address concerns, other residents might start violating the smoke-free policies as well. (see Notice of Smoking Incident and Sample Violation Warning Letter)
- ◆ **Post signs** as a reminder. They can be your voice.
- ◆ **Educate all staff** about the policy so they can answer questions for residents correctly.
- ◆ **Address the concerns of your residents** in a timely manner. Resolution of problems in a timely manner will stop others from arising. If you take the obligation to enforce your policies seriously, residents are less likely to test the policies.
- ◆ **Try to resolve all disputes amicably.** If the policy is violated, issue three written warnings before proceeding with eviction procedures. Have the resident sign these warnings and return them to you in order to create a written record of your attempts to resolve the issue.
- ◆ **Uniformly and promptly enforce your policies.** Some courts have held that an unwillingness to enforce a policy (such as a pet policy) may constitute a waiver of that policy and bar subsequent enforcement.
- ◆ **Include a provision in your lease** stating that waivers can only be made in writing. This will further support you in the event one of your residents argues that the smoke-free policy has been waived due to a lack of prior enforcement.

In a building where a no-smoking policy is phased in gradually, special considerations will have to be made:

- ◆ If a problem arises involving a resident whose lease does not yet contain the smoke-free clause, kindly **ask the resident to smoke outside or ventilate** the residence while smoking indoors. You can also take measures to insulate the smoking and nonsmoking residents' units in order to restrict transfer of secondhand smoke from one unit to another.
- ◆ If necessary, **attempt to relocate residents** who smoke in their unit to a separate part of the building in order to decrease secondhand smoke transfer. You may have to offer incentives in order to get agreement to move. You can also let residents who are concerned about secondhand smoke know that you're working on a smoke-free policy that will help address their concerns. In the meantime, you can try building modifications to help alleviate secondhand smoke drift.

Smoke-Free Policy Adoption Timeline

Month	Activity
_____	Survey Residents (Optional) <ul style="list-style-type: none"><input type="checkbox"/> Call local SmokeFreeHousingNY community partner to discuss policy adoption process and get sample survey<input type="checkbox"/> Survey your residents about their experience with secondhand smoke exposure in the building and their interest in living in a smoke-free building<input type="checkbox"/> Consult with community partner to discuss any survey results and policy options
_____	Decide Policy Details <ul style="list-style-type: none"><input type="checkbox"/> Decide policy details to be included in the Smoke-Free Lease Addendum (see Implementation Tips)<input type="checkbox"/> Modify sample Smoke-Free Lease Addendum<input type="checkbox"/> Determine the number/type of Smoke-Free Building signs needed and contact community partner to request signs, if available
_____	Educate Staff <ul style="list-style-type: none"><input type="checkbox"/> Hold meeting to educate all staff, especially those most affected by change. Invite community partner to talk about the health hazards of secondhand smoke and other reasons for adopting policy<input type="checkbox"/> Talk realistically about enforcement of a no-smoking policy<input type="checkbox"/> Familiarize resident services staff and property management staff with cessation resources and help them understand smoking addiction and behavior to help support residents who smoke.
_____	Notify Residents <ul style="list-style-type: none"><input type="checkbox"/> Begin implementing policy with new residents by having them sign a lease addendum as they move in<input type="checkbox"/> Notify existing residents of policy change through letters and flyers. Inform them of the date the policy will take effect<input type="checkbox"/> Offer cessation options to those residents who wish to quit smoking<input type="checkbox"/> Send a letter to those on a wait list notifying them of new policy
_____	Ask Existing Residents to Sign on to Policy <ul style="list-style-type: none"><input type="checkbox"/> Invite community partner to present to residents regarding policy change and include cessation information<input type="checkbox"/> Send a reminder notice to residents and/or post notices about the implementation date in common areas<input type="checkbox"/> Ask existing residents to sign the lease addendum and return by the due date. Follow-up with residents who did not return the lease addendum so that all are signed before the policy goes into effect
_____	Promote Policy <ul style="list-style-type: none"><input type="checkbox"/> Post Smoke-Free Building signs<input type="checkbox"/> List your building on SmokeFreeHousingNY's website through smokefreehousingny@gmail.com<input type="checkbox"/> Host a smoke-free celebration or policy recognition event<input type="checkbox"/> Make available local cessation resources for staff and residents as well as NYS Smoker's Quitline information

Tenant Survey Sample One

Date

Dear Residents of (building/complex/community):

To protect residents and property from the hazards of secondhand smoke, many residential buildings are adopting no-smoking policies. In New York, virtually all workplaces and numerous recreational facilities have successfully been smoke-free for years. In order to ensure an environment where everyone can live and breathe smoke-free, (name of property) will be addressing the potential adoption of a no-smoking policy.

Please respond to the questions below so that we may review this issue with your input.

Please slide responses under the office door (or provide other means of response) by the evening of (due date) so we can consider your comments.

Please circle 'yes' or 'no' and add comment at the bottom.

Are you a smoker? YES NO

If yes, do you smoke in your unit? YES NO

Do you allow guests or others to smoke in your unit? YES NO

Can you smell tobacco/marijuana smoke from other units when in your apartment? YES NO

Can you smell tobacco/marijuana smoke when in the hallway/common areas? YES NO

Would you be in favor of a smoke-free policy for this building (meaning smokers can still live in the building but cannot smoke in the building)? YES NO

Comments:

Tenant Survey Sample Two

Dear Valued Resident:

The (name of building management or property) is interested in the safety and comfort of tenants, providing an enjoyable living experience for all. There has been a growing body of evidence, summarized in the 2006 U.S. Surgeon General report on secondhand smoke that confirms no risk-free level of exposure. According to the Surgeon General, secondhand smoke exposure can be particularly dangerous to children, adults and children with asthma, and people with heart or breathing problems.

We have decided to review our smoking policy to determine if it should be revised in light of these findings. We value your tenancy and would appreciate your input so that we can design a policy that is equitable to our residents and provides guidance as to where smoking will or will not be permitted. We believe a revised policy will reduce complaints from tenants and between neighbors about drifting secondhand smoke. All answers will be kept confidential.

Please fill in the blanks and circle yes or no where appropriate.

1. Number of years you have been a resident? _____
2. Number of children living in your unit? _____
3. Number of people who smoke that live in your unit? _____
4. Does anyone living in the unit smoke in the unit ? Yes No
5. Are visitors or workers allowed to smoke in your unit? Yes No
6. Have you experienced secondhand tobacco/marijuana smoke drifting into your unit? Yes No
If yes: Please describe where smoke is coming from, for example: hallway,
adjacent patio, adjoining apartment, etc. _____
7. Would you favor a policy to make this building smoke-free? Yes No
(meaning smokers can still live in the building but there will be no-smoking in any indoor area
including common areas and private units)
8. Should there be a designated smoking area outside? Yes No
9. Other areas of the building or grounds that you would like to see designated smoke-free:

Name: _____ (please print)

Unit Number: _____

Thank You.

Please slip completed forms under the management office door (or provide another method for return)

Resident Notification Letter Sample One

(Date)

Dear Resident:

(Property name) has decided to adopt a smoke-free policy in order to provide a healthier environment for all residents. The harmful effects of secondhand smoke, increased maintenance costs, and fire danger caused by indoor smoking are simply too great to ignore.

- As of (date), (building name & address) will be smoke-free. This means that there will be no carrying or use of a lit tobacco product or any other plant product intended for inhalation in indoor common areas or private areas of property. (Owner may add outdoor areas such as balconies and terraces as well as include e-cigarettes.) This policy includes tenants as well as guests, maintenance personnel, and staff. Existing smokers who reside in this building will be “grandfathered,” and thus allowed to continue smoking in their units, until (date depends on terms of lease and/or rules governing the type of housing, usually the date of lease renewal), at which time they also must smoke outside.
- This policy was passed to protect the health of our residents, staff, and guests. Secondhand smoke is a Class A carcinogen, which means it is a cancer causing agent with no risk-free level of exposure. Secondhand smoke can travel through doorways, windows, wall joints, plumbing spaces, and even light fixtures, so secondhand smoke from one unit can adversely affect the health of residents in other units. In addition, fires caused by smoking-related materials are the number one cause of home fire deaths.
- If you or your family members are interested in more information on smoke-free living, please visit the following web-site: www.SmokeFreeHousingNY.org. The website will also link you to a number of resources that can help if you are thinking about quitting smoking.

Please feel free to contact (name of employee, property manager, etc.) or me if you have any questions. We will be happy to assist you in any way possible to work toward a smooth transition.

Sincerely,

Name

Title

Resident Notification Letter Sample Two

Dear Resident:

(Property name) has decided to adopt a smoke-free policy in order to provide a healthier environment for all residents. The harmful effects of secondhand smoke, increased maintenance costs, and fire danger caused by indoor smoking are simply too great to ignore. A smoke-free policy for individual units will be phased in as leases are renewed.

Secondhand smoke is a serious health hazard. Exposure to secondhand smoke causes nearly 42,000 adult deaths each year in the United States. The 2006 Report of the Surgeon General states that there is no risk-free level of exposure to secondhand smoke.

Secondhand smoke is particularly dangerous to children and has been linked to Sudden Infant Death Syndrome (SIDS). In addition, smoking is a leading cause of residential fire-related deaths in the U.S.

This is an issue for the entire residential complex because tobacco and marijuana smoke travels from unit to unit. Secondhand smoke can seep through outlets in walls and spread through air conditioning and heating systems. The remodeling required to prevent secondhand smoke transfer can be costly and ineffective. The only effective method to stop the spread of secondhand smoke is through the adoption of a no-smoking policy.

Smoking will not be prohibited in individual units until leases come up for renewal. However, all leases from this point forward will include a smoke-free addendum.

Please consider this letter as notice about the changes that will be taking place upon your next lease renewal. The intention of the new policy is to enable everyone to breathe clean, tobacco-free indoor air.

Please sign this letter and return to management within one week. If you have any questions or concerns, please contact management.

Regards,

Name
Property Manager/Owner

I understand and agree to abide by the policies contained in this letter.

Name: _____
Signature: _____
Unit: _____
Date: _____

Resident Memo Sample One: Summary of Smoke-Free Policy

MEMO

To: Residents of (Building/Complex)
From: (Employee Name), Property Manager
Date:
RE: No-Smoking Policy

By now, all of you have signed a lease addendum that states that (building/complex) has become a smoke-free property. The following is a summary of what is expected and answers to some of your questions.

Non-smoking areas

All grounds and community areas are smoke-free. This includes (but is not limited to) the walkways, parking lots, driveway, lawn area, community room, and laundry room.

Where can I smoke?

Since the entire property is now considered smoke-free, the only (two) place(s) to smoke will be _____

What if my guest wants to smoke?

The same rules that you are required to follow apply to all guests and vendors on the property. Remember that you are responsible for your guest's actions, so if they smoke it means that you are violating your lease.

I have been smoking here since I moved in, am I exempt?

You can still smoke, but you must smoke only in the designated smoking areas outside of your building.

Can I smoke in my car?

If your car is on the property, then it is still on a non-smoking area. If you are going to use your car to smoke, please do it off the grounds.

Many apartment complexes throughout New York already have become or are considering becoming smoke-free. There are many benefits both for the residents and the management company. We are hoping that each of you will benefit in some way from our transition to a smoke-free facility. We appreciate your cooperation.

Please call me at (phone number) if you have any questions or concerns.

Smoke-free Lease Addendum Sample One

ADDENDUM TO LEASE

SMOKE-FREE POLICY

Due to the increased risk of fire and the known health effects of secondhand smoke, smoking of any product, including tobacco and marijuana, is prohibited in all areas of this property, both private and common, whether enclosed or outdoors. (Recommended- The use of electronic cigarettes is also prohibited in _____.) The policy applies to all owners, tenants, guests, and servicepersons.

Smoking: The term "smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. [Recommended:"Smoking" also includes the use of an electronic cigarette which creates an aerosol or vapor, in any manner or in any form.]

[Recommended - Electronic Cigarette: The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes or under any product name.]

TENANT ACKNOWLEDGEMENT:

I hereby acknowledge the above smoking policy as part of the lease or month-to-month agreement. I agree that I will not smoke on the property except in the designated areas listed below. In addition, I will be responsible for enforcing this policy with all of my visitors, guests, and relatives who visit the premises. I understand that the landlord will take action should I violate the conditions of this policy.

DESIGNATED NO-SMOKING AREAS: _____

NAME (please print) SIGNATURE

DATE

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

ADDITIONAL NAMES:

DATE

NAME (please print) SIGNATURE

DATE

NAME (please print) SIGNATURE

Smoke-free Lease Addendum Sample Two

Smoke-Free Lease Addendum***

*** The portions of this addendum that have been included in parentheses may be adjusted depending upon the scope of your smoke-free policy.

Resident and all members of the resident's family or household are parties to a written lease with Property Owner/Manager (the Lease). This addendum states the following additional terms, conditions, and rules that are incorporated into the Lease. A breach of the Lease Addendum shall give each party all the rights contained herein, as well as the rights provided for in the Lease.

1. **Purpose of Smoke-Free Housing:** The parties' desire to mitigate (i) the irritation and known health effects caused by secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the cost of fire insurance for a non-smoke-free building.
2. a. **Definition of Smoking:** "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. [Recommended: "Smoking" also includes the use of an electronic cigarette which creates an aerosol or vapor, in any manner or in any form.]
[b. **Recommended: Definition of Electronic Cigarette:** The term "electronic cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigs, e-pipes or under any product name.]
3. **Smoke-Free Complex:** Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident's household have been designated as a smoke-free living environment. Resident and members of Resident's household shall not smoke anywhere in the unit rented (or owned if coop or condo) by Resident, in the building where the Resident's dwelling is located, or in any of the common areas (or adjoining grounds, terraces, balconies, or other parts of the residential community), nor shall Resident permit any guest or visitors under the control of Resident to do so. (Optional: The use of electronic cigarettes is also prohibited in _____.)
4. **Resident to Promote No-Smoking Policy and Alert Landlord of Violations:** Resident shall inform Resident's guests of the smoke-free policy. Further, Resident shall promptly give Property Manager/Owner written statement of any incident where secondhand smoke is migrating into the Resident's unit from sources within the building.
5. **Property Manager/Owner to Promote No-Smoking Policy:** Property Manager/Owner shall post no-smoking signs at entrances and exits, common areas, and hallways (and in conspicuous places on the grounds of the building/complex).
6. **Property Manager/Owner Not a Guarantor of Smoke-Free Environment:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the residential building/complex as smoke-free, do not make the Property Manager/Owner or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, Property Manager/Owner shall take reasonable measures to enforce the

smoke-free terms of its leases and to make the (designated areas of the) building/complex smoke-free. Property Manager/Owner is not required to take steps in response to smoking unless Property Manager/Owner knows of said smoking or has been given written notice of said smoking.

7. **Other Residents are Third-Party Beneficiaries of Resident’s Agreement:** Resident agrees that the other Residents at the complex are the third-party beneficiaries of Resident’s smoke-free addendum agreement with Property Manager/Owner. A Resident may sue another Resident for an injunction to prohibit smoking or for damages, but does not have the right to evict another Resident. Any suit between Residents herein shall not create a presumption that the Property Manager/Owner breached this Addendum.
8. **Effect of Breach and Right to Terminate Lease:** A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights provided for in the Lease. A material breach of this Addendum by the Resident shall be a material breach of the Lease and grounds for termination of the Lease by the Property Manager/Owner. Property Manager/Owner acknowledges that in declaring the building (or portion of the building and outdoor areas) to be smoke-free, the failure to respond by Property Manager/Owner to a complaint filed by the Resident shall be treated as equivalent to failure to respond to a request for maintenance.
9. **Disclaimer by Property Manager/Owner:** Resident acknowledges that Property Manager/Owner’s adoption of a smoke-free living environment, and the efforts to designate the residential complex as smoke-free, does not in any way change the standard of care that the Property Manager/Owner would have to a Resident household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Property Manager/Owner specifically disclaims any implied or express warranties that the building, common areas, or Resident’s premises will have any higher or improved air quality standards than any other residential property. Property Manager/Owner cannot and does not warranty or promise that the premises or common areas will be free from secondhand smoke. Resident acknowledges that Property Manager/Owner’s ability to police, monitor, or enforce the agreements of the Addendum is dependent in significant part on voluntary compliance by Resident and Resident’s guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that the Property Manager/Owner does not assume any higher duty of care to enforce this Addendum than any other Property Manager/Owner obligation under the Lease.

Paragraph for Existing Residential Communities that Adopt Smoke-Free Policies:

10. **Effect on Current Residents:** Resident acknowledges that current residents residing in the complex under a prior Lease will not be immediately subject to the smoke-free policies. As current residents terminate occupancy, or enter into new Leases, the smoke-free policy will become effective for those units.

Resident Date

Property Manager/Owner Date

Sample Letter to Residents re. Non-Returned Smoke-Free Lease Addendums

(Date)

(Building/Complex) Resident

Street Address

City, State, Zip

Dear Resident,

Please be advised that I previously mailed out a Non-Smoking addendum to your lease, requesting for you to sign and return. We did not receive this signed document back. I am advising you that the implementation of a smoke-free policy is still in effect.

Enclosed is another copy of the Non-Smoking addendum. Please review it and contact me at (phone number) with any questions or concerns you may have.

Thank you.

Sincerely,

(Employee Name), Property Manager

(Building/Complex)

Notice of Smoking Incident

BUILDING: _____

DATE: _____

RESIDENT: _____

UNIT NO: _____

This notice is to inform management of _____ Apartments of the following smoking-related incident:

Description of incident:

- _____ 1. Smoking coming into rental unit
- _____ 2. Smoking observed in indoor common area
- _____ 3. Smoking observed in outdoor area
- _____ 4. Other:

Date and time of day incident occurred: _____

Remarks/Detailed Description: _____

Please submit this form to the rental office.

Tenant

Date

Sample Violation Warning Letter

The following warning letter can be used as a model to write your own letters to tenants who are violating the terms of your smoke-free policy. Please note that the letter is intended to follow verbal warnings and be tailored according to the specifics of your smoke-free policy and penalties associated with violating the contract.

Date

Dear (name of resident),

It has been brought to our attention that secondhand smoke has been drifting out of your apartment into common areas and/or others' apartments (OR staff noticed a strong odor of cigarettes in your unit).

I would like to remind you that, as stated in your lease agreement, (property name) has a smoke-free policy that states (insert non-smoking policy). This decision was made to protect the health of all tenants from the adverse effects of secondhand smoke, a known health hazard associated with lung cancer and heart disease. The decision was also made to protect our buildings from damage to units and an increased risk of fire.

Tenants who violate the terms of their lease are subject to the penalties outlined in the lease agreement. If you violate the terms of the lease again, we may take appropriate action. (Include further details about your enforcement procedures of warnings, fines, etc.)

(If you have an outdoor designated smoking area, provide details on where it is and ask the tenant to smoke only in the designated area(s).)

Thank you for your cooperation in this matter. Please don't hesitate to contact us at (insert contact information) if you have questions or concerns.

If you are interested in quitting smoking, help is available through the New York State Tobacco Quit Line (1-866-NY-QUITS or www.nysmokefree.com). Services are free and include information, counseling, a personalized quit plan, local quitting resources, nicotine replacement therapy (patches or gum), and quit kits.

Sincerely,

Name

Title

Company

Quitting Resources

Consider providing your tenants with the following smoking and vaping cessation resources and information. For more local resources, contact a community partner through www.SmokeFreeHousingNY.org.

For nicotine addiction, whether it's from smoking or vaping, call the New York State Smokers' Quitline at 1-866-NY-QUITS (1-866-697-8487) or visit www.nysmokefree.com. The Quitline can also help you find a list of clinics that offer free or low-cost counseling and other services throughout New York.

Tips to Quit

- 1. Get Ready!**
 - Write down your reasons for quitting.
 - Put the list in a place where you will look at it often.
- 2. Consider Using a Nicotine Replacement Product.**
 - Using nicotine patches, gum or medication can DOUBLE your chances of quitting.
 - Ask a doctor to help you find a combination that is right for you.
- 3. Get a Quitting Partner.**
 - This person can be another smoker who wants to quit or a friend you can talk to.
- 4. Get a Quit Date.**
 - Mark your calendar.
 - Prepare for your quit date by throwing away ashtrays and lighters.
 - When your quit date arrives, get rid of your cigarettes.
- 5. Make Your Home Smoke-Free.**
 - It will help you avoid the urge to smoke.
- 6. Avoid Things that Trigger Cravings.**
 - You should try to avoid alcohol, caffeine, and stress.
 - It also helps to stay away from other smokers for a while.
- 7. Drink Lots of Water and Exercise.**
 - This will help you to relieve stress, lift your spirits, and improve your health!
 - Walking briskly just 30 minutes a day, at least 4 days a week, can help you.
- 8. Stay Away from the First Cigarette.**
 - The craving will pass.
 - All it takes is one cigarette to get many people smoking again.

Free Signs and Technical Assistance

Once you have decided to go smoke-free, tell the world! Signs are an easy and effective way to catch the attention of renters seeking smoke-free living and help remind existing residents of the new smoke-free policy and designated areas. Many SmokeFreeHousingNY community partners provide window clings and signage free of charge. Some samples are below.

For details about free signs and technical assistance, contact a local partner through the About Us page on www.SmokeFreeHousingNY.org



References

1. Smoke-Free Housing New England. *Costs to Rehabilitate a Unit Where Smoking is Prohibited vs. a Unit Where Smoking is Allowed*. 2009. www.smokefree4me.org
2. U.S. Fire Administration. *USFA Fire Estimates*. www.usfa.fema.gov/statistics/estimates
3. U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. 2006.
4. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) *Environmental Tobacco Smoke Position Paper*. (Atlanta: June 30, 2005).
5. King, Brian, et al. *Multiunit Housing Residents' Experiences and Attitudes Toward Smoke-Free Policies*. *Nicotine and Tobacco Research*. 2010 Jun; 12(6): 598-605
6. Behavioral Risk Factor Surveillance System (BRFSS) Brief, Number 2022-12. Cigarette Smoking New York State Adults, 2020. https://www.health.ny.gov/statistics/brfss/reports/docs/2022-12_brfss_cigarette_smoking.pdf
7. Schoenmarklin, Susan. *Infiltration of Secondhand Smoke into Condominium, Apartments, and Other Multi-Unit Dwellings*. Tobacco Control Legal Consortium. 2009.
8. Graff, Samantha K. *There is No Constitutional Right to Smoke*. Tobacco Control Legal Consortium. 2008.
9. U.S. Department of Housing and Urban Development. Final Rule. *Instituting Smoke-Free Public Housing*. 05 December 2016.
10. Public Health Law Center, *Model Smoke-Free Lease Addendum 4 (2020)*, <https://publichealthlawcenter.org/sites/default/files/resources/PHLC-Model-Smoke-Free-Lease-Addendum.pdf>

Acknowledgements

Portions of this guide were adapted with permission from Live Smoke Free
www.mnsmokefreehousing.org

For more information, additional materials, or to connect with a local community partner, please visit our website www.SmokeFreeHousingNY.org or email smokefreehousingny@gmail.com



This document was created by SmokeFreeHousingNY and the Center for Public Health & Tobacco Policy. SmokeFreeHousingNY is comprised of community partnerships funded by the New York State Tobacco Control Program, with the goal of increasing the availability of smoke-free multi-unit housing throughout New York State. Community partners offer free assistance and materials for adopting a no-smoking policy to public, affordable and market-rate housing providers.

The Center for Public Health & Tobacco Policy (Center) was a resource for the New York tobacco control community. The Center was funded by the New York State Department of Health and worked with the New York State Tobacco Control Program and its contractors to develop and support initiatives that reduce tobacco related morbidity and mortality in New York.

The information and materials contained in this toolkit are for informational purposes only and are not offered or intended to be and should not be construed to be legal advice nor to be a substitute for obtaining legal advice from a licensed attorney.

Created May 2011. Updated October 2014, April 2021 and January 2023



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