

Making Your Building Smoke-Free: A Guide for Landlords & Managing Agents

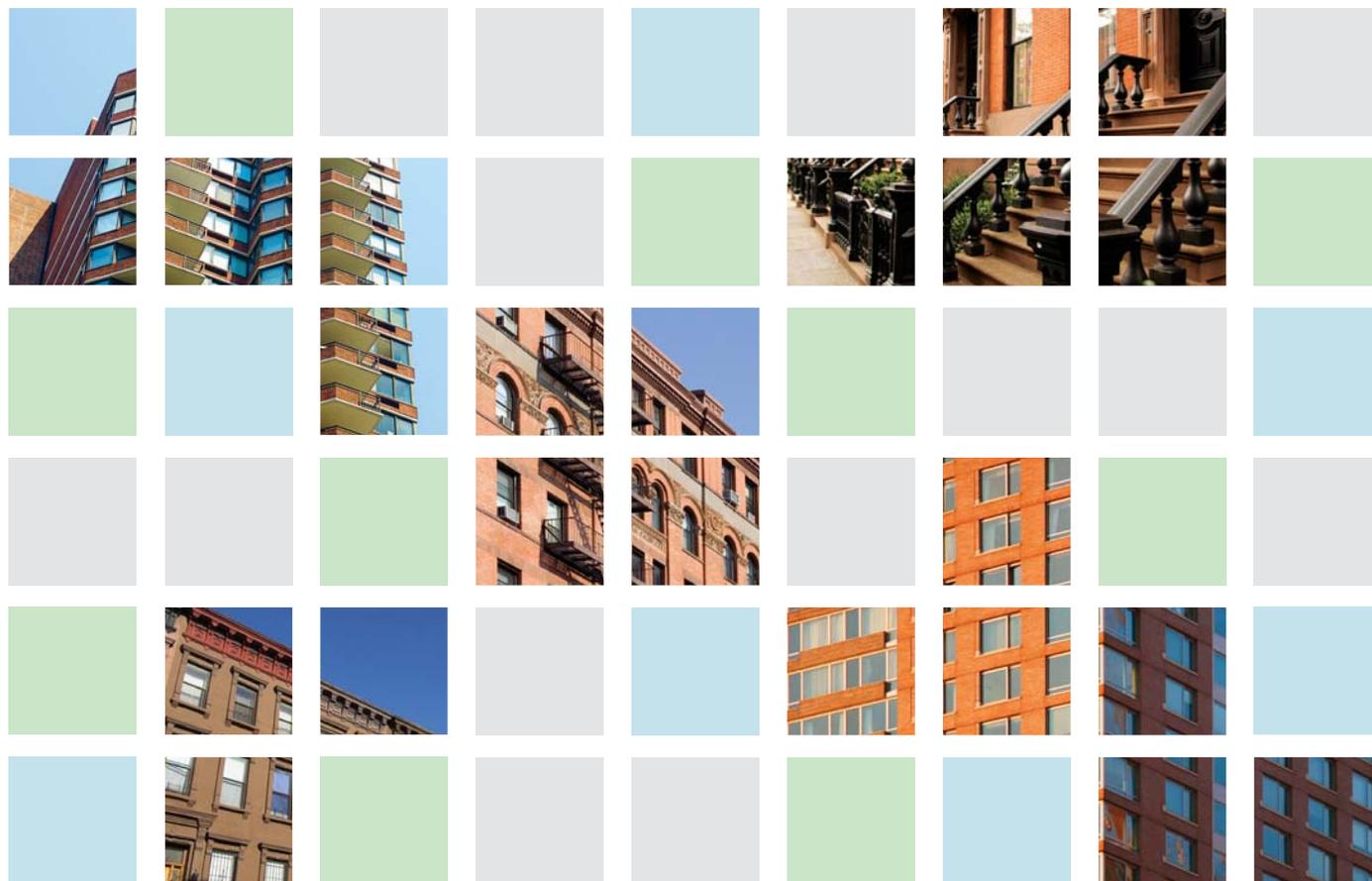
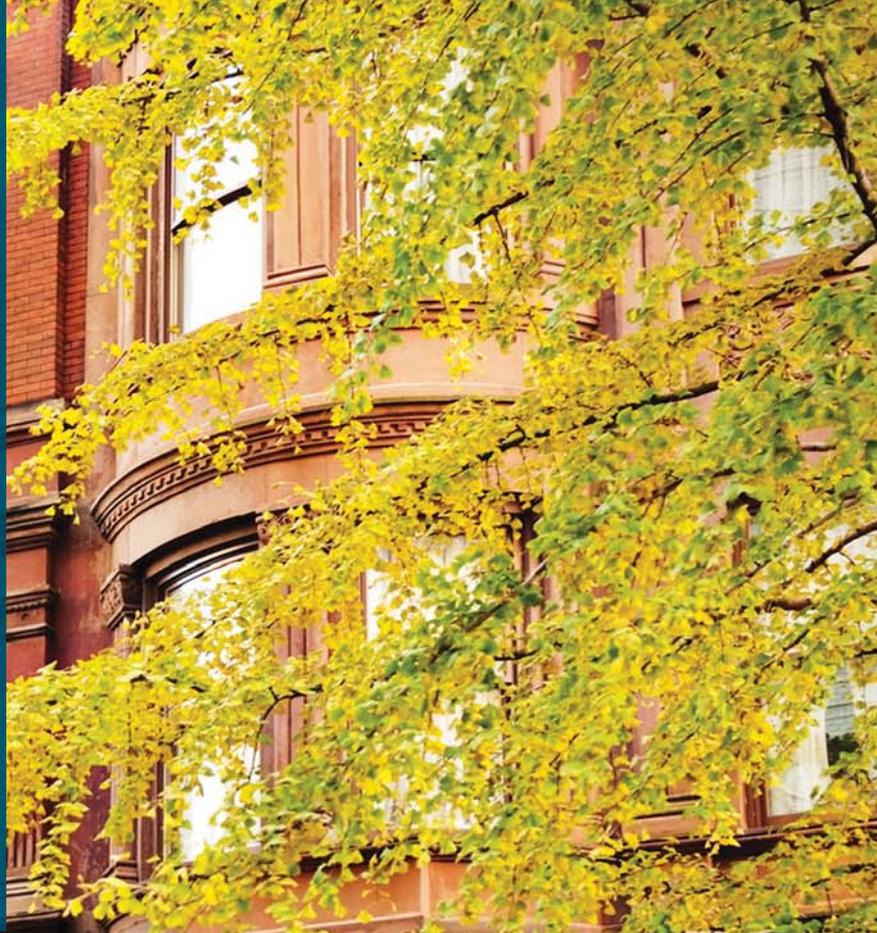




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smoke-free living

Managers and residents of multifamily buildings across the country are discovering the benefits of smoke-free housing. A 100% smoke-free building is one where smoking tobacco products is prohibited anywhere on the premises, including within individual apartments and common indoor and outdoor areas, or a building where smoking is restricted to a limited outdoor area.

Everyone benefits from smoke-free housing:

- **Owners see reductions in property damage and turnover costs, and the potential for insurance savings.**
- **Residents enjoy breathing cleaner, fresher air in their homes and in common areas such as hallways, lobbies and stairwells.**

Smoke-free housing is popular in major cities like Los Angeles, Boston, Chicago and Seattle, where tens of thousands of apartment units have gone smoke-free. Here in New York City, where we have the greatest concentration of multifamily housing in the country, the real estate industry is also beginning to embrace the idea. The first residential buildings in New York to adopt 100% no-smoking rules have opened their doors, and many more residences are considering adoption of this policy.

This guide provides reasons for going smoke-free in your building. It also includes a “How To” section, which guides you through the four steps you need to take to go smoke-free.



healthier business

“Everything sells eventually, even horrible closet-size apartments. But a place smelling like tobacco? It is going to take longer.”

— Real estate agent who markets condominiums and co-ops in Manhattan, quoted in The New York Times¹



MARKET DEMAND: IS THIS GOOD FOR BUSINESS?

Most New Yorkers do not smoke.

- As of 2010, only 14% of New Yorkers smoke—the lowest level on record, and less than the national average of 19%.

Most renters prefer nonsmoking buildings.

- A 2005 survey of New York City renters showed that 50% are willing to pay more to live in a smoke-free building.
- A 2012 poll of New York City voters found that nearly 60% want to live in a place that prohibits smoking.
- 79% of New Yorkers already have a no-smoking rule in their own homes, including 43% of smokers.

Smoke-free building rules are perceived as an attractive amenity.

- The first smoke-free buildings in New York City are promoting this feature as an amenity. Given that most New Yorkers do not smoke and prefer nonsmoking buildings, these landlords see this as a good marketing opportunity.

For Condominiums

Recent research in Massachusetts and Minnesota suggests that there's a greater buyer's market for units in smoke-free buildings.²

- 88% of prospective tenants are immediately less interested in a property if they smell smoke. (Massachusetts)
- More than 73% of prospective condominium residents are more interested in a unit advertised as being in a no-smoking building. (Massachusetts)
- Nearly 80% of owner-occupants reported that they would either "definitely" (63%) or "probably" (16.5%) choose a smoke-free building over an identical building that allowed smoking. (Minnesota)

HEALTHY ADVICE

Research has shown that creating smoke-free housing not only helps nonsmokers but helps smokers to smoke less, and it even helps a significant number of smokers to quit.³



healthier investments



Landlords have reported cleaning costs are two to three times higher for a smoking unit.⁴

ASSET MANAGEMENT

Your property is an important investment. Going smoke-free will help you protect that investment by reducing damage to your property, preventing fires and avoiding liability. You may even be able to lower your insurance premiums. Ask your broker.

If you have residents who smoke inside, it is likely there will be damage to the units: burn marks on the counters, sticky yellow walls and fixtures, burned carpets, a lingering cigarette odor. With smoking residents, you also may need to replace air filters in units and in the building more often. Having residents smoke outside can avoid much of this costly damage. Landlords have reported cleaning costs are two to three times higher for a smoking unit.⁴

Going smoke-free will:

- Help you spend less time and money on cleaning, repairing, replacing and painting when apartments turn over, and can lower your maintenance costs during occupancy.
- Keep your units in better condition, making them more attractive to prospective residents and buyers if you decide to sell the building. It can reduce the risk of fires at your properties, making your building safer for your residents, and possibly even saving you money on insurance costs.



Going Smoke-Free Can Protect Your Property from Fires

The New York City Fire Department reports that cigarette smoking is a leading cause of fires in multiunit buildings, and a leading cause of fire-related death in New York City.⁵

A 2007 study of fire-related child deaths in New York City between 2001 and 2006 revealed that nearly a quarter (24%) were caused by matches or a lighter.⁶

According to the Federal Emergency Management Agency, residential fires caused more than \$6.5 billion in human and property costs in the U.S. in 2010.⁷

AVOID POTENTIAL LEGAL LIABILITY

Residents exposed to secondhand smoke have brought successful legal action against landlords and smoking residents, invoking constructive eviction and breach of the warranty of habitability. Residents with certain disabilities may also be able to request reasonable accommodations to protect them from secondhand smoke. By going smoke-free, you can reduce conflicts among residents, alleviating the demand on you to keep the peace.

Landlords who go smoke-free are happy with the results.

COST OF REHABILITATING A RESIDENTIAL UNIT

General Cleaning	\$240	\$500	\$720	Nonsmoking
Paint	\$170	\$225	\$480	Light Smoking
Flooring	\$50	\$950	\$1,425	Heavy Smoking
Appliances	\$60	\$75	\$490	
Bathroom	\$40	\$60	\$400	
TOTAL	\$560	\$1,810	\$3,515	

Data reflect surveys from housing authorities and subsidized housing facilities in New England. Collected and reported by Smoke-Free Housing New England, 2009.



healthier living

"The only way to fully protect yourself and your loved ones from the dangers of secondhand smoke is through 100% smoke-free environments."

— The U.S. Surgeon General, 2006



HEALTH HAZARDS OF RESIDENTIAL SMOKING

Secondhand smoke is a serious health hazard. It contains more than 7,000 chemicals, many of which are toxic or cause cancer. Secondhand smoke impacts everyone who lives or works in multifamily residences. Young children and the elderly, as well as people with chronic illnesses, are particularly vulnerable to secondhand smoke. These are the same populations that often spend the majority of their time at home.

Infant and Child Exposure

Children, on average, are exposed to more secondhand smoke when they live in multifamily housing. Children have little control over their air environment. The main place where children breathe secondhand smoke is in their homes, even in multifamily housing units where parents do not smoke. National research found that children living in nonsmoking *apartments* have a greater exposure to tobacco smoke than children living in detached nonsmoking *houses*.⁸

Secondhand smoke hurts babies and children.

Because their lungs and bodies are still developing, infants and children are hurt by secondhand smoke more than adults. Secondhand smoke exposure during and after pregnancy causes low birth weight and lung problems in infants, and is

a known cause or factor/contributor to Sudden Infant Death Syndrome (SIDS).⁹

Children who breathe secondhand smoke are more prone to bronchitis, pneumonia and ear infections. In children with asthma, exposure to secondhand smoke likely results in more frequent, and more severe, asthma attacks.

Adult Exposure

Secondhand smoke hurts adults. It is a known cause of heart disease, respiratory problems and lung cancer. Exposure to secondhand smoke can increase risk of blood clots, injure blood vessels and interfere with their repair.

The greater the exposure to secondhand smoke, the greater the risk of health consequences. Research has shown that creating smoke-free housing not only helps nonsmokers but helps smokers to smoke less, and it even helps a significant number of smokers to quit.³ Also, children who grow up in smoke-free homes are less likely to become smokers later in life.

Bottom line: Creating smoke-free housing is the healthiest option for all building residents and employees.



healthier air

Just as the air we breathe is shared by everyone within a multifamily building, so is tobacco smoke.



INDOOR AIR QUALITY

Until recently, health initiatives have focused on changing the behavior of smokers who live with nonsmokers, recognizing that tobacco smoke freely circulates within the home. In promoting smoke-free *buildings*, we are recognizing that the smoking habits of *neighbors* impact the health of nearby apartment occupants.

Just as the air we breathe is shared by everyone within a multifamily building, so is tobacco smoke. Many New Yorkers who do not allow smoking in their home report that tobacco smoke from other residential units drifts into their homes. There is constant air flow between apartments and building common areas. While the specific amount varies depending on the construction and location of the units, in some cases up to 65% of the air will come from other units.¹⁰ Detectable food aromas in a hallway, or within a unit where no one was cooking, is evidence of shared air in multiunit housing. Efforts to air-seal and ventilate apartments may reduce, but do not completely prevent, secondhand smoke from drifting into neighboring units. Some ventilation efforts actually increase the airflow between apartments.

According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers

(ASHRAE), the organization that sets standards for ventilation, the only effective way to eliminate the health risks from exposure to secondhand tobacco smoke is not to allow smoking indoors.¹¹

Studies have shown that 57% of nonsmoking New Yorkers have elevated levels of cotinine in their bodies, an indicator of secondhand smoke exposure. This is well above the national rate of 45%, despite the fact that the smoking rate in New York City is lower than the national average.

The science is clear: Regardless of the walls between us, we share the air. Given the known health hazards of secondhand smoke, smoking at home is an issue for residents of multifamily buildings.

The U.S. Department of Housing and Urban Development Supports Smoke-Free Housing

Due to the hazards of residential smoking, the U.S. Department of Housing and Urban Development (HUD) issued a Notice in 2009 that “strongly encourages Public Housing Authorities (PHAs) to implement nonsmoking policies in some or all of their public housing units.” HUD followed up with a second Notice in 2010 encouraging multifamily housing rental assistance programs to go smoke-free.



Green Standards Promote Smoke-Free Buildings

Implementing smoke-free policies makes apartments cleaner and healthier for everyone and is a no-cost way to a greener building. The value of smoke-free housing has been recognized by at least two prominent environmental protection standards—the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) system and Enterprise Green Communities.

To be LEED-certified, buildings must have an environmental tobacco-smoke-control policy in

place. LEED recognizes prohibiting smoking in all indoor areas as a valid control.

Enterprise Green Communities is a national environmental standard that is now required of all new residential construction and substantial rehabilitations funded by the New York City Department of Housing Preservation and Development (HPD). To meet the standard, projects must accumulate a minimum number of optional points from a menu of green features. Choosing to implement a 100% smoke-free policy is a no-cost way for developers to earn optional points.



how to implement a smoke-free rule in your building

Property managers and owners who have implemented smoke-free rules report that they are easy to implement and easy to enforce. Follow these steps:

STEP 1 Develop the Smoke-Free Rule

Your first step to going smoke-free is deciding what the policy will include and when it will take effect, and then writing or obtaining lease language that reflects these decisions. Your rule can apply to the entire property, including indoor common areas, individual units, private outdoor areas and outdoor common areas. See sample rule on page 18.

New York City's Clean Indoor Air Act already prohibits smoking in all common areas of residential buildings with 10 or more units.

A rule that covers the whole property will have the biggest impact on reducing cleaning and repair costs, reducing fire risk and making the building healthier for residents. It is also the easiest rule to enforce because there are no exceptions. A comprehensive rule should also specify that it pertains to residents' guests, security and maintenance workers, and other visitors to the property. If you cannot go smoke-free on the entire property, an alternative includes a smoke-free rule for all units and indoor areas.

Is a Smoke-Free Rule Legal?

It is legal to prohibit smoking at your properties, inside and outside of the building. It is your property and you have the right to set reasonable rules to protect it and the health of your residents. It is not discrimination to prohibit smoking. Smoking is not a disability and smokers are not a protected class. Keep in mind a "no-smoking" rule is not a "no-smoker" rule; residents who smoke can smoke at locations off the property.

New York City's Clean Indoor Air Act already prohibits smoking in all common areas of residential buildings with 10 or more units. Apartment buildings with fewer than 10 units may begin by adopting smoke-free rules in common areas.

Rent-regulated apartments represent a special case. According to New York State Homes & Community Renewal (HCR), renewal leases for rent-stabilized apartments "must keep the same terms and conditions as the expiring lease unless a change is necessary to comply with a specific law or regulation."¹² However, rent-stabilized units can be made smoke-free when the apartment turns over, or if existing residents voluntarily sign a smoke-free lease amendment.

You should consult an attorney before making these changes.



Involve residents in the rule-developing process. Some landlords conduct a survey of their residents to find out how many would prefer to live in a nonsmoking building, how many already prohibit smoking within their own units, how many are affected by a neighbor's smoke entering their unit and also to learn more about residents' special health conditions and concerns. See sample survey on page 17.

STEP 2 Educate Your Residents

Once you have developed the smoke-free rule, take time to educate residents. More than anything else, getting residents to understand why you are going smoke-free will help with compliance. Let residents know that your concern about smoking in the building led to the development of this rule. Point out the many benefits of going smoke-free, highlighted in this guide.

One way to inform residents of the smoke-free rule is to send out a letter or notice that includes:

- What the rule covers
- Reasons for the rule (reducing fire risk, improving health, protecting property units, etc.)
- Effective date
- Resources for quitting smoking

Talking to Tenants: A Few Points

- **The indoor air quality will be better and protect everyone—residents, staff and pets—from exposure to secondhand smoke and the illnesses caused by exposure.**
 - Nonsmokers will be better protected and those who want to quit will have an easier time.
 - The air will be more pleasant to breathe indoors.
- **The safety of residents and families will be enhanced due to a lower risk of a fire.**
- **People who smoke are welcome, but will have to comply with the building's no-smoking rule.**
 - **This is a no-smoking rule not a no-smoker rule.**
- **Lower maintenance costs may help management keep rental costs and common charges stable.**

Once the letter has circulated, you may want to present this information at a resident meeting where you can address questions and concerns in person. Consider inviting both smoking and nonsmoking residents to help you develop an implementation strategy and set a date for going smoke-free.



STEP 3 Implement the Rule

How you implement a smoke-free rule will depend on the type of leases you have in your building.

New leases:

For residents who move in on or after the effective date of implementation, include the smoke-free rule in all new leases.

Current leases:

Many landlords add the smoke-free rule when a lease expires, during lease renewal. The no-smoking clause can be added sooner if a resident voluntarily agrees to a lease change before his or her lease expires. For rent-stabilized units, residents renewing their leases must voluntarily agree to the no-smoking rule.

***Tip 1:** A smoke-free rule can be easily implemented when opening a new building or when re-leasing a unit that has just been renovated.*

***Tip 2:** Offer incentives for residents to sign no-smoking lease addendums early, ahead of renewal. These could be gift certificates, privileged use or discounted use of one of the building's amenities, etc.*

STEP 4 Enforce the Rule

A smoke-free rule is just like any other rule you enforce.

Here are some tips to help residents comply:

- 1** Advertise the units as smoke-free to attract residents who want a smoke-free home environment. Talk to prospective residents about the rule when showing the property.
- 2** Post signs in the building and on the property, indicating it is smoke-free.
- 3** Remove all ashtrays and clean up any tobacco litter.
- 4** Respond quickly and consistently to violations.
- 5** Use the same warning/enforcement methods for smoking rule violations as you use for any other violation.
- 6** Inform residents that if they smoke in places where smoking is prohibited, they will be in violation of their leases and will be subject to the consequences agreed upon.



- 7 Provide smokers who are interested in quitting with information on how to quit smoking. See Resources on page 19.
- 8 Optional: Provide a designated smoking area outside, away from windows and doors.

Smoke-free housing rules are largely self-enforced.

SPECIAL CONSIDERATIONS FOR CONDOMINIUMS AND CO-OPS

In order to adopt a smoke-free rule, the board must follow the procedures set forth in the by-laws for amending the by-laws. This is the best way to safeguard against potential lawsuits. Prior to seeking an amendment, we recommend that you first conduct a survey among residents to determine attitudes toward smoke-free housing. Because adoption of a smoke-free rule will ultimately be determined by a vote—either by the board or majority/supermajority of unit owners or shareholders (depending on the requirements of the building’s governing documents)—conducting a survey will help prepare the board. Also, it alerts residents that a rule restricting smoking may be forthcoming. Educating the residents on the reasons for going smoke-free is also important for compliance.

Because a smoke-free rule may be controversial, a court may be more willing to uphold the adopted smoke-free rule if it has supermajority support among unit owners/shareholders. A sample by-law amendment can be found online by visiting nyc.gov and searching “smoke-free housing.” You should consult an attorney before changing the by-laws.

Even without specific authority from the by-laws to prohibit smoking in units, the board can require that owners/shareholders address smoke emanating from their units. Assuming the by-laws have provisions against the creation of nuisances, the board can take action against an owner/resident whose smoking is creating a nuisance.

HEALTHY ADVICE

Secondhand smoke is a known cause of heart disease, respiratory problems and lung cancer.

SMOKE-FREE HOUSING SURVEY

[Date]

Dear Residents:

Many apartment building owners are exploring strategies to create healthier environments within their buildings. Some are choosing to adopt smoke-free policies for a number of reasons: People who already suffer from an illness, such as asthma, chronic bronchitis, heart disease, diabetes or cancer, are particularly susceptible to the effects of secondhand tobacco smoke. Young children are also especially vulnerable to the dangers of breathing secondhand smoke, and on average are exposed to more of it than adults. In addition, smoking materials are a leading cause of residential fires in New York.

To better ensure the health and safety of all persons living here, we are considering adopting a smoke-free rule at the [building/complex]. We would like to hear from you!

Please fill out the survey below and return it to [name] by [date] so we may consider your views.

Sincerely,

The Management

Cut here ✂ -----

1. Do you now smoke cigarettes or other tobacco products every day, some days or not at all?
 Every day Some days Not at all
2. Do you allow people, including yourself, to smoke tobacco products in your apartment?
 Yes No
3. Have you smelled tobacco smoke in your home that comes from another apartment or outside?
 Yes No
4. Does smelling tobacco smoke in your home bother you?
 Yes No
5. Are you concerned about the health effects of secondhand tobacco smoke on you or someone you live with?
 Yes No
6. Would you like this building to be smoke-free? (Meaning no smoking indoors, including in apartments.)
 Yes No
7. If yes to the above, would you prefer that smoking is prohibited everywhere on the property—both inside and outside?
 Yes No

Comments:

(Optional) Name _____ Phone _____ Apartment # _____

SMOKE-FREE RULE

Building/Property Address: _____

1. Smoking is prohibited as described below:

Due to the increased risk of fire and the known health effects of secondhand tobacco smoke, smoking is prohibited in the entire premises, including inside residential units, all common areas and areas within 15 feet of entrances, windows, doors and air-intake units. The only exceptions to this rule are in the designated outdoor smoking areas listed below, if applicable. This rule applies to owners and tenants and any other persons on the premises, including guests and servicepersons.

DESIGNATED OUTDOOR SMOKING AREAS (if applicable): _____

2. Definition of "Smoking"

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or any form of lighted object or device that contains tobacco.

3. Complaint Procedure

Complaints about smoke migrating into a residential unit or common area should be made promptly to the owner. Complaints should be made in writing and should be as specific as possible, including the date, approximate time, location and source of migrating smoke.

ACKNOWLEDGMENT & SIGNATURES:

I have read the smoke-free rule described above, and I understand the smoke-free rule governs the premises. I agree to comply with the rule described above.

I understand that violating the rule may constitute grounds for fines or eviction proceedings for rental units. For condominiums, cooperatives or other owned units, I understand that violations of the policy on smoking may be addressed according to the building's governing rules.

Landlord's/Managing Agent's printed name and signature _____ Date _____

Tenant's printed name and signature _____ Date _____

Tenant's printed name and signature _____ Date _____



resources

GOVERNMENT

NYC Department of Health and Mental Hygiene
Visit nyc.gov and search “smoke-free housing.”

U.S. Department of Housing and Urban Development (HUD)

2009 Notice strongly encouraging Public Housing Authorities to go smoke-free: hud.gov/offices/pih/publications/notices/09/pih2009-21.pdf

2010 Notice encouraging owners and operators of multifamily housing who receive federal rental assistance to implement smoke-free policies: portal.hud.gov/hudportal/documents/huddoc?id=10-21hsgn.pdf

U.S. Department of Health and Human Services (HHS)
“The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General” (2006): surgeongeneral.gov/library/reports/index.html

“A Report of the Surgeon General: How Tobacco Smoke Causes Disease” — Fact Sheet (2010): surgeongeneral.gov/library/reports/index.html

U.S. Environmental Protection Agency
Smoke-Free Homes Initiative: epa.gov/smokefree

U.S. Centers for Disease Control and Prevention
Healthy Homes Manual: Smoke-Free Policies in Multiunit Housing: cdc.gov/healthyhomes/Healthy_Homes_Manual_WEB.pdf

ASSOCIATIONS

New York City Coalition for a Smoke-Free City
Health advocacy group providing technical assistance to owners and managers who want their buildings to go smoke-free: nycsmokefree.org

TobaccofreeNYS.org
New York Landlord Smoke-Free Housing Toolkit: breathefreely.org/pdf/SFHHNY_Landlord_Toolkit_2011.pdf

American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)

Visit ASHRAE.org and search “Environmental Tobacco Smoke.”

Tobacco Control Legal Consortium

Legal network for tobacco control policy: publichealthlawcenter.org/programs/tobacco-control-legal-consortium

National Apartment Association

Article: “A Breath of Fresh Air – Five Reasons to Consider Implementing a Smoke-Free Housing Policy”: smokefreehousingny.org/wordpress/wp-content/uploads/A-Breath-of-Fresh-Air-UNITS-April-2011.pdf

Smoking Cessation Services

Call 311 to locate the services nearest you.

List of Quit Smoking Programs in NYC: nycquits.org/Pages/programs.aspx

Smoke-Free Buildings

Apartment listings: smokefreehousingny.org

REFERENCES

¹ <http://www.nytimes.com/2004/02/08/realestate/on-tobacco-road-it-s-a-tougher-sell.html?pagewanted=all&src=pm>

² <http://www.healthyhousinglaw.com/secondhand-smoke/condominium-common-interest-community-materials>

³ Barbara A. Pizacani, Julie E. Maher, Kristen Rohde, Linda Drach and Michael J. Stark. *Nicotine & Tobacco Research* 2012 published 27 February 2012, 10.1093/ntr/ntr334

⁴ <http://www.mnsmokefreehousing.org/landlords/benefits.html>

⁵ http://www.nyc.gov/html/fdny/pdf/publications/annual_reports/2008_2009/2008_2009_annual_report.pdf

⁶ Fortin P. *New York City Child Fatality Report*. 2008 Report from the Child Fatality Review Team, New York City Department of Health and Mental Hygiene.

⁷ <http://www.usfa.fema.gov/statistics/estimates/index.shtml>

⁸ Tobacco-Smoke Exposure in Children Who Live in Multiunit Housing” - Published online December 13, 2010. *PEDIATRICS* Vol. 127 No. 1 January 2011, pp. 85-92 (doi:10.1542/peds.2010-2046)

⁹ Unless otherwise noted, health information regarding secondhand smoke is from: U.S. Department of Health and Human Services. “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General.” 2006. <http://www.surgeongeneral.gov/library/reports/index.html>

¹⁰ http://www.mnsmokefreehousing.org/documents/presentations/CPPW1_Case_for_Smoke_Free_Housing_MN.pdf

¹¹ ASHRAE Position Document on Environmental Tobacco Smoke. October 2010. Search “Environmental Tobacco Smoke” at <http://www.ashrae.org>

¹² <http://www.dhcr.state.ny.us/Rent/FactSheets/orafac4.htm>

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- *Colorado Landlord Guide: Establishing No-Smoking Policies in Multiunit Residential Properties*, The Group to Alleviate Smoking Pollution (GASP of Colorado) 2011
- *A Landlord’s Guide to No-Smoking Policies* ©2008 American Lung Association in Oregon
- *New York Guide to Smoke-Free Condominiums*, The Center for Public Health and Tobacco Policy at New England Law | Boston, 2012
- *Smoke-Free Housing: The Right Decision*, Tobacco Prevention Program, Public Health – Seattle & King County, Seattle, Washington

For more information or to receive additional materials,
call 311 or visit nyc.gov and search "smoke-free housing."

