

REASONS TO EXPLORE SMOKE-FREE HOUSING

WHY PURSUE SMOKE-FREE HOUSING?

This document is for property owners, landlords, and property managers who are interested in exploring a smoke-free policy for their multi-unit buildings. Read on if you are interested in a policy that can help you save money, reduce tenant complaints, improve the health of your tenants and building, and increase your market share.

Smoke-free apartment policies are quickly becoming the standard for multi-unit housing in the U.S. A smoke-free policy is simple and straightforward. There is no federal or state law that prohibits a property owner from implementing a smoke-free policy for their buildings or grounds, and instituting a policy does not preclude someone who smokes from living in the building. It simply requires that all tenants abide by the policy while on the property. Going smoke-free in your multi-unit buildings is one of the best moves you can make for your tenants and your bottom line. The Smoke-Free Environments Law Project conducted an analysis of federal and state laws, HUD rules, and legal cases and found “unequivocally that a ban on smoking for new tenants who move into public or Section 8 housing is permissible in all 50 states.”¹

Reduces Operating Costs

- Apartment turnover costs can be two to seven times greater when smoking is allowed, compared to the cost of maintaining and turning over a smoke-free unit.
- Some insurance companies offer discounts on property casualty insurance for multi-unit owners with a

100% smoke-free policy. Ask your carrier today!

- Smoking is a leading cause of residential fire and the number one cause of fire deaths in the U.S.

Tenants Prefer Smoke-Free Housing

- Several statewide surveys demonstrate that as many as 78% of tenants, including smokers, would choose to live in a smoke-free complex.^{2,3,4}
- Secondhand smoke complaints and requests for unit transfers drop following the implementation of a smoke-free policy. Nationwide, less than 21% of the general population smokes,⁵ so it makes sense that a vast majority of tenants want to live in a smoke-free environment.

Tenant Health Improves with Smoke-Free Housing

- There is **no** risk-free level of exposure to secondhand smoke⁶ and the EPA has identified secondhand smoke as a Class A carcinogen, the most toxic class of chemicals that are known to cause cancer in humans.⁷
- Secondhand smoke is a leading trigger of asthma attacks and other respiratory problems and a known cause of Sudden Infant Death Syndrome (SIDS).⁸
- Secondhand smoke is classified as a “toxic air contaminant,” putting it in the same class of other contaminants

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National Center for
Healthy Housing

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The Monetary Impact

Costs to Rehabilitate a Unit Where Smoking is Prohibited vs. a Unit Where Smoking is Allowed

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

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



including asbestos, lead, vehicle exhaust, and a host of other chemicals strictly regulated in the U.S.⁹

- Ventilation systems do not protect families from secondhand smoke. Most air filter systems are designed to remove odors, not the toxic particles from tobacco smoke. According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking."¹⁰
- Research demonstrates that up to 65% of air can be exchanged between units and that smoke travels through tiny cracks, crevices and chasing, involuntarily exposing individuals in adjacent units.¹¹

Other Policy Benefits

Self enforcing.

Smoke-free policies are largely self-enforcing. Because tenants expect and tend to prefer a smoke-free environment, they will abide by the policy. Guardian Management, a group managing over 12,000 smoke-free units nationwide, recently released survey results showing that more than three-quarters of their residents are "happy" with the smoke-free policy.¹²

Gain green building credits.

Numerous "Green Building" programs, such as the U.S. Green Building Council's LEED program and the Enterprise Community Partners' Green Communities initiative, provide credit in their programs for smoke-free properties.

Access to state affordable housing tax incentives.

Several states (Maine, California and New Hampshire) currently offer tax credit

incentives to developers of low-income housing for new housing projects that include a smoke-free policy.

HUD strongly encourages public housing authorities to pursue smoke free housing.

On July 31, 2009, HUD issued a notice that unequivocally stated the Department's support for non-smoking policies at public housing authorities (PIH-2009-21 [HA]).

EXISTING LAWS ALLOW FOR SMOKE-FREE HOUSING

- There are no federal, state, or local laws that prohibit a landlord, housing authority, or condominium association from adopting a 100% smoke-free policy. You can make your entire property smoke-free, including all apartment units and outdoor spaces.¹³
- Smoking is not a legal right. Smoke-free policies do not infringe on the legal rights of individuals.¹⁴
- Smokers are not a protected class under any state or federal law.¹⁵ Smoke-

free policies are like any other lease provision, such as trash disposal or pet restrictions, and should be implemented and enforced as any other lease policy.

- Both public and private facilities have the right to adopt smoke-free policies. If you are a public housing authority or owner of a subsidized facility, ensure your tenants receive adequate notice (30 days or more) of lease change and that HUD and/or your local housing authority approve of any changes to the model lease.^{16,17}

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KEY DECISIONS AND STEPS

For New Buildings

Start Fresh.

The easiest way to implement a smoke-free policy is to make buildings 100% smoke-free as you develop them. Include explicit language in your lease that notifies incoming tenants of the policy. You can view sample lease language by visiting www.smokefreehousingne.org.

Modify leases.

When adopting a smoke-free policy, include a lease provision or addendum that outlines the restrictions and penalties under your policy. When new or renewing tenants sign the lease, have them initial that they have read and understand the policy.

Advertise as smoke-free.

Include “smoke-free” in all advertisements for your vacant units. Smoke-free policies are amenities, no different than the inclusion of heat or hot water. Approximately 75% of tenants want to live in a smoke-free environment, and including a notice that your building is smoke-free can attract more attention to your listing.

Inform potential tenants.

Include information regarding your smoke-free policy on all housing applications to ensure incoming tenants are aware of the rules before they move in to your building. Also, include adequate signage and communication to remind existing tenants, incoming guests, and maintenance workers of the policy.

For Existing Structures with Tenants

Build tenant support.

When you're not sure how tenants feel about a smoke-free policy and you want their input, a brief survey might be in order. Asking questions such as “Has secondhand smoke from another

unit ever bothered you?” or “If available, would you prefer to live in a smoke-free environment?” can help you determine what type of policy to implement. For sample survey language, visit www.smokefreehousingne.org.

Communicate widely.

The success of your smoke-free policy will be relative to how well you communicate the policy with your tenants. This does not have to be complicated or overly time-consuming, but doing things like including articles in your tenant newsletter, holding tenant meetings so opinions can be voiced, sending a letter to tenants, providing adequate signage, and supplying information on the harmful effects of secondhand smoke will all help with policy enforcement down the road.

Offer support.

Many existing developments offer some type of cessation services (quit smoking support) to their tenants. Look to your State or municipal health department, Lung Association, Cancer Society, or local hospital for free cessation support. Though you are not asking people to quit smoking with a smoke-free policy, this type of policy provides incentive and support to those who were considering quitting. Providing tenants with local cessation information is a way to show that you care about their well-being.

Give plenty of notice.

Notifying residents about your policy well in advance of making it effective isn't only a good idea, it's the law. Neglecting to tell both your new and old residents about your smoking policy is a breach of the duty to provide notice. You may only be required to give 30 days notice per your lease agreement when implementing a smoke-free policy, but it is recommended that you provide at least 90 days advance warning. This extra time will give those who smoke a chance to adjust their lifestyle to the new policy. Your posted

notifications should include the wording that will be in your leases or covenants. Providing poorly-worded or incomplete lease provisions in these notices is also considered a breach of duty.

Consider your options.

There are many options to consider with a new policy. Will you prohibit smoking on the entire property grounds, 25 feet from doorways/entrances/windows or only in the building? If you allow smoking on the grounds, where will those tenants go to smoke? Will you provide a space?



Approximately 75% of tenants want to live in a smoke-free environment.

What about patios and balconies? All these questions and more need to be thought through with staff, administrators, and possibly tenants as well.

Leases

Follow the rules.

With existing buildings, be sure to follow the rules of your lease before adopting new

policies. After a lease has been signed by both parties, it cannot be modified without the consent of both of the parties. Therefore, residents who have fixed-term leases will be exempt from the smoke-free policies.

Start with new and renewing tenants.

When new tenants sign a lease, include a clear smoke-free provision in your contract.

All Buildings

Implications for workers and guests.

Remember, smoke-free policies not only impact residents, but their guests and your employees. When you adopt a smoke-free policy, make it clear that all guests, maintenance workers, and staff are prohibited from smoking as well. ■

RESOURCES

For more detailed information about how to implement a smoke-free policy in your new or existing development, including for example sample surveys, notification letters, and lease addenda, visit any of the following websites.

- Capital District Tobacco Free Coalition
www.smokefreecapital.org
- Smoke-Free Housing New England
www.smokefreehousingne.org
- Michigan Smoke-Free Apartments
www.mismokefreeapartments.org
- Smoke-Free Housing Coalition of Maine
www.smokefreeforme.org
- Minnesota Smoke-Free Housing
www.mnsmokefreehousing.org
- Tobacco Technical Assistance Consortium
www.ttac.org
- Smokefree Apartments Registry
www.smokefreeapartments.org
- Technical Assistance Legal Center
www.phplnet.org/talc

REFERENCES

- ¹ Schoenmarklin, Susan. *Analysis of the Authority of Housing Authorities and Section 8 Multiunit Housing Owners to Adopt Smoke-Free Policies in Their Residential Units*. (Ann Arbor, MI: Smoke-Free Environments Law Project, May, 2005.) (See http://www.tcsg.org/sfelp/public_housing24E577.pdf.)
- ² Smoke-Free Housing Coalition of Maine. *2004–2006 Surveys*. (Portland, ME: 2007.)
- ³ Washington State Department of Health, Tobacco Prevention and Control Program. *2003 Tenant Surveys*. (Olympia, WA: 2003.)
- ⁴ Oregon Smoke Free Housing Project, *2006 Market Surveys*. American Lung Association of Oregon. (Tigard, OR: 2006.)
- ⁵ United States, Center for Disease Control and Prevention. *Prevalence of Current Smoking among Adults Aged 18 Years and Over: United States, 1997–June 2008*. (Atlanta: Department of Health and Human Services, 2008.)
- ⁶ United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006.)
- ⁷ United States, Office of Health and Environmental Assessment. *Health Effects of Exposure to Secondhand Smoke*. (Washington, DC: Environmental Protection Agency, 1992.)
- ⁸ United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006.)
- ⁹ California Environmental Protection Agency. *Environmental Tobacco Smoke: A Toxic Air Contaminant*. (Sacramento, CA: California Air Resource Board, 2006.)
- ¹⁰ American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). *Environmental Tobacco Smoke Position Document*. (Atlanta: June 30, 2005.)
- ¹¹ Center for Energy and Environment. *Reduction of Environmental Tobacco Smoke Transfer in Minnesota Multifamily Buildings Using Air Sealing and Ventilation Treatments*. (Minneapolis, MN: 2004.)
- ¹² Oregon Public Health, Guardian Management. "Guardian Management, LLC Tenant Survey Reveals Majority of Residents Pleased with No Smoking Policy." (Portland, OR: November 18, 2008.)
- ¹³ Schoenmarklin.
- ¹⁴ Technical Assistance Legal Center. *There is No Constitutional Right to Smoke*. Public Health Institute (Oakland, CA: 2005.)
- ¹⁵ Ibid.
- ¹⁶ Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.5.
- ¹⁷ Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.3.

Remember, smoke-free policies are about the smoke, not the smoker. Smoke-free policies do not preclude someone who smokes from living in the building; rather, they simply require that all tenants abide by the policy while on the property.

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