



# Smoke-Free Multi-Unit Housing Toolkit

For Landlords



## Dear Property Owner:

This toolkit is intended to help you transition your residential building or complex to a 100% smoke-free building and property. The manual provides information on the negative financial and health impacts associated with cigarette smoke exposure and use in multi-unit housing, how to reduce those risks in multi-unit housing complexes, as well as instructions on how to voluntarily adopt a 100% smoke-free policy.

The content of this toolkit has been selected from various resources that have been thoroughly researched and tested. It is to serve only as a guide, and does not serve, nor should be construed, as legal advice or counsel. We suggest you work with your attorney for legal advice.

Whether you are changing the policy in your building/complex or planning to implement this policy in a new property, going 100% smoke-free will protect your residents and your investment in this property. **We commend you on your choice to make your residential building/complex 100% smoke-free.**

Best,

*The Coalition for a Healthy NJ*

*in partnership with Tobacco Free for a Healthy NJ*

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- *This toolkit was created as part of the Community Transformation Grant funded by Centers for Disease Control and Prevention (CDC) grant #5U58DP003529-03 in addition to funding from the New Jersey Department of Health, Division of Family Services, Office of Tobacco Control grant #DFHS16CTC002 and grant #DFHS16CTC003. Its contents are solely the responsibility of the authors and do not necessarily represent the official view of the CDC or the NJDOH/FHS/OTCNF.*
- *This toolkit contains general information about legal matters; the information is not advice, and should not be treated as such.*

# KNOW THE FACTS

## Know the Facts: Secondhand Smoke

### SECONDHAND SMOKE

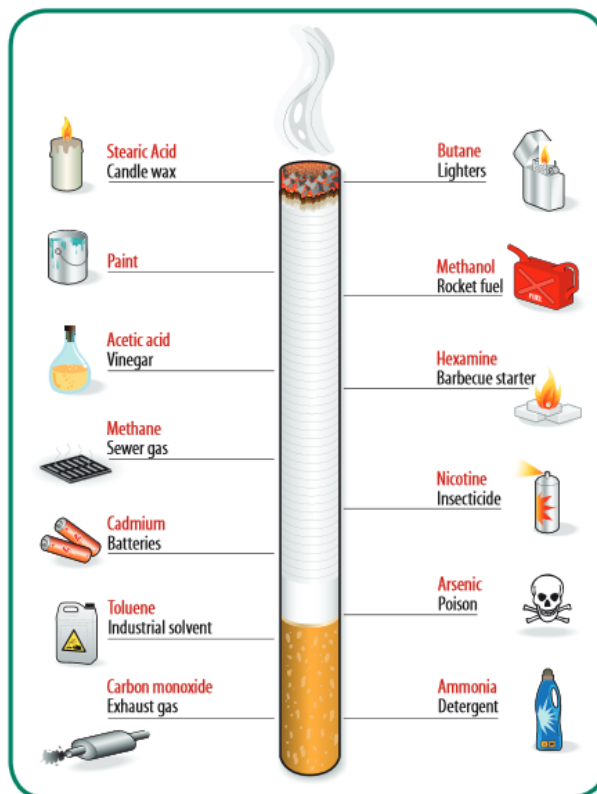
Known as environmental tobacco smoke, is a mixture of two forms of smoke that come from burning tobacco:

*Sidestream smoke:* smoke from the lighted end of the cigarette

*Mainstream smoke:* the smoke exhaled by someone smoking a cigarette

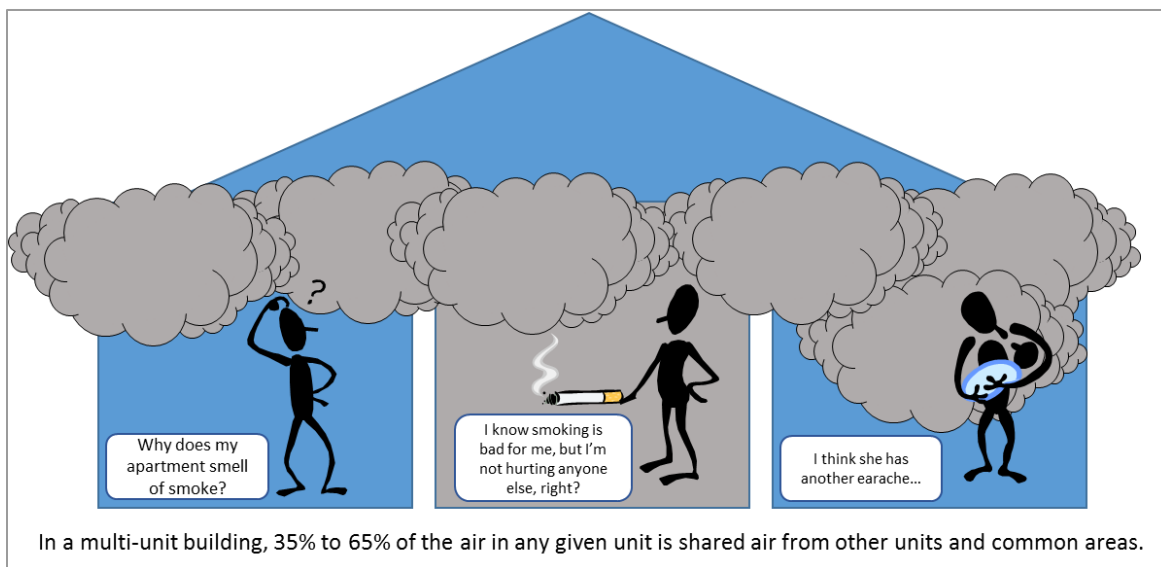
### THIRDHAND SMOKE

Consists of the tobacco residue from cigarettes, cigars, and other tobacco products that is left behind after smoking and builds up on surfaces and furnishings.



# KNOW THE FACTS

## Know the Facts: The Harmful Effects of Secondhand Smoke



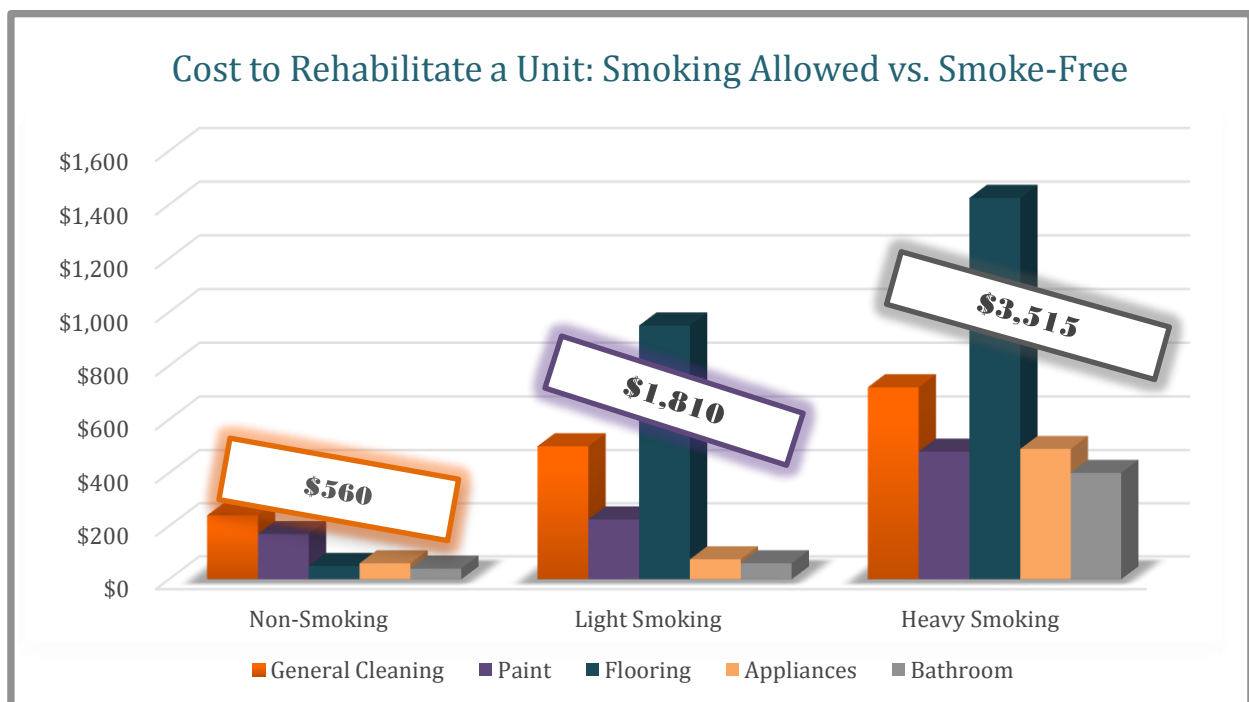
- The Surgeon General declared that there is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health.
- Secondhand smoke is a Group A carcinogen. These are substances known to cause cancer in humans. Secondhand vapor smoke from electronic smoking devices such as e-cigarettes and hookah pens are also hazardous.
- In a multi-unit building, 35% to 65% of the air in any given unit is shared air from other units and common areas. That means if just one tenant smokes, all of your tenants suffer the consequences – including an increased risk of heart attacks, stroke, and lung cancer.
- Children exposed to secondhand smoke have an increased risk of asthma attacks, infections, and sudden infant death syndrome (SIDS).
- According to the American Association of Heating, Refrigeration, and Air Conditioning Engineers, the only means of effectively eliminating health risks associated with indoor exposure to tobacco smoke is to ban smoking activity.

# WHY SMOKE-FREE HOUSING POLICIES

## Reasons to Consider 100% Smoke-Free Housing Policies

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

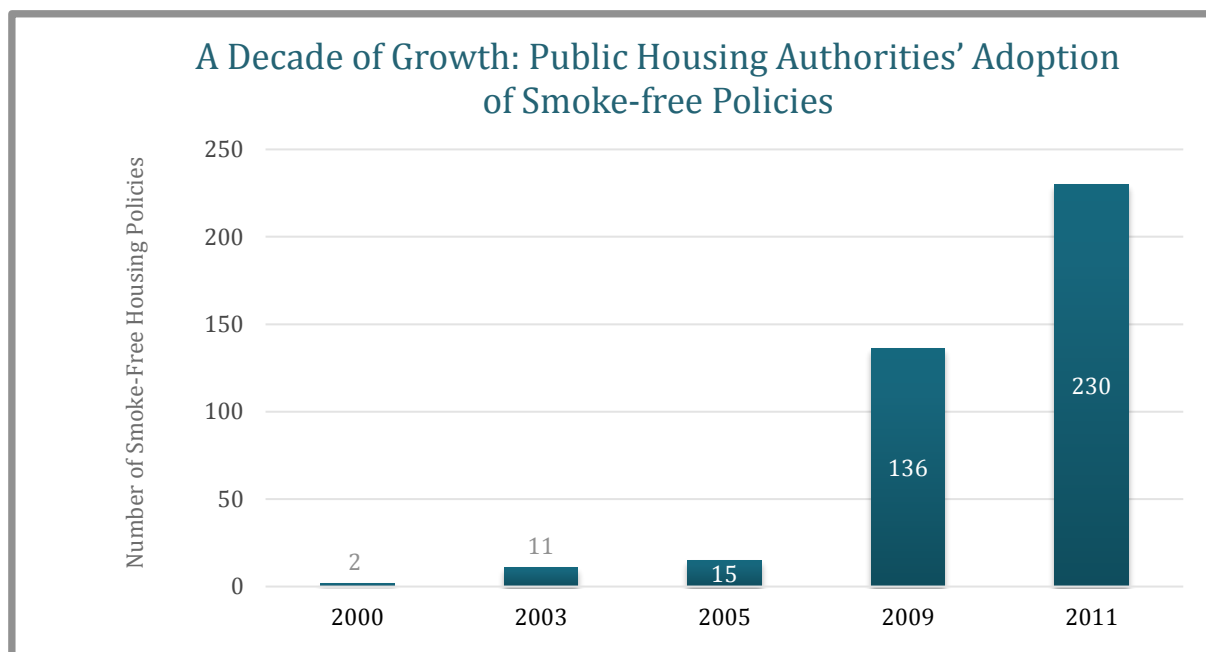


Data reflects surveys from housing authorities and subsidized housing facilities in New England. Collected and reported by Smoke-Free Housing New England, 2009

# WHY SMOKE-FREE HOUSING POLICIES

## TENANTS PREFER 100% SMOKE-FREE HOUSING

- Several statewide surveys demonstrate that as many as 78% of tenants, including smokers, would choose to live in a 100% smoke-free complex.
- 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, so it makes sense that a vast majority of tenants want to live in a smoke-free environment.



Source: Smoke-Free Housing Initiative: American Lung Association

## TENANT HEALTH IMPROVES WITH 100% SMOKE-FREE HOUSING

- There is no risk-free level of exposure to secondhand smoke, and the Environmental Protection Agency has identified secondhand smoke as a Class A carcinogen, the most toxic class of chemicals that are known to cause cancer to humans, in the same class as asbestos and benzene.
- Secondhand smoke is a leading trigger of asthma attacks and other respiratory problems, and a known cause of Sudden Infant Death Syndrome (SIDS).
- Secondhand smoke is classified as a “toxic air contaminant,” putting it in the same class of other contaminants. Secondhand vapor smoke from electronic smoking devices such as e-cigarettes and hookah pens, and smoke from hookah use is also a health hazard.

# FINANCIAL BENEFITS: IT SAVES MONEY!

## A WIN-WIN FOR OWNERS AND TENANTS

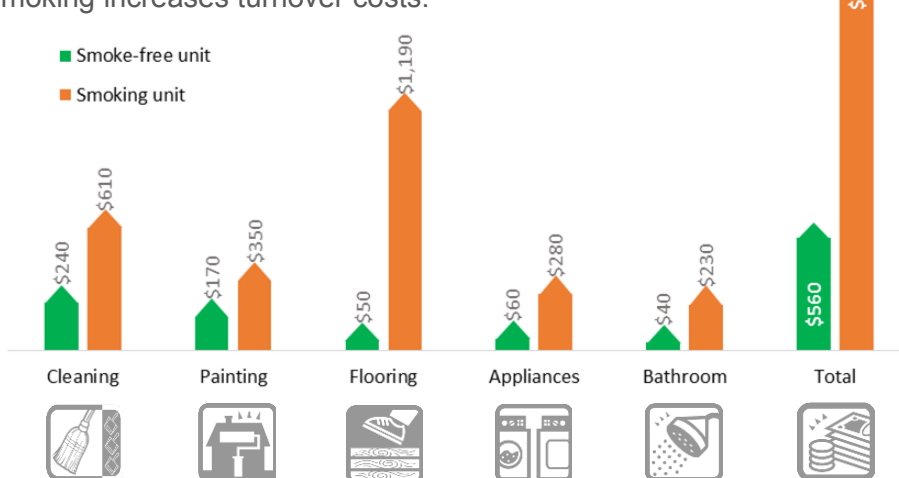
### It's legal.

People who smoke are not a protected legal class, so there is no “right to smoke” under any U.S. law. In fact, the U.S. Department of Housing and Urban Development encourages both public and private housing providers to implement smoke-free policies.

Property managers and associations are empowered by federal and New Jersey law to make smoke-free rules for their properties just as they can make rules regarding pets or noise: to create a better, safer living environment.

### It's profitable.

Going smoke-free protects your investment and your tenants. Smoking is a leading cause of residential fires, and allowing smoking increases turnover costs.



Data reflects surveys from housing authorities and subsidized housing facilities collected and reported by *Smoke-Free Housing New England*. 2009.

### It's easy.

Smoke-free buildings are in demand across the U.S. Tenants prefer smoke-free environments and many already don't allow smoking in their homes, so smoke-free policies are largely self-enforcing.

### BY THE NUMBERS

**443,000**

...deaths are caused by smoking and exposure to secondhand smoke in the U.S. each year.

**87**

...percent of lung cancer death attributed to tobacco.

**70**

...percent of people who smoke say they want to quit.

**44**

...percent higher asthma rates were recorded among children who lived with a person who smokes.

**35 to 65**

...percent of air in any given unit is shared air from other units and common areas.

**88**

...million non-smokers in the U.S. breathe other peoples' tobacco smoke.



# AS A LANDLORD, WHERE DO I START?

## What is considered a 100% smoke-free building?

A smoke-free building is one in which smoking is not permitted indoors, including in any units or common areas. In addition, no outdoor smoking by the entrances, exits, vents and all windows helps to eliminate outdoor secondhand smoke from migrating into an indoor public area of the multi-unit housing, or a private unit. If playgrounds are on-property, making the area in and around the playground and any seating areas near the building smoke-free as well.

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*You can protect your tenants' health and your investment by making your properties 100% smoke-free through a change in policy via your lease agreements.*

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## THE TIME IS NOW

- The trend in multi-unit housing is shifting to smoke-free buildings. The Healthy Homes Manual created by the Centers for Disease Control and Prevention found that the proportion of households which had adopted smoke-free home rules increased from 10% in 1992-93 to 32% in 2003, while the proportion of households that adopted such rules without a smoker increased from 57% to 84% over this period.
- Switching to a 100% smoke-free policy will help you stay competitive in the market, and attract new clientele.

## KEEP IN MIND....

- Going 100% smoke-free doesn't mean that you don't allow residents who smoke to live in your building. It's the behavior that is being restricted, not the person.
- Developing and implementing a 100% smoke-free policy takes minimal effort and produces maximum results for you and your tenants.
- New Jersey has already enacted laws that treat electronic smoking devices (e-cigarettes and hookah pens) similarly to traditional tobacco products. Medical marijuana is not permitted to be smoked in any location where smoking is banned by the New Jersey Smoke-Free Air Act and related New Jersey Department of Health regulations.

# THE LEGAL FACTS

## Current Laws and Notable Circumstances

- The 2006 New Jersey Smoke-Free Air Act requires almost all indoor public places and workplaces be 100% smoke-free, including no use of electronic smoking devices (as of 2010). Indoor areas that need to be smoke-free include “common or shared” areas in multi-unit housing, such as apartment building lobbies, stairwells, common rooms, etc. as per the New Jersey Department of Health’s 2007 Regulation comments.
- The 2007 New Jersey Department of Health regulations NJAC 8:6-2.3(a) requires that no outdoor smoke migrate into an indoor public place that is smoke-free. That means no smoking by the entrances, exits and windows to common areas of a multi-unit housing building. This includes no use of electronic smoking devices in these locations.
- In New Jersey, medical marijuana cannot be smoked in places where smoking is banned by the New Jersey Smoke-Free Air Act or New Jersey Department of Health regulations.
- There are NO federal, state, or local New Jersey laws that we are aware of, that prohibit a landlord, housing authority or condominium association from adopting a 100% smoke-free policy.
- There is no constitutional right to smoke.
- Both public and private facilities can consider adopting smoke-free policies.
- 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.
- Smoking is not a disability under the Americans with Disabilities Act.

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*Just like your policies regarding noise and pets, you can consider policies to prohibit smoking to create a better, safer living environment for your tenants and residents. In fact, the U.S. Department of Housing and Urban Development (HUD) has strongly encouraged property owners and managers to adopt smoke-free policies not only inside HUD properties but on the surrounding property.*

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# MAKING THE TRANSITION

## Making the Transition

### 1. Make a Plan

Create a policy and timeline that work for your property. Consider the measures and tools necessary to implement and communicate the policy, such as enforcement strategies and signage.

### 2. Inform Your Residents

Send a notification to your residents to let them know when the building will be going 100% smoke-free, and include information on the benefits of smoke-free housing and resources to help people quit smoking. Provide a feedback form so that anyone who currently smokes in the building can notify you—that way you can anticipate tenants who may need extra time to transition. You can also hold a meeting with residents to address their questions.

### 3. Amend ALL Leases

Update new leases, lease addenda, house rules, condo rules, bylaws and policies or other governing documents, to include the 100% smoke-free policy terms such as implementation date, enforcement, that smoking is a material breach, it covers any person smoking in a unit such as the resident and visitors (not only persons named on the lease or condominium papers), etc. Depending on your property needs, you may need to implement on lease renewals. Have your attorney conduct a legal review of all documentation.

### 4. Promote Your Status

Make it clear to current and prospective residents that the property is 100% smoke-free. Keep signs or notices in community spaces such as bulletin boards, and note that the property is 100% smoke-free in all marketing, noting implementation dates and expectation of being 100% smoke-free.

#### SAMPLE TIMELINE

##### DAY 1

Review the policy and rollout documents with staff and management.

##### DAY 3

Create or order necessary signage, complete community resources for smoking cessation.

##### DAY 10

Send out notifications to residents that building will go smoke-free on a set date, ask for information on renters who smoke in their units

##### DAY 20

Review responses to notification, log units where people smoke, send follow-ups to residents who do not respond.

##### DAY 25

Hold a meeting to address resident questions and further explain the policy.

##### DAY 30

Send out a reminder that the building will be going smoke-free in 30 days, and post reminders in common areas.

##### DAY 60

Begin enforcing the policy and breathing easier.

*Adapted from Respiratory Health Association Toolkit at  
<http://www.idph.state.il.us/wechoosehealth/multi-unit/Smoke-free%20toolkit%202013.pdf>*

# MAKING THE TRANSITION

## IS A SMOKE-FREE POLICY DISCRIMINATORY? NO

- Smoking is not a constitutionally protected activity. Jurisdictions such as state, counties, municipalities and private properties can restrict smoking.
- Being a smoker is not a constitutionally protected class of person, unlike ethnicity or national origin or other constitutionally protected classes.
- Addiction to nicotine is not a recognized disability for which a reasonable accommodation may be granted.

**Recommendation:** Implement the policy based on prohibiting the activity of smoking in restricted areas, as opposed to an individual.

## DOES LIABILITY INCREASE WITH THE ADOPTION OF SMOKE-FREE POLICY? NO

With the use of appropriate language in a smoke-free lease or lease addendum, a landlord or property owner will not be liable for violations of a smoke-free policy that result in injury to a resident if the landlord was not aware of the violation.

**Recommendation:** Include disclaimer language stating that property owner is not guaranteeing a smoke-free environment. Also include language that tenants have a responsibility to inform the landlord about violations.

## SHOULD TENANTS OR RESIDENTS BE REQUIRED TO NOTIFY THE LANDLORD OR CONDOMINIUM ASSOCIATION OF NONCOMPLIANCE? YES

With the use of appropriate language in a smoke-free lease or lease addendum, a landlord or property owner will not be liable for violations of a smoke-free policy if the landlord was not aware of the violation.

**Recommendation:** Include language that tenants and residents have a responsibility to inform the landlord or condominium association of violations in writing.

## WOULD ACCOMMODATIONS BE REQUIRED FOR INDIVIDUALS WITH MOBILITY OR MENTAL HEALTH CHALLENGES? PROBABLY NOT

- Disability statutes require a direct connection, or “nexus,” between the disability and the accommodation. Allowing smoking inside a building in violation of a smoke-free policy may not be considered a direct enough connection to a mobility challenge or mental health condition.
- The Federal Fair Housing Act states that a property does not have to be leased to an individual whose activities pose a direct health or safety threat to others. Considerable evidence proves the dangers of secondhand smoke exposure to non-smokers in the multi-unit residential setting.

# IMPLEMENTATION AND ENFORCEMENT TIPS

## EDUCATE EVERYONE!

- Deliver presentations and share information with residents and employees on the dangers of secondhand smoke and the benefits of smoke-free policies.
- Conduct surveys to assess the level of support for different types of smoke-free policies.
- Ensure that you have adequate smoke-free signage.

## DOCUMENT EVERYTHING!

- Prepare written lease language, an addendum, condo bylaws, policies or rules, etc. to document the smoke-free policy and the enforcement steps for the policy, including that smoking violations are considered a material breach of the lease, condominium bylaws, etc.
- Document any violations or reports of violation. These records will be useful if a landlord or property owner needs to take action to resolve the smoking issue.

## ENFORCE EVERY VIOLATION

- Enforce the policy. Ensure that the enforcement steps are included in the lease, lease addendum, condo bylaws or other documentation, and are followed for all violations.
- Enforce the policy consistently. Enforce regardless of where the violation occurs (common areas or individual units) and enforce regardless of weather or other contingencies.
- Enforce the policy uniformly. Enforce the policy against everyone who commits a violation, not just against new residents or residents that generate multiple complaints.
- Treat smoking like any other lease or condominium violation that is a material breach.

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## REMEMBER: YOU AREN'T TELLING PEOPLE TO QUIT SMOKING

- *A smoke-free policy protects all tenants, including people who smoke, from secondhand smoke exposure.*
  - *Tenants are still allowed to smoke, as long as the act is done in an approved area that is an appropriate distance away from the building.*
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*Adapted from Tobacco Control Legal Consortium Fact Sheet at  
[http://www.lunachicago.org/site/files/487/109194/374393/570079/Chicago\\_Smoke\\_Free\\_Apartments\\_Fact\\_Sheet.pdf](http://www.lunachicago.org/site/files/487/109194/374393/570079/Chicago_Smoke_Free_Apartments_Fact_Sheet.pdf)*

## MORE INFORMATION



The Coalition for a Healthy NJ is promoting voluntary adoption of smoke-free multi-unit housing policies because secondhand smoke poses serious health risks. Addressing this serious issue will save lives and save money.

If you are interested in learning more about smoke-free policies or would like more information about making your housing facility a healthier place to live, contact us below. We are available to help you during this process at no cost. ***Please contact us today!***

### New Jersey Prevention Network

150 Airport Road, Suite 1400  
Lakewood, NJ 08701



Phone: 732-367-0611

Fax: 732-367-9985



[www.njpn.org](http://www.njpn.org)



GASP is a non-profit organization with a mission of promoting smoke-free air and tobacco-free lives. GASP has developed a wealth of expertise and resource materials on this subject. We provided technical assistance for the passage of the 2006 New Jersey Smoke-free Air Act and many of tobacco control laws including the New Jersey 100% Smoke-free Residential College Housing Law (the first state to enact such a law).

### Global Advisors on Smokefree Policy

7 Cedar Street, Suite A  
Summit, NJ 07901



Phone: 908-273-9368

Fax: 908-273-9222



Karen Blumenfeld, Esq.  
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[kblumenfeld@njgasp.org](mailto:kblumenfeld@njgasp.org)  
[www.njgasp.org](http://www.njgasp.org)

## MORE INFORMATION



Tobacco-Free for a Healthy New Jersey is a statewide project focusing on increasing residents' access to smoke-free air where they work, live, and play. The TFHNJ Program works to reduce tobacco use and the negative impact of secondhand smoke in all counties of New Jersey.

This project promotes opportunities for smoke-free living by providing training and technical assistance to housing authorities, property managers, and landlords who want to transition their multi-unit housing complexes to smoke-free housing; by providing business owners with help improving or creating new Worksite Wellness initiatives to support cessation and reduce tobacco use among the workforce; and by providing technical assistance to municipalities looking to create smoke-free outdoor ordinances and/or reduce youth access to tobacco products and electronic nicotine delivery systems (ENDS).

### Tobacco-Free for a Healthy NJ

#### **NORTH**

BERGEN | ESSEX | HUDSON | MORRIS | PASSAIC  
SOMERSET | SUSSEX | WARREN

*Northern Regional Coordinator: Cindy Meakem*

**Center for Prevention and Counseling**

61 Spring Street, Newton NJ 07860

Phone: 973-383-4787

Email: [cindy@centerforprevention.org](mailto:cindy@centerforprevention.org)

#### **CENTRAL**

HUNTERDON | MERCER | MIDDLESEX | MONMOUTH | UNION

*Central Regional Coordinator: Jenna Giaquinto*

**New Jersey Prevention Network**

150 Airport Road Suite 1400, Lakewood NJ 08701

Phone: 732-367-0611

Email: [jenna@njpn.org](mailto:jenna@njpn.org)

#### **SOUTH**

ATLANTIC | BURLINGTON | CAMDEN | CAPE  
MAY | CUMBERLAND | GLOUCESTER | OCEAN | SALEM

*Southern Regional Coordinator: Kim Burns*

**Atlantic Prevention Resources**

626 North Shore Road, Absecon NJ 08221

Phone: 609-272-0101 ext. 18

Email: [tobaccofreenjsouth@atlprev.org](mailto:tobaccofreenjsouth@atlprev.org)

# SMOKING CESSATION PROGRAMS

## Cessation Resources

Free smoking cessation services are available to qualifying adults in New Jersey, regardless of whether they reside in multi-unit housing. The services are sponsored by the NJ State Department of Health. In addition to these free services, there are privately funded cessation services available by visiting the <http://njquitline.org>. Learn about additional options for treatment, from local in-person programs, to federal online programs at <http://njgasp.org/quit-tobacco.htm>.

Your workplace may also offer a tobacco cessation program. Contact the Wellness Program at your workplace, or your health insurance to find out what is covered by your plan.

### NJ QUITLINE

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*Call the NJ Quitline at:*  
*(866) NJ-STOPS / (866) 657-8677*  
*and*  
*<http://njquitline.org>*

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Participants of NJ Quitline may qualify for a two-week supply of FDA-approved nicotine patches to help them quit smoking, while supplies last. Call NJ Quitline for details.

### MOM'S QUIT CONNECTION

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*(888) 545-5191*  
*Free telephone or face to face cessation counseling*  
*for pregnant and parenting women and families.*

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# SMOKE-FREE HOUSING RESOURCES

## **CDC Secondhand Smoke Fact Sheet**

[http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/Secondhand\\_smoke/general\\_facts/#estimates](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/Secondhand_smoke/general_facts/#estimates)

## **Healthy Homes Manual: Smoke-Free Policies in Multi-Unit Housing**

*Centers for Disease Control and Prevention*

[http://www.cdc.gov/healthyhomes/healthy\\_homes\\_manual\\_web.pdg](http://www.cdc.gov/healthyhomes/healthy_homes_manual_web.pdg)

## **The Dangers of Thirdhand Smoke**

*Breathe Easy Coalition of Maine*

<http://www.breatheeasymaine.org/facts/thirdhand-smoke>

## **Reasons to Explore Smoke-Free Housing**

*National Center for Healthy Housing*

[http://www.ct.gov/dph/lib/dph/hems/tobacco/pdf/reasons\\_to\\_explore\\_smoke-free\\_housing.pdf](http://www.ct.gov/dph/lib/dph/hems/tobacco/pdf/reasons_to_explore_smoke-free_housing.pdf)

## **Enforcement and Implementation Tips/Common Concerns and Questions**

[http://www.lungchicago.org/site/files/487/109194/374393/570079/Chicago\\_Smoke\\_Free\\_Apartments\\_Fact\\_Sheet.pdf](http://www.lungchicago.org/site/files/487/109194/374393/570079/Chicago_Smoke_Free_Apartments_Fact_Sheet.pdf)

## **Smoke-Free Multi-Unit Housing Technical Assistance Resource for New Jersey**

<http://njgasp.org/muh-support.htm>

## **Making the Transition**

*Chicago Smoke-Free Housing*

<http://www.lungchicago.org/smoke-free-housing-managers/>

## **No Smoking Policy Implementation: Sample Timeline**

*American Lung Association*

<http://www.lung.org/associations/states/oregon/>

## **Model Smoke-Free Lease Addendum**

*Live Smoke Free*

[http://www.mnsmokefreehousing.org/documents/Smoke\\_free\\_addendum.pdf](http://www.mnsmokefreehousing.org/documents/Smoke_free_addendum.pdf)

## **Sample Letter to Notify Tenants of Smoke-Free Building Policy**

[http://www.ct.gov/dph/lib/dph/hems/tobacco/pdf/letter\\_to\\_residents\\_1.pdf](http://www.ct.gov/dph/lib/dph/hems/tobacco/pdf/letter_to_residents_1.pdf)

## **Enforcement Tips**

*Smoke-Free Housing*

<http://www.smokefreeforme.org//property-owners-managers>

## **Sample Enforcement Plan and Sample Resident Compliance Letter**

*American Lung Association*

<http://www.lung.org/associations/states/illinois/advocacy/smokefreeillinois/housing/landlords.html>

## SAMPLE IMPLEMENTATION MATERIALS

## Sample Questionnaire

\_\_\_\_\_ is working to create a healthy living environment for all residents. As part of this effort we are exploring a smoke-free building. We would like to learn your opinions on the issue. Please complete the survey below and return it to \_\_\_\_\_.

|                  |         |
|------------------|---------|
| YOUR NAME:       |         |
| HOUSING ADDRESS: | UNIT #: |

|    |  |  |   |  |
|----|--|--|---|--|
| 1. | Do any residents of or visitors to your unit smoke inside the unit, such as cigars, cigarettes, little cigars, hookah, electronic smoking devices such as e-cigarettes or hookah pens, or smoke any other product? | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     |  |
| 2. | In the past year, has tobacco or any other smoke gotten into your unit from somewhere else in or around the building? If YES, from where? If NO, SKIP QUESTION 3.  | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     |  |
| 3. | If yes, does the tobacco or other smoke bother you or make you feel sick?  | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     | <input type="checkbox"/> SOMETIMES   |
| 4. | Did you know that secondhand smoke is bad for your health?   | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     | <input type="checkbox"/> NOT SURE  |
| 5. | Does anyone in your unit have a chronic illness such as asthma, chronic bronchitis, heart disease, diabetes, cancer or is anyone a cancer survivor?  | <input type="checkbox"/> NO individuals have a chronic condition | <input type="checkbox"/> ONE individual has a chronic condition | <input type="checkbox"/> MORE THAN ONE individual have a chronic condition |
| 6. | Would you prefer to live in a building that is completely smoke-free (does not allow smoking in any of the units, common areas, or other indoor spaces)?   | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     | <input type="checkbox"/> NOT SURE  |
| 7. | Would you attend a meeting to hear the results of this survey and learn more about this topic?   | <input type="checkbox"/> YES                                     | <input type="checkbox"/> NO                                     | <input type="checkbox"/> NOT SURE  |

Comments:

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*Thank you. The results of this survey will help us decide how to best address this issue.*

# Sample No Smoking Policy Lease Addendum

## Model Smoke-Free Lease Addendum

Attorney Douglass J. Carney, of Hanbery, Neumeyer & Carney, P.A., prepared the initial version of this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from the Center of Energy and Environment and Association for Non-smokers-Minnesota were also on the committee. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments.

Tenant and all members of Tenant's family or household are parties to a written lease with Landlord (the Lease). The Addendum states the following additional terms, conditions and rules which hereby are incorporated into the Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

1. **Purpose of No-Smoking Policy.** The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building.
2. **Definitions:**
  - Smoking.* The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted or heated cigar, cigarette, or other tobacco product or plant product in any manner or form. Smoking also includes use of electronic cigarette.
  - 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.
3. **Smoke-Free Complex.** Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant and members of Tenant's household shall not smoke anywhere in the unit rented by Tenant, or building where Tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, nor shall Tenant permit any guests or visitors under the control of Tenant to do so. [If you provide an outdoor smoking area, specify where it is here.]
4. **Tenant to Promote No-Smoking Policy and to Alert Landlord of Violations.** Tenant shall inform Tenant's guests of the no-smoking policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into Tenant's unit from sources outside of the Tenant's apartment unit.

5. **Landlord to Promote No-Smoking Policy.** Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.
6. **Landlord Not a Guarantor of Smoke-Free Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.
7. **Other Tenants are Third-Party Beneficiaries of Tenant's Agreement.** Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smoke-free addendum agreements with Landlord. (In layman's terms, this means that Tenant's commitments in this Addendum are made to other Tenants as well as to Landlord.) A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this Addendum.
8. **Effect of Breach and Right to Terminate Lease.** A breach of this Lease Addendum shall give each party all the right contained herein, as well as the rights in the Lease. A material breach of this Addendum shall be a material breach of the Lease and grounds for immediate termination of the Lease by the Landlord.
9. **Disclaimer by Landlord.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment and the efforts to designate the rental complex as smoke-free do not in any way change the standard of care that the Landlord or managing agent would have to a Tenant 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. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other landlord obligation under the Lease.

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LANDLORD

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TENANT

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DATE

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DATE

# Sample Letter to Notify Tenants of Smoke-Free Building Policy

[Landlord Letterhead]

[DATE]

[ADDRESS]

Dear Residents,

In order to provide a healthier environment for our residents and guests, our property has decided to go completely smoke-free. The harmful effects of secondhand and thirdhand smoke and the fire dangers caused by smoking indoors are simply too great to ignore.

The common areas in your building are already smoke-free (this includes hallways, exercise areas, laundry rooms, and enclosed garages). A smoke-free policy for all individual units will be phased in as leases are renewed.

## **Hazards of Secondhand Smoke**

- **Secondhand smoke is a serious health hazard.** It is the third leading cause of preventable death in the United States, causing approximately 49,000 deaths each year. The 2010 U.S. Surgeon General's report states that there is no risk-free level of exposure to secondhand smoke. Secondhand and thirdhand smoke are particularly dangerous to children and have been linked to childhood asthma, low birth weight, ear infections, and Sudden Infant Death Syndrome.

## **Fire Risk**

- **Smoking is the leading cause of fire death in the United States.** Fires can start on decks and porches as well as in units. According to the National Fire Protection Association's report "The Smoking-Materials Fire Problem", one in four (24%) victims who die in residential smoking-related fires is not the smoker whose cigarette started the fire. Fires caused by smoking are costly, deadly, and leave many people with damaged property and no place to live. We want to protect our residents from these dangers.

## **Ventilation is Not Effective**

- Research conducted during air movement studies have shown that **secondhand smoke travels from unit to unit**. The smoke can seep through electrical outlets, heating and duct work, and structural gaps. The remodeling required to prevent secondhand smoke from traveling to another residence can be costly and ineffective. The only effective way to stop the spread of secondhand smoke is by adopting a smoke-free policy.

## **Our Building's New Smoke-Free Policy**

- **Effective [date for new tenants], all tenants signing new leases will be required to sign a smoke-free lease addendum that explains the policy.** All current tenants will be required to sign a smoke-free addendum during their lease renewal process. We anticipate the transition to becoming a smoke-free building to be completed by [date all tenants will have signed smoke-free lease addendum]. The smoke-free policy will cover all individual units and all common areas [If applicable, list other smoke-free places on property]. All residents and guests will be required to follow this policy.

Please consider this letter as notice about the changes that will be taking place upon renewal of your lease. We hope this policy will help everyone breathe easier and live healthier.

Please have all adults living in your unit sign the enclosed form and return it to the management within one week. If you have any questions about this policy, please contact management.

Thank you,

Property Manager, Owner

## Sample Resident Compliance Letter

[DATE]

Dear NAME OF RESIDENT,

As stated in your lease with NAME OF PROPERTY/ COMPANY, our no-smoking policy is that (insert smoking policy from your lease).

On DATE and TIME, you were REPORTED/ OBSERVED (choose one) to be smoking in NAME OF AREA in violation of the lease. *Add other information about the violation as appropriate.*

If you violate your lease again, we may take appropriate legal action, including terminating your lease.

Enclosed with this letter is information regarding resources in the community to quit smoking, in case this is of interest to you.

If you have a particular enforcement procedure of warnings, fines, notices, etc., describe it here.

If you have a designated smoking area, tell the tenant where it is and to remember to smoke in the designated area only.

If you have questions or concerns, please contact us at CONTACT INFORMATION.

Thank you,  
YOUR NAME  
COMPANY

# **Tobacco-Free**

## FOR A HEALTHY NEW JERSEY

Coordinated by:



150 Airport Road | Suite 1400

Lakewood | NJ 08701

P | 732.367.0611

F | 732.367.9985

[njpn.org](http://njpn.org)

Visit us on Facebook | [www.facebook.com/NewJerseyPreventionNetwork](http://www.facebook.com/NewJerseyPreventionNetwork)

Partially funded by:

NJ Department of Health

Family Health Services

Community Health and Wellness Unit

Office of Tobacco Control, Nutrition and Fitness