

# Boston Smoke-Free Homes

## *Condo Association Guide*



Boston Public Health Commission

Boston Smoke-Free Homes Initiative

Made possible by funding from the United States Department of Health and Human Services,  
Communities Putting Prevention to Work Grant

Available online at: [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org)

Adapted with permission from:

*Going Smoke-Free: A Guide for Condominium Trustees and Associations*

The Massachusetts Smoke-Free Housing Project

An Initiative of the Public Health Advocacy Institute

Funded by the Massachusetts Department of Public Health

For more information or questions on how to implement a no smoking rule, contact the Massachusetts Smoke Free Housing Project at (877) 830-8795.

THIS GUIDE IS PROVIDED FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE CONSTRUED AS LEGAL OPINION OR AS A SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM AN ATTORNEY. READERS WITH QUESTIONS ABOUT THE APPLICATION OF THE LAW TO SPECIFIC FACTS ARE ENCOURAGED TO CONSULT AN ATTORNEY.

## Why go smoke-free?

Have residents complained about secondhand smoke drifting into their homes? Has your condo association be thinking about implementing a no-smoking policy? You are not alone. More and more condo associations are deciding to eliminate this problem by going smoke-free.

Going smoke-free makes your building healthier, safer and improves resale value —and it's easier to do than you might think. In this document, you will find all of the information needed to make your building smoke-free. Similar to rules prohibiting pets, condo associations can prohibit smoking in their buildings. Condominium associations can make buildings completely smoke-free by amending the condominium's by-laws through a vote of the unit owners. Check your condo documents for specifics.

The following are just some of the benefits:

### **Going smoke-free is clearly good for health.**

Smoking is harmful. What many people don't realize is that secondhand smoke—smoke inhaled involuntarily by someone who is not smoking—is also extremely hazardous.

The health risks associated with secondhand smoke include:

- Secondhand smoke causes or worsens several chronic diseases, including emphysema, lung cancer, heart disease, stroke, chronic bronchitis, and asthma as well as sudden infant death syndrome (SIDS).<sup>1</sup>
- Secondhand smoke is a major health threat to persons with asthma, and can cause fatal asthma attacks.
- There is no safe level of exposure to secondhand smoke, and the primary source of exposure to secondhand is the home.<sup>2</sup>
- Secondhand smoke cannot be effectively controlled by ventilation or air purification systems. Even according to the ventilation industry, having a smoke-free policy is the only effective way to eliminate the health risks of involuntary exposure to secondhand smoke.<sup>3</sup>
- Secondhand smoke also causes and worsens respiratory tract infections, such as pneumonia and bronchitis, as well as ear infections.
- Secondhand smoke causes over 46,000 heart disease deaths annually among adult nonsmokers in the United States.<sup>4</sup>
- The dangers of secondhand smoke are particularly critical for the most vulnerable people in our community – children and the elderly, along with people with respiratory illnesses.

## Going smoke-free is also good for business.

As the public's awareness of these harmful effects increases, more and more condo buyers are seeking out homes where they will be protected from second-hand smoke. Surveys show a high demand for smoke-free buildings.vii

### Going smoke-free can help you:

- **Improve resale opportunities.** National and local research consistently shows that demand for smoke-free housing is rising. Approximately 85% of Boston's adult residents are non-smokers.<sup>5</sup> Realtors who assist buyers and sellers agree: As the number of public places protected from smoking has increased, so has the number of home buyers and renters looking for smoke-free housing. In fact, you could lose out if you don't go smoke-free: 88% of prospective condo owners are less interested in a development if they smell tobacco smoke.<sup>6</sup>
- **Reduce conflicts among residents.** Secondhand smoke can be a source of conflict among residents. It is well-established that building ventilation and filtration systems do not eliminate health risks or prevent smoke from moving between units.<sup>7</sup> The only way to eliminate the health risks caused by indoor exposure is to eliminate indoor smoking.
- **Eliminate the leading cause of fatal residential fires.** Property damage from cigarette-caused fires exceeds \$400 million annually.<sup>8</sup> No smoking rules reduce the risk of fire-related property damage, injury and death.
- **Reduce your insurance premiums.** Some insurance companies offer discounts or credits to condo associations on their general liability insurance premiums if they implement a no smoking rule. Ask your broker.

## Start the process.

Implementing a no smoking rule is simple. The process will be outlined in your condo association's master deed and declaration of trust, which govern how the association operates. Usually, establishing a smoke-free policy for the entire association will require a vote of the unit owners to adopt a new by-law. Following this four-step process can help:

### STEP ONE:

#### Educate unit owners.

As you develop your smoke-free policy, make sure to reach out to your fellow owners. Let all owners know about the problems caused by drifting tobacco smoke. Discuss the reasons to go smoke-free highlighted in this guide at your condominium association meetings.

Because going smoke-free will require a vote of the unit owners, good resident outreach will help to ensure success. Let residents know that you are concerned about smoking in the building, share stories about residents that are impacted, if appropriate. You will likely find that most residents agree with you – surveys show that most people prefer a smoke-free home.

Common areas in your building may already be protected under the [Massachusetts Smoke-Free Workplace Law](#), and you can make sure they are covered as an intermediate step, the condo association can create a rule that makes all common areas smoke-free, typically through a simple majority vote of the trustees.

After the trustees vote to make common areas smoke-free, make sure to give all residents notice before the rule change goes into effect. The notice should describe where smoking will be prohibited and that the rule change will become effective immediately. A sample [notice of common area rule change](#) is attached.

Even if some owners disagree with the policy, it is helpful to include them in the process. Remember to emphasize that this is a “no *smoking*” rule and not a “no *smokers*” rule: it only requires that smokers go outside to smoke.

Even though a smoke-free policy does not require residents to quit, if a someone is interested in quitting, you can refer them to the following resources:

- The **Massachusetts Smoker's Quitline** is a free, phone-based counseling that's available to all smokers. Call 1-800-TRY-TO-STOP for immediate assistance.
- A number of programs are available to assist **Boston residents** who are trying to quit smoking. Learn more about these local programs by contacting the Boston Public Health Commission at 617-534-4718 or [tobaccocontrol@bphc.org](mailto:tobaccocontrol@bphc.org) or visiting [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org)
- The **Massachusetts Tobacco Control Program** at [www.makesmokinghistory.org](http://www.makesmokinghistory.org)

## STEP TWO:

### Implement the no smoking policy for the entire property.

Condominium associations can make buildings completely smoke-free by amending the condominium's by-laws through a vote of the unit owners. Check your condominium documents for the specifics of how to amend your by-laws.

The rule and by-law change can be done a few different ways. Many condo associations vote to go completely smoke-free immediately. This is the best option because it eliminates the potential for exposure sooner, makes the property more attractive to potential unit buyers, and puts everybody on the same schedule. Alternatively, condo associations can "grandfather in" existing owners, and make units smoke-free as they are sold to new owners. The attached documents allow you to choose the variation that works for your association.

A [sample letter to owners](#) proposing the rule, [voting letter](#) and [by-law amendment](#) are attached and available at [www.bostonsmokefreehomes.com](http://www.bostonsmokefreehomes.com). In the meantime, condo associations usually can start right away by creating a [rule that makes all common areas smoke-free](#) through a simple majority vote of the trustees. Use the [free materials](#) available at [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org) to help designate your property as a smoke-free environment.

## STEP THREE:

### Enforce the no smoking rule.

Smoke-free housing rules are largely self-enforcing. Almost all owners who have implemented a smoke-free policy report that they are satisfied with the results. Here are some tips to ensure success:

- Treat no smoking violations the same way you would treat any other rule violation
- Mail each owner a [letter](#) proposing the rule ahead of time
- Be clear about why you want to have a no smoking rule
- Encourage residents to help with enforcement by encouraging their neighbors to respect the smoke-free policy
- Tell residents they will be held financially responsible for violations
- Record violations in writing
- Respond quickly and consistently to violations
- Post "no smoking" signs in obvious places
- Clean up cigarette butts and remove ashtrays
- Have residents tell their guests about the no smoking rule
- Provide smokers who are interested in quitting with information on quit-smoking services

## STEP FOUR:

### **Promote your smoke-free status.**

Take advantage of the high demand for smoke-free housing in Boston and promote your smoke-free status. In 2008, only 15% of Boston adults smoked.<sup>9</sup> Prospective unit owners will appreciate your efforts, especially since over 92% of Massachusetts residents believe that exposure to secondhand smoke is very harmful or somewhat harmful.<sup>10</sup> Despite increasing demand, few condo buildings are completely smoke-free. Capitalize on this market gap by highlighting your smoke-free status as an amenity when units in your building are being marketed.

Create an Account and register your property today on our free smoke-free housing listing service to help apartment hunters looking for a smoke-free apartment find your property.

Insurance companies may offer special discounted rates for buildings that prohibit smoking because they reduce the risk of fire for all individuals. Check with your insurance carrier.

### **If You Have Questions, Call for Free Advice**

For more information or questions on how to implement a no smoking rule, call the Massachusetts Smoke Free Housing Project at (617) 830-8795. More information about secondhand smoke is available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org). More information about going smoke-free and listing your property is available at [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org).

## Frequently Asked Questions

### **Q. Is it legal to create a smoke-free housing policy?**

Yes. There is no legally protected right to smoke.<sup>11</sup> Similar to a “no pets” rule, a smoke-free policy is legal and can be written into a condo by-law.

### **Q. Can smokers live in a smoke-free building?**

Yes. Smoke-free housing policies restrict the act of *smoking* in or close to the building—not *smokers* themselves. A smoke-free policy only asks residents and their guests to go outside and refrain from smoking in or around the building. Prospective residents should not be screened-out or denied housing opportunities based on their smoking status, or for any other discriminatory purpose.

### **Q. Is a smoke-free policy discriminatory?**

No. Since there is no legally protected right to smoke, and smokers are not denied housing access under a smoke-free policy, these policies are not discriminatory. A smoke-free policy protects the health of all residents by removing a known carcinogen from the air.

### **Q. How are smoke-free policies enforced?**

Smoke-free policies are enforced just like any other condo association by-law. Trustees may issue warning letters and fines for violations.

### **Q. What about subsidized housing?**

The U.S. Department of Housing and Urban Development supports smoke-free policies. There are successful examples of smoke-free housing across all kinds of subsidized housing, including public housing, rental vouchers, privately-owned affordable housing and more. Work with the agency that administers your subsidy program when you are developing your policy to find out if there are any additional requirements for creating your policy.

### **Q. Will a smoke-free policy affect the marketability of my condo?**

Surveys show a high demand for smoke-free units and many people searching for condos are willing to pay more for a unit in a smoke-free building.<sup>12</sup>

### **Q. How are smoke-free condo policies created?**

Smoke-free policies are created by amending the condominium documents, typically the by-laws. For a complete step-by-step guide to the process, download the [Smoke-Free Housing Guide for Condo Owners and Associations](#).

## VOTING LETTER

[The trustees may record the votes of unit owners by distributing this letter to them and have them complete, sign and return the letter to the trustees. The letters should be retained by the trustees for their records. The units to be grandfathered, if any, should be written in below before voting. Remember to check your condominium documents for specific requirements for recording unit owners' votes. Your condominium documents are controlling.]

[Trustee]

[Condominium Name]

[Address]

[Address]

We, the undersigned, being all of the current owners of unit number \_\_\_\_\_ in the \_\_\_\_\_ [condominium name] and having a percent interest in the Condominium, APPROVE / DO NOT APPROVE (check one) the following amendment to the by-laws of the Condominium prohibiting smoking, as follows:

[OPTION ONE: BY-LAW AMENDMENT LANGUAGE WITH NO UNITS GRANDFATHERED – DELETE LANGUAGE BELOW IF NOT USED]

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium's constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a "Class A" carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium's constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking in violation of this rule shall constitute a nuisance pursuant to the terms and provisions of its constituent documents of the Association. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lit product.

Notwithstanding the said prohibition against smoking, the board of trustees may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

SO RESOLVED

[OPTION TWO: BY-LAW AMENDMENT LANGUAGE WITH UNITS GRANDFATHERED –DELETE LANGUAGE BELOW IF NOT USED]

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium’s constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a “Class A” carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium’s constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, and indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated, smoldering or lit product.

Notwithstanding the said prohibition against smoking, the Board may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

Notwithstanding the said prohibition against smoking, smoking shall be allowed in the following units (collectively the “Grandfathered Units”) but only until such time as the unit is conveyed or transferred. Grandfathered units occupied by tenants shall become no smoking upon the expiration of the current lease term, but in no event longer than one (1) year from the effective date hereof.

*Owner-Occupied Grandfathered Units*

Unit #	Current Unit Owner

*Renter-Occupied Grandfathered Units*

Unit #	Current Unit Owner	Lease Expiration Date

This Amendment shall not amend, alter or otherwise affect the existing rule prohibiting Unit owners from causing nuisances. It is acknowledged hereby, that subsequent to the recording of this Amendment, drifting secondhand smoke might rise to the level of constituting a nuisance.

SO RESOLVED.

I hereby authorize the Trustees to take the necessary steps, in accordance with the Declaration of Trust of the Condominium, in furtherance of our vote on the above-referenced by-law amendment.

Kindest regards,

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Print Name]

\_\_\_\_\_ [Date]

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Print Name]

\_\_\_\_\_ [Date]

\_\_\_\_\_ [Signature]

BY-LAW AMENDMENT

*SPACE ABOVE INTENTIONALLY LEFT BLANK*

BY-LAW AMENDMENT

SMOKE FREE RULE

The undersigned members of the Board of Trustees (the “Board”) of the \_\_\_\_\_ [Name of Condominium] Condominium Association (the “Association”) under the Master Deed dated \_\_\_\_\_ [Date Master Deed Signed] and recorded with the \_\_\_\_\_ [Name of Registry] Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and the Declaration of Trust dated \_\_\_\_\_ [Date Declaration of Trust Signed] and recorded with the \_\_\_\_\_ [Name of Registry] Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, the organization of unit owners of the \_\_\_\_\_ [Name of Condominium] Condominium (the “Condominium”), do hereby adopt the following administrative resolution as an amendment to the Association’s rules and regulations pursuant to the by-laws.

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium’s constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a “Class A” carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium’s constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking in violation of this rule shall constitute a nuisance pursuant to the terms and provisions of its constituent documents of the Association. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any

lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lit product.

Notwithstanding the said prohibition against smoking, the board of trustees may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

SO RESOLVED.

EXECUTED as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
\_\_\_\_\_, Trustee

\_\_\_\_\_  
\_\_\_\_\_, Trustee

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 20\_\_

The personally appeared the above-named \_\_\_\_\_,

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, identified to me by evidencing their driver's licenses, Trustees as aforesaid, and acknowledged the foregoing to be his free act and deed, before me.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

BY-LAW AMENDMENT WITH  
UNITS GRANDFATHERED

*SPACE ABOVE INTENTIONALLY LEFT BLANK*

BY-LAW AMENDMENT  
PHASED-IMPLEMENTATION OF SMOKE FREE RULE

The undersigned members of the Board of Trustees (the “Board”) of the \_\_\_\_\_ [Name of Condominium] Condominium Association (the “Association”) under the Master Deed dated \_\_\_\_\_ [Date Master Deed Signed] and recorded with the \_\_\_\_\_ [Name of Registry] Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and the Declaration of Trust dated \_\_\_\_\_ [Date Declaration of Trust Signed] and recorded with the \_\_\_\_\_ [Name of Registry] Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, the organization of unit owners of the \_\_\_\_\_ [Name of Condominium] Condominium (the “Condominium”), do hereby adopt the following administrative resolution as an amendment to the Association’s rules and regulations pursuant to the by-laws.

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium’s constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a “Class A” carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium’s constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, and indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking shall include the inhaling,

exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated, smoldering or lit product.

Notwithstanding the said prohibition against smoking, the Board may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

Notwithstanding the said prohibition against smoking, smoking shall be allowed in the following units (collectively the "Grandfathered Units") but only until such time as the unit is conveyed or transferred. Grandfathered units occupied by tenants shall become no smoking upon the expiration of the current lease term, but in no event longer than one (1) year from the effective date hereof.

*Owner-Occupied Grandfathered Units*

Unit #	Current Unit Owner

*Renter-Occupied Grandfathered Units*

Unit #	Current Unit Owner	Lease Expiration Date

This Amendment shall not amend, alter or otherwise affect the existing rule prohibiting Unit owners from causing nuisances. It is acknowledged hereby, that subsequent to the recording of this Amendment, drifting secondhand smoke might rise to the level of constituting a nuisance.

SO RESOLVED.

EXECUTED as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
, Trustee

\_\_\_\_\_  
, Trustee

\_\_\_\_\_  
, Trustee

\_\_\_\_\_  
, Trustee

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 20\_\_

The personally appeared the above-named \_\_\_\_\_,

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, identified to me by

evidencing their driver's licenses, Trustees as aforesaid, and acknowledged the foregoing to be his free act and deed, before me.

\_\_\_\_\_  
Notary Public

My Commission Expires:

## LETTER PROPOSING NO SMOKING RULE

[Date]

[Unit Owner]

[Address]

[Address]

Dear Unit Owner:

The Trustees of \_\_\_\_\_ [Condominium name] are writing to request your support to designate our property as smoke free. Smoking in the building potentially exposes our nonsmoking residents to secondhand tobacco smoke. Current research shows that secondhand smoke generated in one area of a building frequently will drift into other areas by seeping under doors, through ventilation ductwork and by other means. This potential for exposure raises serious health concerns for our residents. Some of the health effects include the following:

- Nonsmokers who are exposed increase their risk of developing heart disease by 25 - 30 percent.
- Nonsmokers who are exposed increase their risk of developing lung cancer by 20 - 30 percent.
- Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system and increase the risk of a heart attack.
- Children exposed to secondhand smoke are more likely to develop bronchitis, pneumonia, asthma, and ear infections.
- Secondhand smoke has been linked to Sudden Infant Death Syndrome.

The potential for fire is also a concern. Smoking is the number one cause of home fire deaths in the United States, causing 1,000 deaths per year. One-in-four people killed in home fires are not the smoker whose cigarette caused the fire.

The only effective way to fully address these concerns is to designate our property as entirely smoke free. Note that upgrading our ventilation system appears to be impractical. HVAC standards are established by the American Society for Heating, Refrigerating and Air Conditioning Engineers, which does not recommend a ventilation standard for removing secondhand smoke based on its conclusion that no standard ventilation system or air purifier can handle the job. Going Smoke-Free

Accordingly, we invite the members of the condominium association to consider the following proposed rule change. Smoking will be prohibited everywhere on the property, including all indoor and outdoor common areas, all individual units and all indoor and outdoor exclusive use areas. (Exclusive use areas include decks, patios, parking spaces and other such areas belonging to individual unit owners.) The trustees may designate an outdoor smoking area, but would locate the area away from the building where there is no potential for involuntary exposure.

We have two options for implementation. The first option is to make the rule effective for all units immediately. The second option is to grandfather units owned by our smoking residents. Smoking would be allowed in a grandfathered-unit until it is sold or transferred, at which time the unit would become smoke free. The grandfathered-units would not be exempt from our condominium's existing rule that prohibits nuisances, including if secondhand smoke drifting from the unit becomes so severe that it constitutes a nuisance.

Before proposing a no smoking rule formally and putting it out to all owners for a vote, we want to receive as much owner input as possible. For that reason, we have scheduled a meeting at \_\_\_\_\_ [address, date, time]. If you would like to contribute to the discussion, but are unable to attend the meeting, please contact anyone of us directly.

Kindest regards,

\_\_\_\_\_  
[Name], Trustee [Name], Trustee [Name], Trustee

## NO SMOKING RULE FOR COMMON AREAS

Common area rule of \_\_\_\_\_ [Condominium name] Effective \_\_\_\_\_ [Date], smoking shall be prohibited in all indoor and outdoor common areas on the property of the Condominium including, but not limited to, hallways, stairways, foyers, common rooms and facilities, decks, patios, exterior landings, front steps, entrance ways, roof tops, fire escapes, basements, storage areas, parking areas, driveways, walkways, lawns, gardens, adjoining grounds and building facilities. No owner shall smoke in said areas or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member in said areas. Smoking in violation of this rule shall constitute a nuisance pursuant to the terms and provisions of its constituent documents of the Association. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lighted product.

Notwithstanding the said prohibition against smoking, the board of trustees may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

NOTICE OF NO SMOKING RULE  
FOR COMMON AREAS

[Date]

[Unit Owner]

[Address]

[Address]

Dear Unit Owner:

Effective immediately, smoking is prohibited in all indoor and outdoor common areas of the \_\_\_\_\_ [Condominium name] except in designated outdoor smoking areas. A copy of the new rule is attached.

There are several important reasons for the rule change. Most importantly, smoking in common areas exposes our nonsmoking residents to secondhand smoke, thereby increasing their risk of numerous, well documented adverse health effects caused by exposure. Additionally, some of our common areas are potentially covered by the statewide smoking law (M.G. L. c. 270, sec. 6) and thus, are required to be smoke free.

Please inform your guests and tenants that smoking is prohibited in all common areas. You will be held responsible if your guest or tenants violates the no smoking rule. We embrace this small change as an opportunity to ensure that the building is a healthier and cleaner place for all unit owners and guests.

Kindest regards,

\_\_\_\_\_  
[Name], Trustee

\_\_\_\_\_  
[Name], Trustee

\_\_\_\_\_  
[Name], Trustee

NOTICE OF RULE CHANGE FOR  
INDIVIDUAL UNITS AND COMMON AREAS

[Date]

[Unit Owner]

[Address]

[Address]

Dear Unit Owner:

Pursuant to a vote of the unit owners in support of a smoke free environment, effective immediately, smoking is prohibited throughout \_\_\_\_\_ [condominium name] property. A copy of the new by-law, which has been recorded at the registry of deeds, is attached.

Please inform your guests and tenants that smoking is prohibited. You will be held responsible if your guests and tenants violate the no smoking rule. If you smell secondhand smoke, please report it immediately.

A smoking area will be located outside at \_\_\_\_\_  
[Insert location of area] away from the entrance and any buildings. Note that the by-law change allows for the relocation or elimination of the smoking area at any time, particularly if secondhand smoke drifts into individual units or exclusive use areas. [For our residents who wish to continue smoking, we have grandfathered their units. Smoking will be allowed in the grandfathered units until they are sold or transferred, at which time they will become smoke free. Units occupied by tenants will become smoke free within one year of the effective date of this rule or sooner. The grandfathered units, however, are not exempt from the condominium's existing rule prohibiting nuisances, including potentially for drifting secondhand smoke.]

We embrace this small change as an opportunity to ensure that the building is a healthier and cleaner place for all unit owners and guests.

Kindest regards,

\_\_\_\_\_

[Name], Trustee [Name], Trustee [Name], Trustee

## VOTE REGISTER

[The trustees may record the votes of unit owners by having them sign this register. The register should be retained by the trustees for their records. The units to be grandfathered, if any, should be written in before voting. Remember to check your condominium documents for specific requirements for recording unit owners' votes. Your condominium documents are controlling.]

We, the undersigned, being the current owners of units in the \_\_\_\_\_  
\_\_\_\_\_ [condominium name] (the "Condominium") and in possession of a  
percent interest in the Condominium, approve the following amendment to the by-laws of the  
Condominium prohibiting smoking, as follows:

[OPTION ONE: BY-LAW AMENDMENT LANGUAGE WITH NO UNITS GRANDFATHERED – DELETE  
LANGUAGE BELOW IF NOT USED]

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium's constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a "Class A" carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium's constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking in violation of this rule shall constitute a nuisance pursuant to the terms and provisions of its constituent documents of the Association.

Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated or lit product.

Notwithstanding the said prohibition against smoking, the board of trustees may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

SO RESOLVED

[OPTION TWO: BY-LAW AMENDMENT LANGUAGE WITH UNITS GRANDFATHERED –DELETE LANGUAGE BELOW IF NOT USED]

WHEREAS, the Board is empowered to oversee the administration and operation of the Condominium in accordance with the terms and provisions of its constituent documents; WHEREAS, the Unit Owners are entitled to exclusive possession of their respective Units pursuant to M.G.L. c. 183A, §4 and also have the responsibility to properly maintain and repair their respective Units pursuant to the terms and provision of the Condominium’s constituent documents; WHEREAS, secondhand tobacco smoke contains no less than 60 of which are known or probable human carcinogens, and is itself classified as a “Class A” carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the current unit owners of the Condominium on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Condominium’s constituent documents, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

Effective immediately, smoking shall be prohibited everywhere on the property of the Condominium including, but not limited to, individual units, indoor and outdoor exclusive use areas, and indoor and outdoor common areas. No owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, guest, friend, or family member anywhere on the property. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar heated, smoldering or lit product.

Notwithstanding the said prohibition against smoking, the Board may designate (or remove from designation) an outdoor area for smoking, provided the smoking area(s) shall not cause secondhand smoke to drift into indoor common areas, exclusive use areas or individual units.

Notwithstanding the said prohibition against smoking, smoking shall be allowed in the following units (collectively the “Grandfathered Units”) but only until such time as the unit is conveyed or transferred. Grandfathered units occupied by tenants shall become no smoking upon the expiration of the current lease term, but in no event longer than one (1) year from the effective date hereof.

*Owner-Occupied Grandfathered Units*

Unit #	Current Unit Owner

*Renter-Occupied Grandfathered Units*

Unit #	Current Unit Owner	Lease Expiration Date

This Amendment shall not amend, alter or otherwise affect the existing rule prohibiting Unit owners from causing nuisances. It is acknowledged hereby, that subsequent to the recording of this Amendment, drifting secondhand smoke might rise to the level of constituting a nuisance.

SO RESOLVED.

IN WITNESS WHEREFOR, this Certificate has been duly signed by the signatories listed below.

Unit #	Print Name	Signature	Date Signed	% Interest

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<sup>1</sup> Richard H. Carmona –U.S. Surgeon General, *Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (June 27, 2006),

<http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet6.html>

<sup>2</sup> Id.

<sup>3</sup> *American Society of Heating, Refrigerating and Air-Conditioning Engineers Position Statement on Environmental Tobacco Smoke* (2005), [http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239\\_347.pdf](http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf)

<sup>4</sup> Centers for Disease Control and Prevention. *Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004*. *Morbidity and Mortality Weekly Report* 2008;57(45):1226–8

<sup>5</sup> Boston Public Health Commission. *Health of Boston Report*, 2010 p 140

<sup>6</sup> *Market Demand for Smoke-Free Rules in Multi-Unit Residential Properties*, April 2009, Massachusetts Smoke-Free Housing Project, Public Health Advocacy Institute, Northeastern University School of Law

<sup>7</sup> *American Society of Heating, Refrigerating and Air-Conditioning Engineers Position Statement on Environmental Tobacco Smoke* (2005), [http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239\\_347.pdf](http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf)

<sup>8</sup> *U.S. Fire Administration/National Fire Data Center, "Residential Smoking Fires and Casualties,"* June 2005

<http://www.usfa.dhs.gov/downloads/pdf/tfrs/v5i5.pdf>,

<sup>9</sup> Boston Public Health Commission. *Health of Boston Report*, 2010 p 140

<sup>10</sup> *Market Demand for Smoke-Free Rules in Multi-Unit Residential Properties*, April 2009, Massachusetts Smoke-Free Housing Project, Public Health Advocacy Institute, Northeastern University School of Law

<sup>12</sup> Id.