

# Boston Smoke-Free Homes

## *Landlord 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 Landlords*

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 your tenants complained about secondhand smoke drifting into their apartments? Have you had to spend time and money to clean a unit that has been smoked in? You are not alone. More and more landlords are making their properties completely smoke-free. Going smoke-free makes your building healthier, safer and easier to maintain—and going smoke-free is easier than you might think. In this guide, you will find all the information you will need to make your property smoke-free. Similar to rules prohibiting pets, landlords can prohibit smoking in their buildings by having residents sign a No Smoking Lease Addendum; it's best to do this when tenants are renewing their leases. New residents sign the addendum when they sign their lease.

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 good for business.

Fewer and fewer people are smoking these days. As the public's awareness of the harmful effects of smoking and secondhand smoke increases, more and more residents are seeking out apartment buildings where they will be protected from secondhand smoke.

### Going smoke-free can help you:

- **Attract more tenants.** Survey after survey shows a high demand for smoke free apartment buildings. Smoking rates have been dropping over the past decade, particularly in Massachusetts. In fact, only 15% of Boston residents smoke.<sup>5</sup> Furthermore, many people who smoke voluntarily smoke outside, perhaps as a result of the increased awareness and changing social norms around secondhand smoke.
- **Save money on repairs.** Prohibiting smoking can help landlords save money. Apartments in which tenants are allowed to smoke often require more time and money to prepare for the next tenant – often three to five times as much.
- **Reduce potential legal liability.** Landlords are required by law to provide their residential tenants with a safe and habitable dwelling. Secondhand smoke that seeps into an apartment creates a harmful environment, for which the landlord may be liable.<sup>6</sup> Landlords can avoid this potential legal liability by eliminating smoking.
- **Reduce conflicts among tenants.** Secondhand smoke can be a common source of conflict among tenants. Tenants will often choose to move out rather than expose themselves and family members to secondhand smoke – leaving their landlord with a vacant apartment.
- **Eliminate the leading cause of residential fire-related deaths.**<sup>7</sup> 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 may offer discounts or credits if you go smoke-free. Ask your insurance broker.

## Start the process.

Implementing a no smoking rule is simple. When your current tenants renew their leases, have them sign a [No Smoking Lease Addendum](#). Implementation and enforcement can also be easy if you follow these steps:

### STEP ONE:

#### Educate your tenants.

A landlord has the ability to make his or her building completely smoke-free with a no smoking lease addendum. As you develop your smoke-free policy, make sure to include your tenants in the process. It also helps to tell your tenants why you are going smoke free. Let tenants know that you are concerned about secondhand smoke drifting throughout the building, and share stories about residents that are impacted. Point out the many benefits of going smoke free highlighted in this guide. You will likely find that most residents agree with you. After all, surveys show that most people prefer a smoke-free home.

Next, send residents a letter giving notice of the new rule. Here is a sample [notice letter](#) that you can use. In the letter, state why you are making a smoke-free rule, when the rule goes into effect, and other details about your new policy. If you are working with a new building or new tenants, you can put them on notice of the rule when they sign their leases. Take advantage of the demand among prospective residents and market your buildings as smoke-free on our free listing service at [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org).

Common areas in your building may already be protected under the Massachusetts Smoke-Free Workplace Law, and you can make certain that they are covered immediately by including a [common area no smoking rule](#) in your outreach process. Individual leases do not need to be changed to create a rule for the common areas – just give tenants 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 letter](#) is attached.

Even if some residents 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. Smokers will be welcome to live in your smoke-free property. They will just have to smoke outside.

Even though a smoke-free policy does not require residents to quit, if a tenant 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.**

To prohibit smoking inside apartments, have residents sign a [no smoking lease addendum](#) when they sign their new lease or lease extensions or renewals. Notify existing tenants of the change ahead of time by sending a [notice letter](#). Where there is no written lease, the lease renews each time the tenant pays rent. Notify month-to-month tenants at least one month before going smoke-free. Have them sign a no smoking lease addendum.

You may be able to implement the rule change sooner than the lease renewal dates if you give residents proper notice. Many residential leases allow for changes to the rules and regulations if they are related to the benefit, safety, comfort and convenience of all the occupants of the building. Check your lease to see if it allows for a rule change before leases expire.

The [sample no smoking lease addendum](#) and [notice letter](#) are attached and available at [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org). 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. In a recent survey, 99% of landlords who had implemented a smoke-free policy report that it was a good decision to go smoke-free.<sup>9</sup> Here are some tips to help ensure success:

- Treat no smoking violations the same way you would treat any other rule violation
- Respond quickly and consistently to violations
- Mail each resident a copy of the notice letter and lease addendum
- Be clear about why you 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
- 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 Status as a Smoke-Free Building**

Take advantage of the high demand for smoke-free housing in Boston and promote your smoke-free status. As of 2008, only 15% of Boston adults reported smoking.<sup>10</sup> Tenants will appreciate your efforts, especially since over 92% of Massachusetts tenants believe that exposure to secondhand smoke is very harmful or somewhat harmful.<sup>11</sup> Despite increasing demand, few apartment buildings are completely smoke-free. Capitalize on this market gap by highlighting your smoke-free status as an amenity when you market your property.

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 (877) 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>12</sup> Similar to a “no pets” rule, a smoke-free policy is legal and can be written into an apartment lease or condo bylaw. It simply involves having tenants sign a No Smoking Lease Addendum and giving notice ahead of time. In fact, landlords may be open to potential liability if they do allow smoking in their buildings.<sup>13</sup>

### **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 lease provision or condo association bylaw. Landlords, property managers and condo associations consistently report that enforcement is easy. See the tips in the guide above for help.

### **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. Is there a market for smoke-free housing?**

Smoke-free policies are popular among residents. In fact, surveys show that over 92% of tenants in Massachusetts building with a smoke-free policy support the rule. Also, these policies attract new tenants: 70%-74% of residents who do not live in a smoke-free building would support the immediate implementation of a no-smoking rule. (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)

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

Smoke-free policies are created by a simple addendum to your standard lease document. For a complete step-by-step guide to the process, download the [Smoke-Free Housing Guide for Landlords](#), available at [www.bostonsmokefreehomes.org](http://www.bostonsmokefreehomes.org).

NOTICE OF RULE CHANGE  
NO SMOKING IN COMMON AREAS

[Date]

Dear Residents:

Effective immediately, smoking is prohibited in all common areas of the building, including but not limited to, hallways, stairways, foyers, common rooms and facilities, fire escapes, decks, patios, exterior landings, front steps, lawns and gardens, driveway, entrance ways, basements, storage areas and other common building facilities. Smoking means the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar lighted product.

Please inform your guests that smoking is prohibited in the common areas. You will be held responsible, if your guests violate the no smoking rule. Secondhand smoke is a serious health issue. I sincerely hope that all residents, even those who smoke, will continue to enjoy living in our building. I embrace this small change as an opportunity to ensure that the building is a healthier and cleaner place for all residents and guests.

Sincerely,

[Landlord]

## NO SMOKING LEASE ADDENDUM

Reference is hereby made to a lease or tenancy at will agreement (“Lease”) by and between, the Tenant, including all members of Tenant’s family or household (“Tenant”), and the Landlord.

The following additional provisions shall be fully applicable to the Lease and made part thereof as though included within the Lease itself.

**PURPOSE:** Tenant acknowledges the following: smoking increases the risk of fire; smoking is likely to damage the Tenant’s apartment; secondhand smoke is likely to drift from one apartment to another; exposure to secondhand smoke causes adverse health outcomes.

**DEFINITIONS:** 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 lighted product. The term Landlord shall include property owners and property managers.

**NO SMOKING RULE:** No Tenant shall smoke, nor permit anyone to smoke, in the Tenant’s apartment. Smoking shall be prohibited throughout the entire apartment complex, 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.

**DESIGNATED SMOKING AREA:** The foregoing rule notwithstanding, the Landlord may designate an area for smoking, provided the designated area is located outside of, and away from, any building or other location where secondhand smoke might drift back into the building. Tenant acknowledges that the designated smoking area may be relocated from time to time or eliminated entirely at any time during the lease term.

**NO SMOKING SIGNS:** Landlord shall post “No Smoking” signs at the entrance and exits, in common areas, and in conspicuous places on the grounds of the apartment complex.

**COMPLIANCE:** Landlord shall take reasonable steps to ensure compliance with the terms and provisions of this Addendum. Tenant shall inform Tenant’s guests of the no smoking rule. Tenant shall promptly give Landlord notice of any incident of smoking or migrating secondhand smoke.

THIRD-PARTY BENEFICIARIES: Tenants agree that other tenants at the complex are the third-party beneficiaries of this No Smoking Addendum and, accordingly, a tenant has the right to sue another tenant for an injunction to prohibit smoking or for damages. Any exercise of these rights shall not create a presumption that the Landlord breached this Addendum.

DISCLAIMER: Tenant acknowledges the following: a) that the adoption and/or enforcement of the no smoking rule shall not make the Landlord a guarantor of Tenant’s health or of the smoke-free condition of the Tenant’s apartment and the common areas; b) the adoption and/or enforcement of the no smoking rule shall not, in any way, change the warranty of habitability, the covenant of quiet enjoyment, or other duty of care owed to the Tenant; and c) that Landlord’s ability to police, monitor, or enforce the no smoking rule is dependent in significant part on compliance by the Tenant and Tenant’s guests. 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.

[INCLUDE THE FOLLOWING PROVISION TO ALLOW FOR GRANDFATHERING OF EXISTING]

EFFECT ON CURRENT RESIDENTS: Tenant acknowledges that current tenants residing in the complex under a prior lease, if any, will not be immediately required to cease smoking within their apartments. As current residents move out or have their leases renewed, the smoke-free policy will become effective for their apartments.

WITNESS the execution hereof under seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Landlord

\_\_\_\_\_  
Tenant

\_\_\_\_\_  
Tenant

LETTER NOTIFYING TENANTS OF LEASE AND RULE CHANGE

[Date]

[Resident]

[Address]

[City, State Zip]

Dear Resident:

The decision has been made for this property to become smoke free, including all apartments.

The only way to effectively prevent smoke from seeping into common areas and the apartments of other residents is to prohibit smoking entirely in and around the building. The adverse health effects of secondhand smoke are well documented. A smoke free property will help protect the health of residents and their families. To the residents who smoke, you are welcome to continue living in the building, as long as you refrain from smoking while on the property.

The rule change will occur when leases are renewed. As new residents move in and current residents renew their leases, the no smoking rule will become effective for their apartments. This means that during the next year, some residents might not be prohibited from smoking inside their apartments, until their leases are renewed. I ask for your cooperation as I phase-in the new rule. (Please note that I reserve the right to prohibit smoking immediately.)

[INCLUDE THE FOLLOWING PARAGRAPH TO INCORPORATE RULE ON A SET DATE AFTER LEASES RENEW]

The rule change will occur on \_\_\_\_\_ [insert date] after all of our residents' leases renew. I ask for your cooperation as we implement this new rule. (Please note that I reserve the right to prohibit smoking immediately.) In addition, effective immediately, smoking is prohibited in all common areas of the building, including but not limited to, hallways, stairways, foyers, common rooms and facilities, fire escapes, common area decks and patios, exterior landings, front steps, entrance ways, basements, storage areas and other building facilities. Smoking means the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, other product containing any amount of tobacco, or other similar lighted product.

Please inform your guests that smoking is prohibited. You will be held responsible, if your guest violates the no smoking rule.

I sincerely hope that all residents, even those who smoke, will continue to enjoy living in the building. I embrace this small change as an opportunity to ensure that the building is a healthier and cleaner place for all residents and guests.

Sincerely,

[Landlord]

---

<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

[http://www.bphc.org/about/research/hob2010/Forms%20%20Documents/Health%20of%20Boston%202010%20Full%20Report\\_Rev16Nov10.pdf](http://www.bphc.org/about/research/hob2010/Forms%20%20Documents/Health%20of%20Boston%202010%20Full%20Report_Rev16Nov10.pdf)

<sup>6</sup> Massachusetts Department of Public Health, *Going Smoke-Free: A Guide for Landlords*. P. 4

[http://makesmokinghistory.org/en\\_US/secondhand-smoke/homes.html](http://makesmokinghistory.org/en_US/secondhand-smoke/homes.html)

<sup>7</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>,

The Hartford Fin. Serv. Group Inc., *Fire Sense, Causes and Prevention*,

[http://www.thehartford.com/firesense/causes\\_prev/smoking.htm](http://www.thehartford.com/firesense/causes_prev/smoking.htm)

<sup>8</sup> John R. Hall, Jr., *National Fire Protection Association*, *The Smoking-Material Fire Problem* 10 (2006).

<sup>9</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>10</sup> Boston Public Health Commission. *Health of Boston Report*, 2010 p. 140

<sup>11</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> For a discussion of relevant Massachusetts case law, see Massachusetts Department of Public Health, *Going Smoke-Free: A Guide for Landlords*