

# Going Smoke-Free

## A Guide for Landlords

For more information or for answers to questions on how to implement a no-smoking rule, contact the Massachusetts Smoke-Free Housing Project at (617) 373-2026.

The Massachusetts Smoke-Free Housing Project  
An Initiative of the Public Health Advocacy Institute  
Funded by the Massachusetts Department of Public Health



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



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Recent reports are available online at  
[www.mass.gov/mtcp](http://www.mass.gov/mtcp).

More information on smoke-free housing is  
available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org).



# Going Smoke-Free: A Guide for Landlords

## Executive Summary

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**H**ave you been thinking about implementing a no-smoking rule in your properties? Have your tenants complained about secondhand smoke drifting into their apartments? You are not alone. More and more landlords are making their properties completely smoke-free. A 2008 survey of Massachusetts landlords found that 99% of landlords who had implemented a smoke-free rule felt it was a good decision.<sup>i</sup>

### **It is entirely legal.**

Just like prohibiting pets, landlords can prohibit smoking. Smoke-free policies are **not** discriminatory. Your policy prohibits smoking. It does not prohibit smokers from renting your apartments.

When you make your properties smoke-free, you can:

- attract more tenants
- save money by reducing the need for repairs
- reduce potential legal liability
- eliminate the leading cause of residential fires
- potentially reduce your insurance premiums
- reduce conflicts among tenants
- eliminate exposure to a Class A carcinogen

### **Implementing a no-smoking rule is simple.**

When your current tenants renew their leases, have them sign the model No-Smoking Lease Addendum available in the Resources section of this guide. Have your month-to-month tenants sign the Addendum one month before the rule change becomes effective.

No-smoking policies are largely self-enforcing. Once the rule is established, you are likely to attract tenants who want to live in a smoke-free environment. Over 93% of Massachusetts landlords who had implemented a smoke-free rule reported that the rule was virtually self-enforcing, the same as enforcing any other rule or easy to enforce. Only 6.7% reported encountering difficulty in enforcement.<sup>ii</sup>

To make implementing and enforcing your no-smoking rule easier:

- post “no smoking” signs
- clean up cigarette butts and remove ashtrays
- tell your tenants why you have a no-smoking rule
- have tenants tell their guests about the no-smoking rule
- respond quickly and consistently to potential violations
- tell your tenants that they will be held financially responsible for violating the rule

Free telephone support is available for all smokers and their families at 1-800-Try-To-Stop. More information about quitting smoking and secondhand smoke is available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org).



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## Introduction

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**S**moking in apartments is a concern because secondhand smoke is not contained inside individual apartments. Instead, it drifts into common areas and other apartments. It seeps under doors, through kitchen and bathroom ventilation ducts, and through electrical wall sockets and light fixtures. After seeping into neighboring apartments, secondhand smoke can stay in the air for hours.<sup>iii</sup> As a result, nonsmoking tenants may be exposed at unsafe levels.

Secondhand smoke can best be described as a “toxic soup.”<sup>iv</sup> It is comprised of side-stream smoke from the lit tobacco product and exhaled smoke from the smoker. Of the more than 4,000 chemical compounds found in secondhand smoke, no less than 60 of them are known or probable human carcinogens.<sup>v</sup> The United States Environmental Protection Agency classifies secondhand smoke as a “Class A” carcinogen.<sup>vi</sup> Children are particularly vulnerable. Exposure to secondhand smoke causes bronchitis, pneumonia, asthma, and ear infections in children.<sup>vii</sup> Exposure to secondhand smoke also has been linked to Sudden Infant Death Syndrome.<sup>viii</sup>

As the public’s awareness of these harmful effects has increased, more and more tenants have sought out apartment buildings where smoking is prohibited altogether. Surveys from across the country show a high demand for smoke free apartment buildings.<sup>ix</sup> The trend is not surprising, given that smoking rates have dropped over the past decade, particularly in Massachusetts. In fact, Massachusetts has one of the lowest smoking rates in the country.<sup>x</sup>

Many landlords have responded to the demand for smoke-free housing by deciding to prohibit smoking altogether in their buildings. This is entirely legal. To make their properties smoke-free, Landlords have current tenants sign a No Smoking Lease Addendum when they renew their lease. New tenants sign the Addendum along with their lease. Smokers are welcome as long as they refrain from smoking while on the property.



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## Legal Questions

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### **It Is Legal to Prohibit Smoking Entirely**

A common question is whether implementing a property-wide no smoking rule is legal. There is no doubt as to the answer: it is entirely legal. It simply involves having tenants sign a No-Smoking Lease Addendum.

- *Smoking is Not a Protected Constitutional Right* The question of whether smoking is constitutionally protected was answered once and for all in the 2005 case entitled *American Lithuanian Naturalization Club, Athol, Mass., Inc., v. Board of Health of Athol*.<sup>xi</sup> The case involved a legal challenge to a board of health regulation that prohibited smoking in private clubs. The Massachusetts Supreme Judicial Court went through a list of federal and state constitutional protections and found that none of them protected smoking.<sup>xii</sup> Accordingly, smoking in apartment buildings is not a constitutional right.
- *Anti-Discrimination Laws Do Not Protect Smoking* Although the nicotine in tobacco products is highly addictive, anti-discrimination laws do not protect smoking. Anti-discrimination laws, such as the American with Disabilities Act (“ADA”), the Federal Fair Housing Act of 1988 and the Massachusetts state-law equivalents are designed to prevent discrimination based on race, disability and certain other characteristics. The only conceivable way that any of these laws would stop landlords from prohibiting smoking was if someone were to argue that smoking is a protected disability. However, it has already been established that smoking is not a protected disability. The ADA states that “nothing in this [law] shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking...”<sup>xiii</sup> Additionally, smoking does not qualify as a protected disability because it is treatable through cessation counseling and pharmacological aids, such as the nicotine patch. Thus, anti-discrimination laws do not prohibit landlords from implementing no-smoking rules.
- *Smoker Protection Laws Do Not Prohibit “No-Smoking Rules”* Massachusetts does not have a smoker protection law. Even if it did, smoker protection laws only prevent employers from factoring in smoking when making employment decisions or requiring employees to quit smoking.<sup>xiv</sup> These laws, however, do not create a right to smoke anywhere, including in apartment buildings.
- *Housing Subsidies or Public Funding Do Not Prohibit “No-Smoking Rules”* Neither Massachusetts nor the United States Department of Housing and Urban Development (“HUD”) prohibit landlords from implementing no-smoking rules. In fact, landlords are encouraged to establish rules for the protection of the health of their tenants, which would include a no-smoking rule.<sup>xv</sup> Note that those landlords required to use the HUD model lease should first contact their HUD supervisor before implementing a no-smoking rule.



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### **Landlords Are Potentially Liable if They Allow Smoking**

Smoking in apartment buildings exposes landlords and property managers to significant potential liability. Implementing a no-smoking policy will eliminate this potential liability. In a 2008 Survey of Massachusetts landlords, 42% of landlords reported that a smoke-free rule decreased their potential legal liability.<sup>xvi</sup>

Landlords are financially liable under Massachusetts law for allowing smoking in indoor common areas, if the common areas qualify as workplaces. The 2004 Statewide Smoke-Free Workplace Law prohibits smoking in virtually every workplace in Massachusetts.<sup>xvii</sup> If an apartment building has one or more employees, then smoking is prohibited in the enclosed areas where employees work, including hallways, stairways, elevators, lounges, lobbies, and other such common areas. Outdoor common areas are not included.

Landlords and property managers are responsible for prohibiting smoking in the common areas covered by the Smoke-Free Workplace Law. Local boards of health and municipal governments may issue fines of up to \$300 for failing to act. Each day smoking is allowed constitutes a separate violation, which means the financial liability can increase quickly. Smokers who violate the law may receive fines of \$100.

In addition to the potential liability under the Statewide Smoke-Free Workplace Law, tenants may bring legal action directly against landlords under the following legal claims:

- Negligence
- Breach of the Covenant of Quiet Enjoyment
- Nuisance
- Violation of the Warranty of Habitability

As awareness of the danger of secondhand smoke increases, the potential liability from these types of lawsuits also will increase. The following two Massachusetts cases are instructive:

*Harwood Capital Corp. v. Carey*, No. 05-SP00187, *Boston Housing Court* (2006). The owner of a condominium unit, who was leasing the unit, was forced to evict his tenants for smoking. The Condominium Trust had levied numerous fines against the unit owner after other residents in the building complained about the drifting secondhand smoke. In the eviction proceedings, the Boston Housing Court found that the secondhand smoke that was drifting out of the rented condominium unit and into neighboring units constituted a **nuisance** under the terms of the lease. The precedent established by this case would support claims by tenants that drifting secondhand smoke is a nuisance, for which landlords are liable.



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*50-58 Gainsborough St. Realty Trust v. Haile*, No. 98-02279, Boston Housing Court (1998). A judge in the Boston Housing Court awarded tenants **rent abatement** because of secondhand smoke seeping into their apartment. The judge found that “the evidence does demonstrate to the Court the tenants’ right to **quiet enjoyment** was interfered with because of the second-hand smoke that was emanating from the nightclub below.”

A third area of potential liability arises from the Federal Fair Housing Act of 1988 and the Massachusetts state law equivalent. Fair housing laws prohibit discrimination in housing, including discrimination against tenants who are disabled. If a tenant with a disability proves that exposure to secondhand smoke substantially impairs his ability to reside in the apartment, then the landlord must make “reasonable accommodations” for the tenant.

In the 2003 Massachusetts case entitled *Donnelley v. Cohasset Housing Authority*, a tenant alleged that his exposure to secondhand smoke was a violation of fair housing laws.<sup>xviii</sup> The court found that secondhand smoke could potentially constitute a violation, but did not in this case, because the tenant’s discomfort and other mild reactions did not qualify as a substantial impairment. A disability that could potentially qualify is asthma, which is one of the most common respiratory illnesses in Massachusetts.<sup>xix</sup> Secondhand smoke is a known trigger for asthma attacks.<sup>xx</sup>



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## Reasons for Going Smoke-Free

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**M**aking your properties smoke-free saves you money and can make your life easier. When you go smoke-free, you can:

**Attract more tenants.** There is a high demand for smoke-free apartment buildings.<sup>xxi</sup> Smoking rates have dropped over the past decade, particularly in Massachusetts. In fact, Massachusetts has one of the lowest smoking rates in the country. The increase in demand for smoke-free apartment buildings appears to be the result of an increase in the awareness of secondhand smoke-related diseases.

- Over 70% of tenants in Massachusetts who do not currently live in a smoke-free building would support the immediate implementation of a no smoking rule or remain neutral.<sup>xxii</sup>
- Over 96% of tenants in Massachusetts who currently live in a smoke-free building support it.<sup>xxiii</sup>
- Over 67% of prospective tenants in Massachusetts would be more interested in looking at an apartment if it was listing as being a smoke-free building.<sup>xxiv</sup>
- Over 76% of prospective tenants in Massachusetts are less immediately less interested in looking at an apartment if they smell tobacco smoke when looking at it.<sup>xxv</sup>

**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 re-rent. Some of the repairs you'll avoid include:

- replacing carpets with cigarette burns
  - patching burns in linoleum countertops and flooring
  - abating the odor of stale tobacco smoke
  - repainting yellow stained walls and ceilings
- 
- 66% of Massachusetts landlords reported having to pay \$100 or more extra in smoking-related maintenance costs per apartment compared to an apartment where smoking was not allowed. 33% expended more than \$500 extra.<sup>xxvi</sup>
  - 12% of Massachusetts landlords who had implemented a smoke-free rule reported that it decreased their vacancy rates, and 78% reported no effect on vacancy rates.<sup>xxvii</sup>
  - 19% of Massachusetts landlords who had implemented a smoke-free rule reported that it decreased their turnover rates, and 78% report no effect on turnover rates.<sup>xxviii</sup>





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**Eliminate the leading cause of residential fires.** More people die in fires caused by smoking than by any other type of fire. Property damage from cigarette-caused fires exceeds \$400 million annually.

**Potentially reduce your insurance premiums.** Some insurance companies offer landlords discounts on general liability insurance premiums if they implement a no-smoking rule. No-smoking rules reduce the risk of fire-related property damage, injury and death. Ask your broker.

**Reduce potential legal liability.**

Under Massachusetts law, landlords are required to provide their residential tenants with a safe and habitable dwelling. Secondhand smoke that travels into an apartment creates a harmful environment, for which the landlord may be liable. Residents have brought successful legal actions based on drifting secondhand smoke. Landlords can avoid the potential legal liability simply by eliminating smoking.

**Reduce conflict among tenants.**

Although the landlord is legally responsible for providing residential tenants with a safe and habitable dwelling, secondhand smoke can be a common source of conflict among tenants. Tenants will often choose to move out rather than expose themselves and their family members to secondhand smoke.

- 39% of Massachusetts landlords who had implemented a smoke-free rule reported that it decreased the number of disputes among tenants, and 57% reported no effect on disputes.
- 93.3% of the landlords who had implemented a smoke-free rule reported that the rule was virtually self-enforcing, the same as enforcing any other rule or easy to enforce. Only 6.7% reported encountering difficulty in enforcement



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## Reasons for Going Smoke-Free

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- *Ventilation Does Not Work.*

Some may recommend improving ventilation as a solution to secondhand smoke seepage. That is a very expensive solution that, in the end, will not work. HVAC standards are established by the American Society for Heating, Refrigerating and Air Conditioning Engineers (“ASHRAE”), which has studied drifting secondhand smoke for years. ASHRAE will not recommend a ventilation standard for removing secondhand smoke because they know that no standard ventilation system or air purifier can handle the job.<sup>xxix</sup>
- *Exposure to Secondhand Smoke is a Health Hazard*

Secondhand smoke is not just a nuisance. It is dangerous. Here are some facts about secondhand smoke:

  - The United States Environmental Protection Agency classifies secondhand smoke as a “Class A” carcinogen, which puts it in the same category as asbestos and other carcinogens.
  - Secondhand smoke contains Benzene, Formaldehyde, Arsenic Ammonia, Vinyl Chloride, Hydrogen Cyanide and other toxic substances.
  - Secondhand smoke is the third leading cause of preventable death in the United States. It causes approximately 3,400 lung cancer deaths and 22,700 to 69,600 heart disease deaths in adult nonsmokers in the United States each year.
  - 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 (SIDS).<sup>xxx</sup>
  - Once in a room, secondhand smoke can linger for hours.



# Going Smoke-Free: A Guide for Landlords

## Starting the Process

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**I**mplementing a no-smoking policy is simple. Use these four easy steps:

### **STEP ONE: Educate Your Tenants**

Take the time to educate tenants. Getting tenants to understand why you are implementing a no-smoking rule will help with compliance. This step should be relatively easy given that over 92% of Massachusetts tenants believe that exposure to secondhand smoke is very harmful or somewhat harmful.<sup>xxxii</sup>

Let tenants know that you are concerned about smoking in the building. Share with them the many benefits of going smoke-free—including making a healthier and safer home for them by eliminating exposure to secondhand smoke and reducing the risk of fire. You may need to convince some tenants, but a little work up front pays dividends later. Attached to this Guide is a [sample letter you can use for tenant education](#).

The tough part is talking with the tenant who smokes. Share your concerns with him. Make sure the tenant knows he is welcome to stay as long as he does not smoke at the apartment complex or smokes only in a designated smoking area, if one is designated. Then, invite the tenant to help you set a date for going smoke-free.

You may be surprised to find a positive reaction from smokers. Data shows that many smokers want to live in smoke-free buildings for the health and safety of their family.

A landlord has an absolute legal right to establish a smoke-free policy when the tenant renews his or her lease. The tenant may certainly volunteer to go smoke-free sooner.

If the tenant is interested in quitting, you can refer them to the free services offered by the Massachusetts Department of Public Health available at 1-800-Try-To-Stop. More information is available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org).

### **STEP TWO: Implement the No-Smoking Policy for All Common Areas**

Start right away by making sure your building is in compliance with the Massachusetts Smoke-Free Workplace Law. Many common areas such as hallways, stairwells and laundry rooms should be smoke-free already.

The Smoke-Free Workplace Law mandates that any enclosed area with one or more employees be smoke-free, including the common areas of residential rental properties. Property managers,



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## Starting the Process

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superintendents, cleaning crews and other workers, even if they are independent contractors, qualify as “employees” under the Smoke-Free Workplace Law. If your property has employees, you are required to prohibit smoking in the enclosed common areas.

If your property is exempt from the Smoke-Free Workplace Law, establishing a smoke-free policy in common areas is a good place to start. Individual leases do not need to be changed for the common areas. Simply 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. Attached is a [model notice you can use to let tenants know about the rule change](#).

If, like many buildings, the common areas in your building are smoke-free already, your next step is to implement a rule change for those common areas that are not enclosed, such as fire escapes, decks, patios, exterior landings, front steps and the surrounding grounds. Secondhand smoke often drifts from these locations back inside the building through doors and apartment windows. Therefore, it is important to prohibit smoking in these areas. If a smoking area is designated, it should be far from any entrance or other area where the smoke might drift back into the building.

### **STEP THREE:** **Implement the No-Smoking Policy for the Entire Property**

To prohibit smoking inside apartments, when current tenants renew their lease, have them sign the model [No-Smoking Lease Addendum](#), which is attached at the end of this Guide. Have new tenants sign the Addendum along with their lease. Month-to-month tenants (tenants-at-will) should provide a notice one month before the rule change goes into effect.

Although tenants might find it disruptive, you may have the legal right to implement the rule change sooner than the lease renewal dates. Many residential leases allow for changes to the rules and regulations for inside apartments if they “are reasonably related to the safety, care, cleanliness, or orderly conduct of the leased premises and the building ... and for the benefit, safety, comfort and convenience of all the occupants of said building.” Check your leases.

### **STEP FOUR:** ***Enforce the No Smoking Rule***

No-smoking rules are largely self-enforcing. A 2008 survey of Massachusetts landlords found that 93.3% of landlords who had implemented a smoke-free rule reported that the rule was virtually self-enforcing, the same as enforcing any other rule or easy to enforce. Only 6.7% reported encountering difficulty in enforcement.<sup>xxxii</sup> Once the rule is established, you are likely to attract tenants who support smoke-free policies. Here are some tips:

- Post “No Smoking” signs at the entrance, hallways and other conspicuous areas. If you find someone smoking somewhere, post a sign there, too.



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- Provide smokers who are interested in quitting with information about the free stop-smoking services provided by the Massachusetts Department of Public Health at 1-800-Try-To-Stop. More information is available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org).
- Remove ash trays and clean up any cigarette butts. These items make people feel like they are in a smoking area.
- Repair the smoking-caused damages inside apartments, for one last time. If an apartment has cigarette burns and smells like cigarette smoke, then the tenants may be inclined to ignore the no smoking rule. Replace or patch carpet, floors, and countertops that have cigarette burns; paint smoke-stained walls and ceilings; and take steps to reduce the odor of stale tobacco smoke.
- Document potential violations. If you smell secondhand smoke in the building, record when and where you smelled the smoke and where you think it originated. If a tenant complains about smoking, respond quickly. Acknowledge the complaint and resolve the issue in a timely fashion.
- Be consistent. Taking the same steps in the same period of time sends a clear message to everyone that smoking is not allowed.
- Make your tenants aware that they will be held financially responsible for violating the policy. The cost of repairing any damage caused to the apartment by smoking can be deducted from the security deposit.
- Tell the offending tenant why you have a smoke free policy. Give him or her information on the effects of exposure to secondhand smoke.
- Smoking violations are just like any other lease violation. How would you respond to loud noises or inappropriate disposal of garbage? Deal with it the same way as other rules.

### **STEP FIVE:** **Promote Your Status as a Smoke Free Building**

Take advantage of the high demand for smoke-free apartment buildings and promote your status. Remember that smoking rates have dropped off over the past decade and that Massachusetts has one of the lowest smoking rates in the country—in 2008, only 16.4% of Massachusetts adults smoked. Potential tenants will appreciate your attention to this important issue.



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## Starting the Process

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**STEP SIX:**  
**If You Have Questions, Call for Advice—FREE!**

For more information on how to implement a no-smoking rule or to have your questions answered, call the Massachusetts Smoke-Free Housing Project at (617) 373-2026.

More information about secondhand smoke is available at [www.makesmokinghistory.org](http://www.makesmokinghistory.org).

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<sup>i</sup> Public Health Advocacy Institute, *Market Demand for Smoke-Free Rules in Multi-Unit Residential Properties Landlords' Experiences with Smoke-Free Rules*, Boston, MA (Jan. 2009) (hereinafter PHAI Report).

<sup>ii</sup> *See id.*

<sup>iii</sup> CA Env'tl. Prot. Agency, *Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant* (2005).

<sup>iv</sup> U.S. Dep't of Health and Human Servs., *The Health Consequences of Involuntary Smoking: A Report of the U.S. Surgeon General* (1986) (hereinafter Surgeon General Report).

<sup>v</sup> *See id.*

<sup>vi</sup> *See Flue-Cured Tobacco Coop. Stabilization Corp. v. U.S. Env'tl. Prot. Agency*, 313 F.3d 852 (2002).

<sup>vii</sup> J. DiFranza et al., *Prenatal and Postnatal Environmental Tobacco Smoke Exposure and Children's Health*, *Pediatrics* 113 (4 Supp.) 1007-15 (April 2004).

<sup>viii</sup> H. S. Klonoff-Cohen et al., *The Effects of Passive Smoking and Tobacco Exposure Through Breast Milk on Sudden Infant Death Syndrome*, 273(10) *JAMA* 818 (March 1995)

<sup>ix</sup> *See e.g.* [http://www.smokefreeoregon.com/housing/pdf/CDRI\\_SummaryReport.pdf](http://www.smokefreeoregon.com/housing/pdf/CDRI_SummaryReport.pdf) (last visited on March 31, 2008)

<sup>x</sup> Centers for Disease Control and Prevention, *State-Specific Prevalence of Cigarette Smoking Among Adults and Quitting Among Persons Aged 18 -- 35 Years -- United States, 2006*, 56(38) *Morbidity & Mortality Wkly. Rep.* 993 (Sept. 2007); *see also* Executive Office of Health and Human Serv., Mass Dep't of Public Health, *Annual Report of the Mass. Tobacco Control Program, Fiscal Year 2007* (2008) *available at* [http://www.mass.gov/Eeohhs2/docs/dph/tobacco\\_control/annual\\_report\\_2007.pdf](http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/annual_report_2007.pdf).

<sup>xi</sup> 446 Mass 310 (2006).

<sup>xii</sup> It is also important to note that private landlords are not subject to claims that they violated a constitutional right. The United States and Massachusetts Constitutions are checks on government action, not actions by private citizens.

<sup>xiii</sup> 42 U.S.C.A. § 12201 (2007).

<sup>xiv</sup> Samantha Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke: 2008* (2008), *available at* <http://www.tclconline.org/documents/constitutional-right.pdf>.

<sup>xv</sup> No Smoking Policies at HUD Assisted Housing Developments. Smoke-free Environments Law Project, <http://mismokefreeapartment.org/hudletter.pdf>

<sup>xvi</sup> PHAI Report.

<sup>xvii</sup> Mass. Gen. Laws. c. 270, §22 (2008).

<sup>xviii</sup> 2003 WL 21246199 (Sup. Ct. Mass) (2003).

<sup>xix</sup> *Asthma & Allergies*, Asthma and Allergy Foundation of America, *republished at* <[www.aafa.org](http://www.aafa.org)>, (visited on Nov. 1, 2002).

<sup>xx</sup> *See id.*

<sup>xxi</sup> *See supra* note 7.

<sup>xxii</sup> PHAI Report

<sup>xxiii</sup> *See id.*

<sup>xxiv</sup> *See id.*

<sup>xxv</sup> *See id.*

<sup>xxvi</sup> *See id.*

<sup>xxvii</sup> *See id.*

<sup>xxviii</sup> *See id.*

<sup>xxix</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers, *Engineers Should Follow Local Codes in Regard to Smoking*, <http://www.ashrae.org/pressroom/detail/13537> (last visited March 31, 2008)

<sup>xxx</sup> *See supra* note 1.

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<sup>xxxi</sup> PHAI Report

<sup>xxxii</sup> *See id.*

*SAMPLE NOTICE OF RULE CHANGE*

**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





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## Appendix

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### *SAMPLE NO-SMOKING LEASE ADDENDUM*

#### 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.



# Going Smoke-Free: A Guide for Landlords

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**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.

**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



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## Appendix

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### *SAMPLE LETTER NOTIFYING TENANTS OF LEASE CHANGE AND RULE CHANGE*

[Date]

Resident  
123 Main Street  
City, State 01234

Dear Resident:

The decision has been made for this property to become smoke-free, including all apartments. The only way to prevent smoke from seeping into common areas and other residents' apartments 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.)

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, decks, 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