



## Landlord/Property Managers'

## Smoke-Free Housing Toolkit

**Use this toolkit to help you create a smoke-free building for yourself, your tenants and your staff. This toolkit includes:**

- Information on your legal right to eliminate smoking  
Learn why “no smoking” restrictions are the legal equivalent to “no pet” or “no loud noise” restrictions and why this is allowed under the US constitution.
- Step-by-step smoke-free guide  
Decide on and enact a policy option that works best for your building and residents’ needs.
- Cost savings from smoke-free units  
Going smoke-free can save you thousands per unit on cleaning and maintenance costs and makes your units more desirable to future tenants.
- Letter to residents: Outdoor Smoke Free Notice  
A sample letter that you can use to inform residents of new smoke-free outdoor policies.
- Letter to Resident: Indoor Smoke-Free Notice  
Let your residents know why indoor smoke-free living is the best choice for everyone involved.
- Tobacco Smoke-Free Areas Addendum  
Sample lease addendum to formalize policy changes.
- Model Enforcement Letter  
Send warning letters to violators to stop smoking at your site.

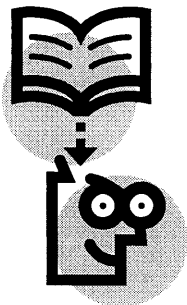
If you have additional questions about going smoke-free or to request free smoke-free decals, please contact the Tobacco Related Disease Control Program at **(415) 499-3020** or visit our Web site at [www.smokefreemarin.com](http://www.smokefreemarin.com)

*Thank you for making Marin a  
healthier place to live!*

## Landlords/Property Managers: You Can Choose to Make Your Building Smoke-Free!<sup>1</sup>

### Smoke-Free Units and Buildings are Legal

- ✦ You have the legal right to ban smoking in all or part of your property, including individual rental units.
- ✦ There is no state or federal right to smoke. Banning smoking is not discrimination.
- ✦ “No Smoking” restrictions are the legal equivalent of “No Pets” or “No Loud Noise” rules.
- ✦ It is legal to ask tenants to acknowledge in a lease or month-to-month rental agreement that they will not smoke or allow guests to smoke in their units.
- ✦ It is legal to advertise a unit as “smoke-free.”

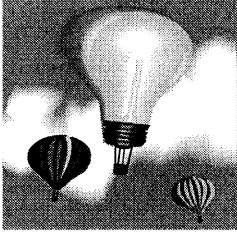


### There is No Constitutional Right to Smoke<sup>2</sup>

- ❖ No court has ever recognized smoking as a constitutional right.
- ❖ Smoking is not protected under the First Amendment “right to privacy.” This right only applies to marriage, contraception, family relationships, and the rearing and education of children.
- ❖ Smokers are not a protected class under the equal protection clause of the U.S. or California constitutions. Smoking regulations are not grounds for discrimination claims. Only conditions of birth such as race, national origin, and gender receive protection against discrimination. *Smoking is a behavior, not a condition of birth.*

<sup>1</sup> RESPECT, a statewide project of the American Lung Association of the East Bay, “Building on a Smoke-Free Foundation,” June 14, 2007 <<http://www.respect-ala.org/drift.htm>>.

<sup>2</sup> Legal information is from the Technical Legal Assistance Center (TALC), a project of the Public Health Institute. “There is No Constitutional Right to Smoke,” June 14, 2007 <[http://talc.phlaw.org/pdf\\_files/0051.pdf](http://talc.phlaw.org/pdf_files/0051.pdf)>. This fact sheet was created to provide general information only and is not offered or intended as legal advice.



## Four Steps for Developing a Smoke-Free Policy

### *First Step: Survey Tenants (sample below)<sup>3</sup>*

1. Should smokers be allowed to smoke wherever they want?
2. Is it fair to restrict smokers from smoking in their own units?
3. Should people have the right to choose whether or not they are exposed to secondhand smoke?
4. Does secondhand smoke bother you?
5. Does it bother you if people smoke in common outdoor areas where you live, such as the swimming pool, playgrounds or patios?
6. Does it bother you if people smoke in common indoor areas where you live, such as the club house, hallways and laundry room?
7. Would you support rules that restrict smoking in outdoor common areas?
8. Would you support rules that restrict smoking in indoor common areas?

You can also use this as an opportunity to inform tenants about the harmful effects of secondhand smoke. You may decide to organize a meeting to present survey results and discuss smoke-free policies.

### *Second Step: Decide on a policy option<sup>4</sup>*

Option #1: Ban smoking throughout entire building, including in units.

Option #2: Designate specific units/buildings as smoke-free.

- Non-smoking bans involving individual units need to be included in the lease. Non-smoking clauses can be placed in new *or*

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<sup>3</sup> "Providing healthy options for tenants," American Lung Association of California, Superior Branch, 2000.

<sup>4</sup> Information from this section is primarily taken from an article that appeared in the June 2003 issue of Assisted Housing Financial Management Insider. This monthly news service is published by Vendome Group, LLC, formerly Brownstone Publishing Co., and subscription information about all of Vendome's real estate tools can be found at [www.vendomegrp.com](http://www.vendomegrp.com).

renewing leases. Sample lease provisions are included in this toolkit.

- TALC publication's "*How Landlords Can Prohibit Smoking in Rental Housing*" provides a detailed legal explanation on how to modify leases.

Option #3: Ban smoking in common areas only (indoor and/or outdoor)

- Bans in common areas are considered house rules and do not need to be included in the lease. As a courtesy, you should give tenants advance notice of the change and post signs that clearly communicate the new rules.

Option #4: Create designated outdoor smoking areas.

- This is best done in conjunction with the other options above while providing smokers with a place to smoke.

*Step Three: Notify tenants of the plan*

- Provide written notice of the new policy
  - Send each unit written notice
  - Post notice in the common areas
- Allow at least 30 days to pass before the changes are enforced.
- Include the new smoke-free policy in lease agreements, where applicable.

Please see the document entitled "*Smoke-free Housing Policy Notice*" as an example.

*Step Four: Monitor the policy*

- Help tenants with complaints when they arise
- Give violators three warnings before starting the eviction process.
  - The "*Model Letters*" document provides samples.

Learn more about the effects of second hand smoke and your legal right to control it: [www.smokefreemarin.com](http://www.smokefreemarin.com)- *Smoke Free Marin* provides information on local tobacco ordinances and resources for quitting.

[www.smokefreehousing.org](http://www.smokefreehousing.org) – *Smoke Free Housing* provides information on smoke-free housing in Northern California.

<http://www.phi.org/talc> - *Technical Legal Assistance Center* provides free technical assistance on tobacco control policy issues, such as smoke-free housing.

[http://www.tobaccoscam.ucsf.edu/Secondhand/Secondhand\\_lid.cfm](http://www.tobaccoscam.ucsf.edu/Secondhand/Secondhand_lid.cfm)- *Tobacco Scam* documents exposure to second hand smoke over time.

[www.tobaccosmoke.org](http://www.tobaccosmoke.org)- *Tobacco Smoke* presents recent studies on second hand smoke exposure.



## Cost Savings from Smoke-Free Units

### Save on Cleaning:

- Save as much as \$1,000 per unit in additional cleaning and maintenance expenses necessary to remove tar, smoke particulates, and other damage from walls, blinds, rugs, and countertops.<sup>5</sup>
- Save money required to sanitize air.
- Save maintenance costs necessary to remove cigarette butts from grounds.

### Increase Business:

- 86% of locals don't smoke and most tenants don't want to live in a building that permits smoking.
- Smoke-free buildings are highly desirable for tenants with asthma, allergies, and other health conditions.
- Reduce turnover of non-smoking tenants.
- Improve the resale value of your building.<sup>6</sup>
- List your building on the Smoke-free Apartment House Registry at <http://www.smokefreeapartments.org/2005brochure.pdf>.

### Save Time:

- Eliminate need to mediate disputes between smoking and non-smoking tenants.
- Eliminate needed to clean smoke-filled apartments.
- Attract more prospective tenants and fill vacant units faster.

### Save on Insurance:

- Save money on insurance premiums.
- Eliminate risk of fire due to smoking in bed, on furniture, or through improperly extinguished cigarette butts.

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<sup>5</sup> Smoke Free Housing, "How Much Does Secondhand Smoke Cost a Landlord?" June 14, 2007  
<[http://www.smokefreeforme.org/presentation/maintenance\\_cost.pdf](http://www.smokefreeforme.org/presentation/maintenance_cost.pdf)>.

<sup>6</sup> Antoinette Martin, "Real Estate & Secondhand Smoke: On Tobacco Road, It's a Tougher Sell," New York Times, 8 Feb. 2004.

## Letter to Residents: Outdoor Smoke Free Notice<sup>1</sup>

We recognize the rights of tenants and visitors to smoke. However, as representatives of property owners we are obligated to comply with federal, state and local laws that protect the public from environmental tobacco smoke or fire hazards caused by smoldering cigarette butts. Therefore, all building entrances, including windows and doors, will be kept smoke-free. Violations will result in fines ranging from \$ 100 - \$ 500 per incident, with CAL-OSHA fines of \$ 7,000 for the fourth complaint. Under the Americans with Disabilities Act, we can be sued for \$ 50,000 - \$ 100,000 plus attorney's fees if an individual with respiratory illness such as asthma, experiences damage to their health while doing business on our premises.

In complying with these laws, our policy is that no member of the public should ever have to inhale secondhand smoke upon entering our building(s). Likewise, no employee shall be subject to inhaling smoke drifting in through doors or windows. Please refrain from smoking any tobacco products both indoors (including restrooms) and within 20 feet of any entrance, walkway or sidewalk leading to building entrances. Due to the stiff legal penalties we face if these regulations are violated, infractions of this policy will be treated in the same manner as other policies on our premises. These rules are in effect 24 hours a day.

Outdoor ashtrays have been provided for your convenience at locations where it is permissible to smoke. For your personal safety, smoke in a safe, well-lit area and be aware of your surroundings. In order to reduce fire hazards and to protect the safety and cleanliness of the buildings and entrances, please extinguish all cigarettes in the outdoor ashtrays. To be considerate, please don't smoke on balconies especially during the warm months when smoke may drift into your neighbors' balconies and open windows.

For those smokers wishing to quit or cut back, there are now many new programs and products to help you go smoke-free. Contact Bay Area Community Resources in San Rafael at 415-444-5580 ext. 399 for upcoming cessation classes. The Smoker's Helpline also provides free phone cessation services to all California smokers at 1-800-NO-BUTTS or [www.californiasmokershelpline.org](http://www.californiasmokershelpline.org).

We thank you for your cooperation.

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<sup>1</sup> SmokeFREE housing, "Smoke Free Housing Policy Sample," July 24, 2007  
<<http://www.smokefreehousing.org/Policy/Policy.asp>>.