



Metropolitan
Multi-Family
Realty



**NO-SMOKING
CONVERSION GUIDE**



Home
Advisor
Association



mmha

SMOKE FREE HOUSING

- Chapter 1 What is Smoke Free Housing?**
- Chapter 2 Is there a Market for it?**
- Chapter 3 Benefits to the Landlord or Property Owner**
- Chapter 4 Implementing the No-Smoking Rule**
- Chapter 5 Tips for Enforcing the Rule**

Frequently Asked Questions (FAQ's)

References / Resources

“For me it was the repainting each time, the extent of cleaning, professional carpet cleaners, hoping you would get the smell out. I just finally decided it wasn't worth it.”

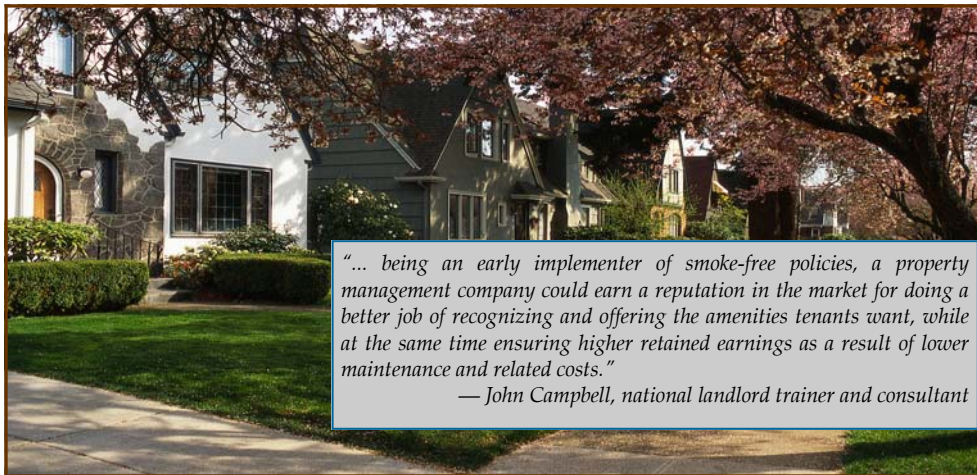


CHAPTER 1 - WHAT IS SMOKE FREE HOUSING?

Question: Have you been thinking about a no-smoking rule for your rentals?

If you answered yes; then like many other landlords, you may be fed up with the time and money it takes to repaint, replace carpet, and turn over apartments where tenants have been smoking indoors.

You may already know that smoking indoors poses a fire hazard and can result in major liabilities to both residents and property owners. Perhaps you have even had tenants complain about tobacco smoke drifting into their homes from neighboring units. Maybe you have even heard that other landlords are working to eliminate these headaches by adopting a no-smoking rule, and you find yourself wondering if it can work for you too.



If any of this describes your situation; here comes the good news! You **CAN** adopt a no-smoking rule. Just as you may have rules governing pets, you can also have rules prohibiting smoking at your rental properties, both indoors and in certain outdoor areas. It is entirely within your rights.

You may want to visit, www.smokefreehousingnw.com for some additional free resources designed to assist both landlords and tenants address this issue. See the last page of this booklet for a guide to some helpful articles and handouts that you may find useful in researching or implementing this new rule in your property or properties.

Unless otherwise noted, quotes in this publication were provided by Portland-Vancouver metro area landlords in focus groups. The findings are summarized in the report, “Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies and Practices.” Campbell Delong Resources, Inc, November 2007 on the Smoke Free Oregon website.

CHAPTER 2 - IS THERE A MARKET FOR IT?

Non-smoking housing is an exciting market opportunity for Portland-Vancouver metro area landlords.



A survey was conducted on the topic in the summer of 2006, researching both landlords and tenants in the Portland-Vancouver metro area. Here are the findings:

Most renters would prefer non-smoking buildings

- Three-quarters of renters do not smoke at all.
- 19% of renters smoke daily—but only 11% smoke inside regularly.
- Two-thirds of smokers agree that even small amounts of secondhand smoke is hazardous to your health.
- Many landlords say that a no-smoking rule helps them attract and keep tenants who take good care of their units.

Most renters don't smoke and most smokers smoke outside

- Three-quarters would rather live in a non-smoking building.
- 52% would even pay extra rent.
- Three-quarters say it is okay for landlords to prohibit smoking inside rental units to keep secondhand smoke from drifting into other units.
- Most renters, regardless of income, age, or gender, would prefer a no-smoking rule.
- Over a third of renters in multi-unit buildings say they are regularly exposed to a neighbor's secondhand smoke.

"The debate is over. The science is clear: secondhand smoke is not a mere annoyance, but a serious health hazard."
- U.S. Surgeon General Richard Carmona, 2006

"We had an entire building lease up in just 30 days, because people were calling specifically for non-smoking units."

Many landlords are saying that a no-smoking rule helps them to attract and retain tenants who take good care of their units.

Marketing Tips

- Wherever you list vacancies, make sure to include "non-smoking" in the amenities.
- List your properties on www.housingconnections.org, a free resource that includes a section on smoking restrictions in the property profile.
- Put "No Smoking" signs on the front door, hallways, common areas and outdoor areas to let prospective tenants know about your policy.
- Please visit www.smokefreehousingnw.com to order signs and stickers, or make your own signage.

SAMPLE TENANT SURVEY

Dear Resident: We are thinking about making some changes in the smoking policy at [property or company name]. Please tell us what you think about smoking and secondhand smoke in your building.

Your answers will be kept anonymous and confidential, and will not be used against you in any way. You may choose to leave any question blank. Please return the survey by [date due to box in manager's office; by mailing in envelope provided, etc.]

1. In the last year, has tobacco smoke drifted into your unit from another unit or hallway?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

2. Have you complained to management about the tobacco smoke drifting into your home?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

3. Would you prefer to live in a building where smoking is banned from certain outdoor areas such as:
 - a. Swimming pools
 - b. Breezeways
 - c. Balconies
 - d. Entryways
 - e. Sidewalks
 - f. Other: _____

4. Would you prefer to live in a building which:
 - a. Is entirely non-smoking, including the units
 - b. Has smoking and non-smoking sections, including the units
 - c. Prohibits smoking in indoor common areas, but not individual units
 - d. Don't Know

5. If your building, including the units, became non-smoking, what would you do?
 - a. No change
 - b. Smoke outside
 - c. Want to live here even longer
 - d. Want to move
 - e. Don't Know



More survey questions on the next page..



6. Do you think secondhand smoke is harmful to people's health?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

7. Do you feel that your health is at risk due to secondhand smoke coming into your unit?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

8. Do you or does someone in your household smoke?
 - a. Yes
 - b. No
 - c. Sometimes

9. Do you allow smoking in your home?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

10. Secondhand smoke is especially harmful for babies, children, the elderly, and people with certain health conditions, such as asthma, heart disease, or multiple chemical sensitivities. Is there anybody in your household who belongs to these high-risk groups?
 - a. Yes
 - b. No
 - c. Maybe
 - d. Don't Know

CHAPTER 3 - BENEFITS TO THE LANDLORD OR PROPERTY OWNER

Your property is an important investment. Protect it! A no-smoking rule will help you save money by reducing damage to your property, preventing fires, and avoiding liability.

A no-smoking rule is one of the easiest ways to reduce damage to your units and keep your costs down:

If you have tenants who smoke, you know what it does to your property: burn marks on the counters, yellow walls, trashed carpets, a horrible odor, and worse. A no-smoking rule will help you spend less time and

money on cleaning, repairs and painting. It will keep your units in better condition, making them more attractive to prospective tenants and to buyers if you decide to sell.

A no-smoking rule will also protect your property from fires: The Hartford Insurance Company reports that more people die in fires caused by smoking than by any other type of fire. Smoking is the #1 cause of residential fire deaths in Oregon and Washington, causing more expensive property damage than most other types of fires. A no-smoking rule will reduce the risk of fires at your rental properties and you may even be able to get an insurance discount. Ask your broker.

A no-smoking rule will help you avoid potential legal liability due to nonsmoking tenants' exposure to secondhand smoke: Several common law theories, including constructive eviction and breach of the warranty of habitability, have been used to bring successful legal action against landlords and smoking tenants. Tenants with certain disabilities may also be able to request reasonable accommodations to protect them from secondhand smoke. Ventilation and air sealing technologies are not effective ways to eliminate secondhand smoke according to the American Society of Heating, Refrigerating and Air Conditioning Engineers.

Many of the Landlords who adopted no-smoking rules tell us they would never go back.

Case Study

A 2006 court case . Poyck v. Bryant, found that the secondhand smoke drifting between apartments was a breach of the implied warranty of habitability and was grounds for a constructive eviction. The nonsmoking tenants had broken their lease and the landlord was unable to recoup thousands of dollars in back rent because the judge ruled that the landlord was responsible for the acts of the third party.



Policy Checklist

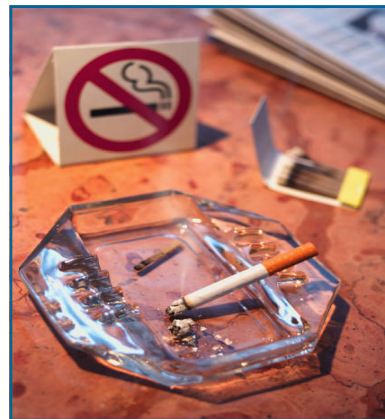
- List the places where smoking is and is not allowed.
- State who the policy applies to (tenants, guests, staff, service persons).
- Set the effective date of the policy.
- Define smoking.
- Optional: Designate a smoking area outside at least 25 feet away from the doors, windows, and major walkways.



“It started with a couple floors. We told people that in a year it would be non-smoking, and we’d give them resources to help them quit.”

Helpful Talking Points

- Tenants and their families will be safer from fires.
- The air will be healthier for everybody who lives in a non-smoking building.
- There will be less damage to the units.
- A no-smoking rule is not a “no-smoker rule”. Smokers will simply have to step outside (as most smokers already do), and away from the building.
- If a smoker is ready to quit, free resources include the Tobacco Quit Line at 1-800-QUIT-NOW and Freedom From Smoking at lungusa.org.



“We do an addendum to the lease and have the tenants sign it.”

CHAPTER 4 - IMPLEMENTING THE NO-SMOKING RULE

If you are opening a new building or complex, the easiest thing to do is prohibit smoking from the beginning.



When converting an existing building or complex, you may need to phase in the policy as you fill vacancies or as leases are renewed. You can also “go smoke free” after a certain date if you follow landlord-tenant law requirements, including giving advance notice and having tenants agree to the changes in writing. We recommend using a No-Smoking Addendum (a sample of this form can be viewed at: www.metro-multifamily.com/buy_forms/samples).

Sample Lease Language

NO-SMOKING PROPERTY:

Complete Complex—Resident agrees and acknowledges that the Property has been designated as a no-smoking living environment. Resident agrees they will not smoke anywhere on the Property or adjacent to and within 25 feet of any portion of the Property. Resident will not permit any guests or visitors of Resident to do so.



DESIGNATED PORTIONS OF THE PROPERTY NO-SMOKING:

Resident agrees and acknowledges that designated portions of the Property have been designated as no-smoking. Resident agrees that they will not smoke on the no-smoking portion of the Property and will not permit any guests or visitors of Resident to do so.

Resident agrees to inform all of their guests or visitors of the No-Smoking Policy and to require any guest or visitor who violates the Policy to leave. Resident is responsible for the actions of their guests and visitors.

WASHINGTON STATE:

Washington Law prohibits smoking in any space “open to the public” such as the rental office of the Property. Resident agrees to comply with this law and require their guests and visitors to comply also.

LANDLORD NOT A GUARANTOR OF A SMOKE FREE ENVIRONMENT:

Resident acknowledges that Landlord’s adoption of a No-Smoking Policy, and the efforts to designate all or some of the Property as non-smoking do not make the Landlord or any of its agents the guarantor of Resident’s health or of the smoke free condition of the non-smoking portions of the Property. However, Landlord will take reasonable steps to enforce the No-Smoking Policy. Landlord is not required to take steps in response to smoking unless Landlord has actual knowledge of the smoking and the identity of the responsible Resident.

DEFINITION OF SMOKING:

The term “smoking” means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or any form.



NO SMOKING ADDENDUM

DATE _____ PROPERTY NAME/NUMBER _____ UNIT NUMBER _____

RESIDENT NAME(S) _____

Due to the increased risk of fire, increased maintenance costs, and the possible health effects of secondhand smoke, Landlord is adopting the following No-Smoking Policy which covers all or a part of the Property (defined below). The following terms, conditions and rules are hereby incorporated into the Rental Agreement.

1. PROPERTY SUBJECT TO NO-SMOKING POLICY (Check paragraph that applies):

- The whole property is no-smoking including but not limited to all buildings, dwelling units, porches, decks, balconies, yards, garages, parking areas and other common areas (collectively the "Property").
- The following portions of the Property are no-smoking: a) the dwelling units including any porches, balconies, yards, etc. and the building(s) located at _____; and b) the common areas within 25 feet of the no-smoking buildings.

If only a portion of the Property is no-smoking:

- The Resident's Unit (including porch, decks, yards, etc.) is no-smoking.
- The Resident's unit is no-smoking in the building.

2. DEFINITION OF SMOKING: The term "smoking" means inhaling, exhaling, breathing, carrying, or possessing any lighted cigar, cigarette, pipe, or other tobacco product in any manner or in any form.

3. NO-SMOKING POLICY:

- 3.1 (Complete Property) Resident agrees and acknowledges that the Property has been designated as a no-smoking living environment. Resident agrees they will not smoke anywhere on the Property or adjacent to and within 25 feet of any portion of the Property. Resident will not permit any guests or visitors of Resident to do so.
- 3.2 (Designated Portions of Property No-Smoking). Resident agrees and acknowledges that designated portions of the Property have been designated as no-smoking. Resident agrees that they will not smoke on the no-smoking portion of the Property and will not permit any guests or visitors of Resident to do so.
- 3.3 Resident agrees to inform all of their guests or visitors of the No-Smoking Policy and to require any guest or visitor who violates the Policy to leave. Resident is responsible for the actions of their guests and visitors.
- 3.4 (Washington State). Washington law prohibits smoking in any space "open to the public," such as the rental units on the Property. Resident agrees to comply with this law and require their guests and visitors to comply also.

4. LANDLORD NOT A GUARANTOR OF SMOKE FREE ENVIRONMENT. Resident acknowledges that Landlord's adoption of a No-Smoking Policy, and the efforts to designate all or some of the Property as no-smoking, do not make the Landlord or any of its managing agents the guarantor of Resident's health or of the smoke free condition of the rental units on the Property. However, Landlord will take reasonable steps to enforce the No-Smoking Policy. Landlord is not required to take any steps to prevent or discourage smoking unless Landlord has actual knowledge of the smoking and the identity of the responsible Resident.

5. LANDLORD DISCLAIMER. Resident acknowledges that Landlord's adoption of a non-smoking living environment, and the efforts to designate all or portions of the Property as no-smoking, does not in any way change the standard of care that the Landlord has under applicable law to render the Property any more habitable or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any intention or obligation to provide that the Property will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not intend to promise that the Property will be free from secondhand smoke. Resident acknowledges that Landlord's ability to police, monitor, or enforce this Addendum is dependent in significant part on voluntary compliance by Residents and Residents' guests. Residents with respiratory ailments, allergies or other condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Addendum than any other Landlord obligation under the rental agreement.

6. EFFECT ON CURRENT RESIDENT. Resident acknowledges that current Residents residing on the Property under leases/rental agreements signed prior to adoption of this No-Smoking Policy may not be immediately subject to this No-Smoking Policy. As current Residents move out, have current leases expire or enter into new leases/rental agreements, the No-Smoking Policy will become effective for them and their guests.

7. EFFECT OF BREACH. Resident understands and agrees with the conditions of this Addendum and that failure to adhere to any of the conditions of this Addendum will constitute both a material non-compliance with the rental agreement and a serious violation of the Rental Agreement. In addition, Resident will be responsible for all costs to remove smoke odor or residue upon any violation of this Addendum.

RESIDENT SIGNATURE _____	DATE _____	RESIDENT SIGNATURE _____	DATE _____
RESIDENT SIGNATURE _____	DATE _____	RESIDENT SIGNATURE _____	DATE _____
RESIDENT SIGNATURE _____	DATE _____	RESIDENT SIGNATURE _____	DATE _____
MANAGER SIGNATURE _____	DATE _____		

ON SITE RESIDENT MAIN OFFICE (IF REQUIRED)

YOU CAN PURCHASE A NO SMOKING ADDENDUM
FORM LIKE THE ONE PICTURED HERE FROM
METRO MULTIFAMILY HOUSING ASSOCIATION.

MMHA HAS **ALL** THE FORMS YOU NEED TO
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OUR FORMS ARE THE MOST COMPREHENSIVE IN
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CHAPTER 5 - TIPS FOR ENFORCING THE RULE



Talk to your tenants. Giving your tenants advance notice about the no smoking rule will help you gain compliance with the policy. You might want to go “over and above” your normal procedures for announcing rule changes. A little bit of extra work at the beginning could help you avoid headaches later on. Some landlords choose to survey their tenants to find out how

many smoke inside their units, how many would prefer a no-smoking rule, and how many would want to move. Smokefreehousingnw.com has sample survey questions and a sample tenant handout to help you explain your rule to tenants.

Some Tips For Getting Tenants to Comply

- Advertise the units as non-smoking to attract tenants who either don't smoke or only smoke outside. Talk to prospective tenants about it when showing the property.
- Put the no-smoking rule in the lease agreement and read through the rule with tenants as they sign their lease.
- Post signs in the building and on the property.
- Inform tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to rentable condition, which could cost thousands of dollars.
- Use the same warning/enforcement methods for smoking rule violations that you use for any other rule.
- Visit the properties regularly and perform inspections, just as should always be done for all rentals.
- Optional: Provide a designated smoking area outside, away from the doors and windows (25 ft is recommended).



**Enforce your no-smoking rule
just like any other rule.**



FREQUENTLY ASKED QUESTIONS (FAQ's)

Q: What do I have to gain from a no-smoking rule?

A: A no-smoking rule will help protect your property from damage and fires. You will save money on turnover expenses because apartments will cost less to clean, repair, and repaint. As more people become aware of the health hazards of secondhand smoke, no-smoking is an amenity that most Portland-Vancouver metro area tenants want.

Q: Is a no-smoking rule legal?

A: Yes. It is legal to prohibit smoking at your properties, inside and out. It is your property and you have the right to set reasonable rules to protect it. It is not discrimination to prohibit smoking. Smoking is a behavior, not an inborn characteristic. It is not a disability and smokers are not a protected class. As when changing any rule, be sure to follow landlord-tenant law (give notice, have tenants sign their agreement with the rule change, apply it equally, etc.).

Q: Can I adopt a no-smoking rule in HUD-assisted housing?

A: Yes. You can adopt a no-smoking rule for new tenants at HUD-assisted housing, but you may have to "grandfather" existing tenants until their leases renew. If you want to change the model lease, you will have to get HUD approval, but changes can be made to "House Rules" without HUD approval.

Q: Do no-smoking rules work only in higher end properties?

A: No. Many local landlords are already enjoying success with no-smoking rules at all kinds of properties, in all sections of the metro area. Three quarters of renters, even those with household incomes under \$25,000, would rather live in a non-smoking building. Three out of four metro area renters are nonsmokers. The survey found that only 19% of metro area renters smoke on a daily basis, but only 11% smoke inside.

Q: My tenants are complaining about secondhand smoke. What can I do about it until the no-smoking rule goes into effect?

A: Ask tenants to smoke outside or away from the building. You could try to reduce the secondhand smoke drifting between your tenants' units by sealing the units off or by improving the ventilation, but be aware that neither will eliminate the problem.



REFERENCES / RESOURCES

Local Research

Smoke free Rental Housing in the Portland Metropolitan Area, Campbell DeLong Resources, July 2006. www.smokefreehousingnw.com

Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies & Practices, Campbell DeLong Resources, Inc. January 2007. www.smokefreehousingnw.com

Housing Regulations

"The Americans with Disabilities Act: Effective legal protection against secondhand smoke exposure" Clifford Douglas. 2004. www.repositories.cdlib.org/context/tc/article/1184/type/pdf/viewcontent

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Legal Analyses

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"There is no constitutional right to smoke" Public Health Institute, Technical Assistance Legal Center. February 2004. www.phi.org/pdf-library/talc-memo-0051.pdf#search=%22no%20constitutional%20right%20smoke%22

Secondhand Smoke

"The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General." June 27, 2006. www.surgeongeneral.gov/library/secondhandsmoke

"Environmental Tobacco Smoke Position Statement." The American Society of Heating, Refrigerating, and Air-Conditioning Engineers. June 2005. www.ashrae.org/doclib/20058211239_347.pdf

Fires

"2005 Annual Report." The Oregon State Fire Marshall. 2005. www.egov.oregon.gov/OOHS/SFM/docs/data_Services/2005_Annual_Report_FINAL.pdf

"Fire in Washington." The Washington State Fire Marshall. 2004. www.wsp.wa.gov/fire/2004firpt.pdf

~ SECONDHAND SMOKE FACTS ~

- ▶ **Secondhand smoke kills 53,000 non-smoking Americans and 800 non-smoking Oregonians every year.**
- ▶ **Secondhand smoke contains more than 43 cancer-causing agents and many other toxins, including formaldehyde, cyanide, carbon monoxide and arsenic.**
- ▶ **Secondhand smoke exposure causes heart disease and lung cancer in adults and sudden infant death syndrome and respiratory problems in children.**
- ▶ **There is no risk-free level of secondhand smoke exposure: even brief exposure adversely affects the cardiovascular and respiratory systems.**
- ▶ **Only smoke free environments effectively protect people from secondhand smoke exposure indoors.**

Visit www.smokefreehousingnw.com/housing for the following resources:

- Order signs and stickers.
- Tenant Handout—to explain the benefits of a no-smoking rule.
- Sample Tenant Survey—to find out how many tenants would prefer a no-smoking rule.
- Market Survey Report: “Smoke-free Rental Housing in the Portland Metro Area.
- Landlord Focus Group Report “Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies and Practices.”
- Fact Sheet on Secondhand Smoke
- Articles about HUD-assisted housing, the Fair Housing Act, the American with Disabilities Act, legal cases and how they relate to secondhand smoke and no-smoking policies.





Metro MultiFamily Housing Association is a proud member of the Portland-Vancouver Metro Area Smokefree Housing Advisory Board, sponsored by the American Lung Association of Oregon, Clark County Tobacco Prevention and Education Program, and the Multnomah County Tobacco Prevention Program. The "No Smoking Conversion Guide" was adapted with permission from "A Landlord's Guide to No-Smoking Policies". Thank you to Multnomah County Health Department and the Oregon Public Health Division for their generous grant.



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