



## New York Guide to Smoke-Free Cooperatives



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## Public Health & Tobacco Policy Center

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**SmokeFreeHousingNY** is comprised of community partnerships funded by the New York State Tobacco Control Program. It is working to increase the availability of smoke-free multi-unit housing through educating and providing technical assistance to public and private landlords throughout New York.

**This work provides educational materials and research support for policy initiatives. The legal information provided does not constitute and cannot be relied upon as legal advice.**

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## Introduction

Residents of cooperative housing in New York have become increasingly aware of the secondhand smoke that drifts into their units. Accustomed to working in smoke-free offices and eating in smoke-free restaurants, a vast majority of New Yorkers know the risks associated with secondhand smoke exposure and consider living in a smoke-free home a basic necessity. Because this necessity is dependent on the decision of their neighbors to smoke or not smoke indoors, many residents of multi-unit dwellings are seeking to adopt smoke-free policies for their buildings.

Exposure to secondhand tobacco smoke is not just an annoyance; it's a serious health hazard. "Secondhand smoke" refers to the direct smoke from a lit cigarette or other tobacco product and indirect smoke exhaled by smokers. There are no safe levels of secondhand smoke for children or adults, yet non-smokers are regularly exposed to this health risk.<sup>1</sup> In multi-unit buildings, secondhand smoke can seep under doors and through ventilation ducts, electrical outlets and light fixtures into neighboring units and common areas. Even ventilation systems fail to completely eliminate secondhand smoke drift.<sup>2</sup>

Indoor cigarette smoking presents a further health hazard in that it is a leading cause of residential fires and the number one cause of home fire-related deaths.<sup>3</sup> Multi-unit housing, such as cooperatives, is especially susceptible to fires spreading from neighboring units.

A smoke-free policy refers to an explicit smoking restriction for cooperatives — both inside and outside of individual units (including balconies decks, and patios) and all common areas. Smoking is prohibited in building entryways and from a designated building perimeter (if not the entire property).

Smoke-free policies not only provide health benefits for people and pets living in these buildings, they offer owners potential financial advantages as well. Owners can avoid costly repairs due to cigarette and smoke damage as well as protect their investment. As the market for smoke-free properties increases, properties with smoke-free policies in place may find increased resale value.<sup>4</sup> These health, safety and economic benefits have been a collective driving force behind the implementation of smoke-free policies in multi-unit residential buildings throughout New York and the nation.

Good news for owners and governing boards: smoke-free policies are enforceable and implementation is straightforward. This guide outlines the steps necessary to establish a smoke-free policy in cooperative housing. It also contains specifics on the benefits of such a policy, an example of a smoke-free policy and other tools to aid your policy implementation efforts. With this guide and some patience, you will soon be rewarded with a healthier, safer and more desirable living environment.

### Second Hand Smoke

- ➔ Secondhand Smoke (SHS) is toxic.
- ➔ Exposure to SHS should be avoided.
- ➔ SHS exposure may be involuntary, as when smoke drifts through apartment walls.
- ➔ SHS drift cannot be completely stopped; only a smoke-free policy ensures reduced SHS exposure.
- ➔ SF policies are a legal, effective method of preventing SHS exposure and limiting its adverse health effects.

# Benefits of a Smoke-Free Policy

## Health Benefits

Many health problems are caused or worsened by exposure to secondhand smoke. These include cancer, heart disease, atherosclerosis, asthma, respiratory and ear infections, Sudden Infant Death Syndrome, decreased fertility and adverse pregnancy outcomes.<sup>5</sup> Children exposed to secondhand smoke are more likely to develop asthma, ear infections and wheeze illnesses.<sup>6</sup> Reducing exposure to secondhand smoke will decrease the frequency, severity and overall likelihood of suffering from these health issues.

View Surgeon General Reports on SHS:  
<http://surgeongeneral.gov/library/index.html>

Unfortunately, even seemingly minimal exposure to secondhand smoke may inflict negative health consequences.<sup>7</sup> Residents are exposed to toxins when breathing smoke lingering near building entryways and drifting between units through windows, outlets and ductwork. Mechanical solutions to secondhand smoke drift, such as ventilation and plugging, are not successful in combating secondhand smoke.<sup>8</sup> The most effective way to reduce exposure to secondhand smoke drift is to make cooperative grounds completely smoke-free. An increasing number of multi-unit residential buildings have successfully implemented smoke-free policies to eliminate exposure to secondhand smoke.<sup>9</sup>

## Financial Benefits

In New York and nationwide there is growing market support for smoke-free housing. In a recent survey of New York City residents, 58% reported they would pay more to live in smoke-free housing.<sup>10</sup> Multi-unit developments across New York have successfully implemented smoke-free policies, and New York and other states and cities offer smoke-free registries to assist those exclusively seeking smoke-free housing.<sup>11</sup> Utah's legislature enacted a state law explicitly authorizing smoke-free condo by-laws.<sup>12</sup>

Beyond an increasing desire for smoke-free housing, surveys suggest smoke-free properties may render a higher rental or purchase price.<sup>13</sup> As smoking rates decrease and awareness of the dangers of secondhand smoke exposure increases, demand for smoke-free housing will likely continue to rise. This increased demand will benefit owners of cooperatives with smoke-free policies already in place.

Further, not allowing lit cigarettes, cigars and pipes in multi-unit housing reduces the incidence of property damage - such as burns, stains, and odors - that these products and their smoke cause. For example, attempting to remove smoke odor, discoloration and chemicals through refurbishing upholstery, carpets and curtains is a typical yet costly fix and does not guarantee the desired result.<sup>14</sup> Since smoke residue lingers and is difficult to remove, housing cooperatives with smoke-free policies may save on building maintenance costs and offer common areas and units more attractive for rent and sale.<sup>15</sup>

Of additional benefit, buildings with smoke-free policies are less likely to suffer unintentional fires and accompanying financial (and other) losses. A cooperative may even receive reduced casualty or liability insurance rates after implementing a smoke-free policy.

## Legal Benefits

Housing cooperatives may legally implement a smoke-free policy because smoking is not a right protected by the U.S. Constitution,<sup>16</sup> federal law<sup>17</sup> or New York State law.<sup>18</sup> Specifically, a New York court found that secondhand smoke constitutes “unreasonable interference” with another’s use of a condo unit and that it was within a condo board’s scope of duty to stop the smoke by bringing a nuisance suit.<sup>19</sup> In a case brought under the Fair Housing Act, a court ordered the implementation of a smoke-free policy to accommodate a disabled tenant negatively impacted by the smoking.<sup>20</sup> A Colorado court found a condo association’s smoke-free policy to be enforceable because it was “proper, reasonable, made in good faith and not arbitrary and capricious.”<sup>21</sup>

Further, the board of directors in a housing cooperative has a duty to act in the best interest of its residents.<sup>22</sup> Cooperatives that allow smoking may be vulnerable to legal action by residents who have been harmed by resulting secondhand smoke.<sup>23</sup> Shareholders may successfully argue (through a nuisance suit,<sup>24</sup> or claiming a violation of the warranty of habitability,<sup>25</sup> for example) that the cooperative board must act to minimize the intrusion of secondhand smoke.<sup>26</sup> Implementing a smoke-free policy could be in the best interest of its shareholders and satisfy a duty to prevent harm from secondhand smoke.

Cooperative smoke-free policies are healthful, market-supported and legal. Reminding other shareholders of these benefits may motivate your cooperative to implement its own smoke-free policy.

## Implementing a Smoke-Free Policy

A cooperative housing corporation, commonly referred to as a “co-op,” is a legal entity that owns real estate.<sup>27</sup> Unlike condominium owners, who own just their individual units, co-op members own a portion of a corporation that owns an entire property.<sup>28</sup> Co-op members are shareholders of the corporation with the number of shares owned generally proportional to the value of the apartment she or he occupies.<sup>29</sup> The co-op corporation is the landlord and shareholders are the usual residents of an individual apartment: Akin to landlord and tenant, the corporation and shareholder enter into an agreement detailing the terms of use for an individual apartment.<sup>30</sup>

Smoke-Free Housing NY offers free advice and support on implementing a SF policy: [SmokeFreeHousingNY.org](http://SmokeFreeHousingNY.org)



Smoking in a co-op is a concern because toxic secondhand smoke drifts into common areas and other units.<sup>31</sup> Many cities already prohibit smoking in the common areas in multi-unit housing; however, these ordinances may not prohibit smoking in individual units or other areas where smoke is likely to drift into another's individual unit (e.g., balconies, near exterior windows, front steps, etc.).<sup>32</sup> For example, New York City's ordinance prohibits smoking in "common areas of a multiple dwelling containing ten or more dwelling units" but does not prohibit smoking in individual units.<sup>33</sup> Since secondhand smoke drift occurs between units and from nearby outdoor spaces, only a policy which completely prohibits smoking in these areas will be effective and reap the benefits previously outlined. In order to implement a smoke-free policy that would extend the smoking prohibition to individual units and other co-op areas, it is usually necessary to change the by-laws of the co-op.<sup>34</sup>

### The Essentials

- ☑ A written smoke-free policy;
- ☑ Amendments to the proprietary leases and the by-laws;
- ☑ Recordation – the amendment is signed by all members of the board of directors.

Existing co-ops looking to establish an enforceable smoke-free policy will need to amend the following documents:

1. *Proprietary Leases* - The agreement between the corporation and the shareholders is a long-term lease called a proprietary lease or occupancy agreement and it is legally binding.<sup>35</sup> The proprietary lease may restrict a shareholder from renting the unit, making structural renovations, or otherwise impacting the value of the property or other members' health and safety.<sup>36</sup>
2. *By-Laws* - In New York, founding co-op shareholders must draft by-laws and file a certificate of incorporation with the Secretary of State of New York.<sup>37</sup> The by-laws detail the rights and obligations of the shareholders and thus govern the co-op's operations.<sup>38</sup> Many of the provisions found in the proprietary lease may be found in the by-laws, but the by-laws also include additional provisions dealing with the business of the co-op (such as those regarding co-op funds and property management).
3. *House Rules* - These rules also govern the rights and obligations of shareholders, but they "may not alter the basic corporate structure of the cooperative or the financial and contractual rights created in the Offering Plan or Proprietary Lease."<sup>39</sup> Therefore, simply adding a house rule may not be sufficient to establish an enforceable smoke-free policy. However, House Rules should reflect all changes to the by-laws and proprietary leases as it will provide resident-shareholders with a consistent outline of their responsibilities.<sup>40</sup>

The procedures for amending these documents are typically found both in the proprietary leases and in the by-laws themselves.<sup>41</sup> If no procedures are outlined, New York law provides that by-laws may be amended by two-thirds of the resident-shareholders at the annual meeting after notice has been given to all resident-shareholders of the purpose of the amendment and that a vote will be taken at the meeting.<sup>42</sup> Generally, co-op owners – as shareholders – are eligible to vote to change the by-laws.<sup>43</sup> If the co-op's procedures for amendment provide that the board of



directors may amend the by-laws, the resident-shareholders still must affirm the amendment with a two-thirds vote.<sup>44</sup>

The **steps for amending by-laws** that follow are only guidelines. Depending upon the size, nature, personality, and governing documents of a co-op, as well as the local law, the route to a smoke-free policy may vary.<sup>45</sup> Additionally, there may be other considerations which influence the best way to reach the goal of a smoke-free co-op.

## Step 1: Educate Shareholders

*Survey all shareholders* and learn their support for and understanding of a smoke-free policy. (A sample survey is in Appendix B.) Regardless of the survey results, you'll want to communicate with all shareholders and residents about the proposed smoke-free policy and your reasons for it. You may want to address the dangers of secondhand smoke and its unstoppable drift, why a smoke-free policy is the best solution to limit exposure as well as the other health, financial and legal benefits to going smoke-free. Ascertain shareholders' understanding of the policy, how it will affect them, and whether they support a smoke-free policy. Use these conversations along with the survey results to learn about concerns, correct misconceptions and gain widespread support. Be sure to focus on the problem of secondhand smoke and not vilify smokers. Your time investment will help you tailor a policy to your co-op's needs, increase overall support and minimize surprise and complaints down the road.

*Keep detailed records* of when and how smoke is affecting your unit and what has been done to address the issue. If applicable, include medical documentation. These records may be helpful in educating and persuading the board or other owners about the importance of the proposed smoke-free policy.

*Voice concerns to the board* and encourage others to do the same. Issues of widespread concern generally garner more attention and may be more quickly resolved.

## Step 2: Draft the Smoke-Free Policy

Have a clear objective for your smoke-free policy in mind and begin drafting the amendment. If you get stuck while writing, return to this objective and consider how each clause helps achieve it. You will want to include this statement of purpose in the amendment – it creates a record of the “**why**” behind the policy. (An example by-law amendment is provided in Appendix D.)

### **What** is “smoking”?

“Smoking” should be defined broadly to ensure the policy is effective. You may define smoking as “carrying, burning, or otherwise handling or controlling any lit or smoldering product containing tobacco or cloves, including but not limited to cigarettes, cigars, or pipes.”<sup>46</sup> Be sure to also define other key terms to ensure everyone has the same understanding of their meaning.



**Who** will the rule apply to?

In addition to the resident-shareholder, smoking should not be permitted by any resident, tenant, or guest anywhere on the property where the rule is in effect.

**Where** is smoking restricted?

Clearly indicate which areas are designated smoke-free. This could include common areas and individual units, indoors and out. You may define an “individual unit” to include decks, patios, balconies, and other exclusive use outdoor areas attached to the unit.

Likewise, outdoor common areas such as roof-decks, sheds and vestibules may be designated smoke-free. If your policy does not prohibit smoking from the entire co-op grounds, be sure to designate a smoke-free perimeter with enough distance to ensure smoke cannot drift through windows, entryways or overcome outdoor smoke-free common areas.

**When** will the rule become effective?

Determine when the rule will become effective and include the date or timeframe in the rule.

**How** is the policy enforced?

The rule should identify who is charged with ensuring compliance and the consequences for an infraction. Look to your co-op’s existing enforcement provisions for other policy violations, such as loud music or personal storage in common areas. Response to any reported policy violations must be prompt and consistent; this both aids policy effectiveness and also ensures there is no misinterpretation of consent.<sup>47</sup> Consider complaint-driven progressive enforcement, beginning with a friendly reminder or warning, moving to fines and culminating with more drastic measures, such as court action or eviction.<sup>48</sup> To the extent fines are used, the value should not exceed the approximate costs smoking causes the co-op (costs may include repair, replacement and labor maintenance as well as costs administering the policy).<sup>49</sup>

In addition to the above policy specifics, the by-law should address the following:

*Co-op Information:* State the name of the co-op, the date and location of the Certificate of Incorporation, and state that the board adopts the terms set forth in the document as an amendment to the co-op’s by-laws.

*Board’s Power:* State the board’s power to oversee the administration and operation of the co-op.

*Shareholders’ Rights:* Resident-shareholders, through the proprietary lease, obtain the right to occupy the space in the building to which their shares are allocated (i.e. his or her apartment unit). The proprietary lease defines the rights and obligations of the resident-shareholder in

### Grandfather Policy

A policy **grandfathering** current smokers means allowing smoking in a specific unit for a specified period of time. Grandfathering limits the policy’s health benefits and may create enforcement confusion. If a grandfather provision appears to be a required compromise, you may wish to wait until the cooperative has enough support for a complete smoke-free policy.

regards to the premises.<sup>50</sup> Therefore, in order to successfully enact a smoke-free policy, the co-op will have to amend both the by-laws and the proprietary leases.<sup>51</sup>

*Objectives and Stated Purpose:* As discussed above, outline the facts and purpose for adopting the policy. For example, state that secondhand smoke is hazardous to health and a complete prohibition is the only proven way to limit secondhand smoke exposure (e.g., ventilation systems have not been proven to reduce exposure). You may also discuss the fire hazard, maintenance and repair costs associated with smoking.

### NYC Co-ops<sup>a</sup>

**Co-ops are required to define their policy on smoking. The policy must be incorporated into:**

- ☒ purchase (dwelling or shares) agreements
- ☒ by-laws/co-op rules
- ☒ rental agreements

<sup>a</sup> NYC, N.Y., Ord. 1585A-2017

*Approval:* After the amendment passes, include acknowledgment that a vote was administered according to the by-laws and approved by a sufficient majority (the majority required by the co-op's procedure).

*Recordation & Seal:* Write the date of passage on the by-law amendment and have all members of the board of directors sign the amendment. You may have a notary public witness the signatures and submit a signed certification statement.

### Step 3: Amend the By-Laws

The by-laws function as a contract between shareholders. Some co-op by-laws allow an amendment to the by-laws to be made by the board of directors.<sup>52</sup> Others provide that only the shareholders may amend the by-laws or change any rules.<sup>53</sup>

### Amendment by board of directors:

Some co-op by-laws require that amendments be passed by the board of directors. If so, a certain number or percentage of board members, known as a "quorum," must be present and a majority must vote for the amendment.<sup>54</sup> The by-laws usually spell out what constitutes a quorum. Otherwise it is half the board.<sup>55</sup>

Following the board's approval the shareholders must confirm support at the shareholder meeting.<sup>56</sup> Written notice setting forth the purpose of the proposed amendment must be given to the resident-shareholders prior to the meeting.<sup>57</sup> A quorum of shareholders must be present. Again, this will usually be defined in the by-laws, but if not is a majority.<sup>58</sup> The amendment must receive a minimum number of votes as provided by the by-laws. If not provided, each state will have its own default rule for the number of votes needed.<sup>59</sup> In New York, by-laws may be amended by a two-thirds vote of the shareholders.<sup>60</sup>

### New Co-op?

Are you a new cooperative? It is even more straightforward to implement a smoke-free policy in new buildings or in buildings where no units have been purchased (for example, when converting an existing building into a co-op). A smoke-free rule may simply be included as a by-law along with other conditions, covenants and restrictions within the master deed and/or declaration of trust. Enforcement methods in new buildings may mirror those discussed in this guide.

## Amendment by shareholders

Some by-laws require that amendments be adopted at the shareholder meeting.<sup>61</sup> Shareholders meetings usually take place once a year,<sup>62</sup> but a special meeting may be called. A notice of the meeting must be sent to all shareholders.<sup>63</sup> Rules regarding such notice will usually be found in the by-laws.<sup>64</sup>

A quorum of shareholders must be present. Requirement for the quorum will usually be written in the by-laws and may include participation requirements for directors.<sup>65</sup> If not written, a simple majority will do.<sup>66</sup> The amendment must receive a minimum number of votes as provided by the by-laws, or, if not provided, each state will have its own default rule.<sup>67</sup> In New York, the amendment must be approved by two-thirds of the shareholders.<sup>68</sup>

The co-op's secretary should accurately record the outcome of the vote in the minutes of the meeting,<sup>69</sup> and keep a copy of the by-law amendment as it was adopted.<sup>70</sup> The president of the board will sign the smoke-free policy, officially adopting it. The amendment should be maintained with the other co-op governing documents, typically by the secretary of the board.<sup>71</sup> This is necessary both for documentation for insurance purposes and because this information becomes important if the policy is legally challenged.<sup>72</sup>

## Step 4: Amending the Proprietary Lease

The lease agreement between a cooperative shareholder and the cooperative's board of directors is a long-term proprietary lease. The long-term proprietary lease (sometimes referred to as an occupancy agreement) typically defines the permitted uses of the apartment. These provisions are also typically referred to in the by-laws and the House Rules. Courts treat a proprietary lease the same as an ordinary lease for the purposes of landlord-tenant law as the relationship between the resident-shareholder and the co-op is similar to the relationship between a tenant and a landlord.<sup>73</sup>

The by-laws or the terms of the lease usually lay out the process needed to amend the lease.<sup>74</sup> If the terms for amending the proprietary lease appear in both the proprietary lease and the by-laws—in order for the amendment to be effective—there must be compliance with the procedures in both documents.<sup>75</sup>

## Step 5: Notify Residents of the Smoke-Free Policy

Once the smoke-free policy has passed, inform all shareholders of the new rule. The by-laws may include a procedure for this. The new smoke-free policy should also be sent to all current residents, whether shareholders or renters, and it should indicate the effective date, the areas where smoking is restricted, and how it will be enforced. Reminders about the approaching effective date could also be posted in the newsletter, on the co-op's website, or sent through individual letters or email.

Post smoke-free signs and clean up cigarette butts. Residents should be encouraged to inform people who are violating the policy about the new rule (they may be guests unaware of the smoke-free policy). If violations persist, residents should inform the board of directors and enforce the policy.

### Step 6: Enforce the Smoke-Free Policy

The no-smoking rule will be largely self-enforcing. The following strategies may aid success:

- Provide each resident and owners a copy of the rule change or by-law amendment.
- Post “No Smoking” or “Smoke-Free Area” signs in conspicuous places and anywhere violations occur.
- Remove ashtrays and cigarette butts from common areas and repair damage from prior smoking; this will encourage residents to abide by the smoke-free policy.
- Document potential violations. Residents who smell smoke should record when and where it was noted and from where it might have originated. Complaints should be filed with the board or as specified in the by-laws.
- Violations of the smoke-free policy should be treated like any other rule violation: enforcement should be prompt, consistent and in accordance with the policy’s enforcement clause.
- Ensure that owners are aware that they will be held responsible for the policy, even when it is violated by their guest or tenant.

### Contact Smoke-Free Housing NY for Free Advice and Support

For more information and support on implementing a smoke-free policy in your multi-unit housing community, contact Smoke-Free Housing NY. Their website will direct you to many resources, including a community liaison available to work with your cooperative. Visit their website, [www.SmokeFreeHousingNY.org](http://www.SmokeFreeHousingNY.org).

## Citations

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<sup>1</sup> OFFICE OF THE SURGEON GEN., THE HEALTH AND CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE 11 (2006), *available at*

<http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf>.

<sup>2</sup> AM. SOC'Y OF HEATING, REFRIGERATION, AND AIR-CONDITIONING ENG'RS, ASHRAE POSITION DOCUMENT ON ENVIRONMENTAL TOBACCO SMOKE § 5.0 (2010), *available at* <http://www.ashrae.org/about-ashrae/position-documents>; OFFICE OF THE SURGEON GEN. (2006), *supra* note 1, at 92.

<sup>3</sup> Marty Ahrens, *Home Structure Fires*, NAT'L FIRE ASS'N (2011), *available at* <http://www.nfpa.org/assets/files/PDF/HomesExecSum.pdf>.

<sup>4</sup> See CTR. FOR ENERGY & ENVTL. & TOBACCO LAW CTR., SURVEY OF COMMON INTEREST COMMUNITY (CIC) OWNER-OCCUPANTS IN MINNESOTA REGARDING: TOBACCO SMOKE MOVEMENTS IN CICs AND INTEREST IN SMOKE-FREE CICs (July 2011), *available at* <http://dl.dropbox.com/u/23584390/Condominium%20Research/Minnesota%20Survey%20of%20Condo%20Owner%20Occupants%202011%2007.pdf>; THE MASS. SMOKE-FREE HOUSING PROJECT, MARKET DEMAND FOR SMOKE-FREE RULES IN MULTI-UNIT RESIDENTIAL PROPERTIES & LANDLORDS' EXPERIENCES WITH SMOKE-FREE RULES (Apr. 2009), *available at* <http://dl.dropbox.com/u/23584390/Condominium%20Research/Massachusetts%20Housing%20Survey.pdf>; Lambeth Hochwald, *To Buy or Not to Buy in a Smoking Prohibited Building*, BUS. INSIDER (Mar. 19, 2012), <http://www.businessinsider.com/58-of-new-yorkers-would-pay-more-to-live-away-from-people-who-smoke-2012-3> (reporting survey results showing 58% of New Yorkers are willing to pay more to live in smoke-free housing); see also C.J. Hughes, *For Some Smokers, Even Home Is Off Limits*, N.Y. TIMES (Nov. 15, 2009), [http://www.nytimes.com/2009/11/16/nyregion/16smoke.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2009/11/16/nyregion/16smoke.html?_r=1&pagewanted=all).

<sup>5</sup> OFFICE OF THE SURGEON GEN., A REPORT OF THE SURGEON GENERAL: HOW TOBACCO SMOKE CAUSES DISEASE 568-71 (2010), *available at* [http://www.surgeongeneral.gov/library/tobaccosmoke/report/full\\_report.pdf](http://www.surgeongeneral.gov/library/tobaccosmoke/report/full_report.pdf).

<sup>6</sup> *Id.* at 470.

<sup>7</sup> OFFICE OF THE SURGEON GEN. (2006), *supra* note 1.

<sup>8</sup> AM. SOC'Y OF HEATING, REFRIGERATION, AND AIR-CONDITIONING ENG'RS, *supra* note 2, at 3 (discussing environmental tobacco smoke, devices used to reduce exposure to it and concluding that "the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity").

<sup>9</sup> Kay Lazar, *Boston's Largest Condo Goes Smoke-Free*, BOSTON.COM (Mar. 21, 2012), [http://articles.boston.com/2012-03-21/metro/31215616\\_1\\_smoking-ban-smoking-in-common-areas-cigarette-smoke](http://articles.boston.com/2012-03-21/metro/31215616_1_smoking-ban-smoking-in-common-areas-cigarette-smoke); Teri Karush Rogers, *Smoking Bans Advance in Co-ops and Condos*, BRICKUNDERGROUND: NYC REAL ESTATE SURVIVAL (Mar. 16, 2011), [http://www.brickunderground.com/blog/2011/03/smoking\\_bans\\_advance\\_in\\_co\\_ops\\_and\\_condos](http://www.brickunderground.com/blog/2011/03/smoking_bans_advance_in_co_ops_and_condos); Susan Schoenmarklin & Jacque Petterson, *Clearing the Air: Industry Discusses Trend Toward Smoke-Free Housing*, UNITS MAGAZINE - A PUBL'N OF THE NAT'L APARTMENT ASS'N (Dec. 2007), <http://www.tcsq.org/sfelp/UnitsDec2007.pdf>.

<sup>10</sup> Hochwald, *supra* note 4.

<sup>11</sup> See, e.g., *New York Vacancies*, SMOKEFREEAPARTMENTS.ORG, [http://www.smokefreeapartments.org/list\\_newyork.html](http://www.smokefreeapartments.org/list_newyork.html) (last visited Apr. 13, 2012).

<sup>12</sup> UTAH CODE ANN. § 57-22-5(1)(h) (2008).

<sup>13</sup> CTR. FOR ENERGY & ENVTL. & TOBACCO LAW CTR., *supra* note 4; THE MASS. SMOKE-FREE HOUSING PROJECT, *supra* note 4; Hochwald, *supra* note 4; Hughes, *supra* note 4.

<sup>14</sup> Antoinette Martin, *On Tobacco Road, It's Tougher to Sell*, N.Y. TIMES (Feb. 8, 2004), <http://www.nytimes.com/2004/02/08/realestate/on-tobacco-road-it-s-a-tougher-sell.html?scp=1&sq=On+Tobacco+Road&st=nyt> ("Lingering tobacco residue can make a home difficult to



sell and drive down the selling price. Clean-up is costly and does not guarantee that the smoke's smell or harmful chemicals will be fully removed.”).

<sup>15</sup> *Id.*

<sup>16</sup> *Grussendorf v. City of Oklahoma*, 816 F.2d 539, 541 (10th Cir. 1987) (holding that the Fourteenth Amendment does not protect the right to smoke). See generally SAMANTHA K. GRAFF, TOBACCO CONTROL LEGAL CONSORTIUM, THERE IS NO CONSTITUTIONAL RIGHT TO SMOKE 1-2 (2008).

<sup>17</sup> See Americans with Disabilities Act of 1990, 42 U.S.C. § 12201(b) (1990) (stating that “[n]othing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment . . . in transportation . . . or in places of public accommodation”).

<sup>18</sup> N.Y. LAB. LAW § 201-d (McKinney 2012) (stating that employment smoker protection law does not apply to housing).

<sup>19</sup> *Poyck v. Bryant*, 820 N.Y.S.2d 774, 780 (Civ. Ct. 2006).

<sup>20</sup> *In re U.S. Dep’t Hous. & Urban Dev. & Kirk & Guildford Mgmt. Corp. & Park Towers Apartments*, HUD Case No. 05-97-0010-8, 504, Case No. 05-97-11-0005-370 (1998) (allowing a smoke-free policy applying to all future tenants to satisfy the reasonable accommodation requirement for a disabled tenant in government subsidies rental housing).

<sup>21</sup> *Christensen v. Heritage Hills 1 Condo. Ass’n*, 2006 WL 4585750 (Colo. Dist. Ct. Nov. 7, 2006).

<sup>22</sup> See *Suarez v. Rivercross Tenants’ Corp.*, 438 N.Y.S.2d 164, 167 (1981).

<sup>23</sup> See *Poyck*, 820 N.Y.S.2d at 777 (stating the presence of secondhand smoke in a condominium unit can be a breach of the warranty of habitability).

<sup>24</sup> See *Chemical Bank v. 635 Park Ave. Corp.*, 588 N.Y.S.2d 257, 260 (N.Y. Sup. Ct. 1992) (“[C]ooperative corporations and their board of directors have a fiduciary duty to the shareholder-tenants and have a duty to act in an appropriate and reasonable manner.”); see also *Zipper v. Haroldon Court Condo.*, 835 N.Y.S.2d 43, 45 (N.Y. App. Div. 2007) (holding that an ongoing odor of an unacceptable level can constitute a nuisance and warrant eviction from a condominium); *Upper E. Lease Assocs., LLC v. Cannon*, No. 44409/09, 2011 WL 182091, at \*1 (N.Y. Dist. Ct. 2011) (stating that the presence of secondhand smoke in plaintiff’s apartment constituted a nuisance that the landlord was required to take action to prevent).

<sup>25</sup> *Suarez*, 438 N.Y.S.2d at 167 (holding that owners in a housing cooperative may bring suit for breach of the warranty of habitability in order to result in “increased attention on the part of cooperative boards of directors to the well-being of the members of the corporation”).

<sup>26</sup> See *Poyck*, 820 N.Y.S.2d at 777 (stating the presence of secondhand smoke in a condominium unit can be a breach of the warranty of habitability).

<sup>27</sup> Sherrill R. Oman, *Cooperative Housing: A Primer* (Jan. 2008), [http://www.fredlaw.com/articles/realestate/real\\_0801\\_sro.html](http://www.fredlaw.com/articles/realestate/real_0801_sro.html).

<sup>28</sup> *Id.*

<sup>29</sup> Gerald Lebovits, *Cooperatives and Condominiums in the New York City Housing Court*, 36(2) N.Y. ST. B.A. REAL PROP. L.J. 43, 45 (2008).

<sup>30</sup> *Chemical Bank v. 635 Park Ave. Corp.*, 588 N.Y.S.2d 257, 258-59 (N.Y. Sup. Ct. 1992).

<sup>31</sup> OFFICE OF THE SURGEON GEN. (2006), *supra* note 1, at 158 (“Secondhand smoke exposure from ‘shared air spaces’ within a building is also of concern, as a significant proportion of the population lives in apartment buildings or condominiums where smoking in another part of the building might increase tobacco smoke exposure for households of nonsmokers.”).

<sup>32</sup> See N.Y.C., N.Y., CHARTER CODE § 17-502(m) (2002) (prohibiting smoking in common areas of multiple-unit housing containing ten or more units). See also S.F., CAL., HEALTH CODE art. 19F, § 1009.22(f) (2010) (“Smoking is prohibited in enclosed common areas of multi-unit housing complexes.”); RICHMOND, CAL., CODE ch. 9.57 § 7.57.020(a) (2009) (“Smoking is prohibited in all Multi-Unit Residence Common Areas.”); see also *Condos, Co-ops To Vote on Smoking Bans*, HUFF. POST N.Y. (Mar. 16, 2011), [http://www.huffingtonpost.com/2011/03/16/condos-coops-to-vote-on-s\\_n\\_836615.html](http://www.huffingtonpost.com/2011/03/16/condos-coops-to-vote-on-s_n_836615.html).

<sup>33</sup> N.Y.C., N.Y., CHARTER CODE § 17-502(m) (2002).

<sup>34</sup> “It’s unusual for an association board to seek to amend the certificate of incorporation. The bylaws can be amended, but it usually requires a super majority of the unit owners to be approved.” Lisa Iannucci,



*Amending Your Rules and Bylaws: Change is Good*, N.J. COOPERATOR (Feb. 2007), <http://njcooperator.com/articles/32/1/Amending-Your-Rules-and-Bylaws/Page1.html>.

<sup>35</sup> VINCENT DILORENZO, N.Y. CONDO & COOP LAW §3:9 (2d ed. 2007).

<sup>36</sup> See *Chemical Bank v. 635 Park Ave. Corp.*, 588 N.Y.S.2d 257, 259 (N.Y. Sup. Ct. 1992); *330 West End Apartment Corp. v. Kelly*, 478 N.Y.S.2d 220, 223 (Sup. Ct. 1984).

<sup>37</sup> N.Y. COOP. CORPS. LAW §11 (McKinney 2012); DiLorenzo, *supra* note 36, at §3:9.

<sup>38</sup> See N.Y. COOP. CORPS. LAW § 14 (McKinney 2012) (stating that the by-laws set forth the rights and obligations of the resident-shareholders and also general provisions regarding the property and funds of the co-op).

<sup>39</sup> *North Broadway Estates, Ltd. v. Schmoltdt*, 559 N.Y.S.2d 457, 459 (1990).

<sup>40</sup> See *id.* at 459 (stating that a change in the House Rules would not be binding on a tenant unless it was also reflected in the proprietary lease).

<sup>41</sup> See *Brennan v. Breezy Point Co-op, Inc.*, 63 N.Y.2d 1022, 1026 (N.Y. 1984) (holding that co-op had to comply with the procedures in both the proprietary leases and by-laws in order to validly enact an amendment to the proprietary lease).

<sup>42</sup> N.Y. COOP. CORPS. LAW § 14 (McKinney 2012).

<sup>43</sup> *Id.* (“By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates voting thereon at a meeting held after due written notice setting forth the proposed action and the purpose of the meeting.”).

<sup>44</sup> *Id.*

<sup>45</sup> N.Y.C., N.Y., CHARTER CODE § 3-14 (2012) (requiring that housing co-ops aided by New York City file their by-laws and any amendments to their by-laws with Housing Preservation and Development (HPD)).

<sup>46</sup> David B. Ezra, “*Get Your Ashes Out Of My Living Room!*”: *Controlling Tobacco Smoke In Multi-Unit Residential Housing*, 54 RUTGERS L. REV. 135, 188 (2001).

<sup>47</sup> Richard Siegler & Eva Talel, *Enforcing Housing Rules – the Power to Fine*, 231 N.Y. L.J., no. 86, May 5, 2004, available at <http://www.stroock.com/SiteFiles/Pub268.pdf>.

<sup>48</sup> See, e.g., Vivian S. Toy, *Upper West Side Condo Votes to Ban Smoking*, N.Y. TIMES, (May 12, 2011), <http://www.nytimes.com/2011/05/15/realestate/upper-west-side-condo-votes-to-ban-smoking.html?pagewanted=all> (reporting a large Upper West Side condominium of mainly family-sized units adopted a smoke-free policy; the enforcement policy specified a \$150 fine for the first complaint, with fines increasing by \$150 for each succeeding complaint).

<sup>49</sup> *Vernon Manor Co-op. Apartments v. Salatino*, 15 Misc. 2d 491, 497 (Civ. Ct. N.Y. Co. 1958) (holding a late charge equal to 100 percent of the payment in default cannot be sustained as reasonably related to the loss which might be incurred by the co-op); Siegler, *supra* note 48; see also *Behler v. Ten-Eighty Apartment Corp.*, N.Y. L.J., at 18, col. 4 (Sup. Ct. N.Y. Co., April 11, 2001) (holding that a liquidated damage clause in an alteration agreement which was disproportionate to any real loss suffered by the co-op was an unenforceable penalty).

<sup>50</sup> *Chemical Bank v. 635 Park Ave. Corp.*, 588 N.Y.S.2d 257, 258-59 (N.Y. Sup. Ct. 1992).

<sup>51</sup> *Brennan v. Breezy Point Co-op, Inc.*, 63 N.Y.2d 1022, 1026 (N.Y. 1984) (holding that co-op had to comply with the procedures in both the proprietary leases and by-laws in order to validly enact an amendment to the proprietary lease).

<sup>52</sup> N.Y. COOP. CORPS. LAW § 14(i) (McKinney 2012).

<sup>53</sup> *Id.* at § 16 (“The by-laws may provide for their amendment by the board of directors . . . . By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members.”).

<sup>54</sup> N.Y. BUS. CORP. LAW § 707 (McKinney 2012).

<sup>55</sup> *Id.*

<sup>56</sup> The shareholders are required to hold an annual meeting, where such policy changes would be voted on by the shareholders. However, the shareholders may call a special meeting to vote on a particular topic, such as a smoke-free by-law amendment. N.Y. COOP. CORPS. LAW § 16 (McKinney 2012).

<sup>57</sup> *Id.*

<sup>58</sup> N.Y. BUS. CORP. LAW § 608 (McKinney 2012).

<sup>59</sup> See CAL. CIV. CODE § 817 (West 2012) (“Amendment of the bylaws and articles of incorporation requires the affirmative vote of at least two-thirds of the resident-owner members or shareholders.”); MINN. STAT. ANN. § 308A.165 (West 2012) (“[T]he bylaws or amendment is approved by a majority of the votes cast.”); N.Y. COOP. CORPS. LAW § 16 (McKinney 2012) (“By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates.”).

<sup>60</sup> N.Y. COOP. CORPS. LAW § 16 (McKinney 2012) (“By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates.”).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Adequate minimum notice of the time, place, and proposed changes, must be made in writing and delivered by hand or through the mail to all shareholders no less than twenty days prior to the meeting. *Id.*

<sup>64</sup> If the bylaws do not address it, “a written or printed notice of the proposed amendment and of the time and place of the vote thereon shall be delivered to each member of the cooperative corporation.” *Id.* at § 12.

<sup>65</sup> N.Y. BUS. CORP. LAW § 708 (McKinney 2012) (allowing board action to be taken without board members being physically present, but, only if authorized by the bylaws of the corporation).

<sup>66</sup> *Id.* at § 608.

<sup>67</sup> See CAL. CIV. CODE § 817 (West 2012) (“Amendment of the bylaws and articles of incorporation requires the affirmative vote of at least two-thirds of the resident-owner members or shareholders.”); MINN. STAT. ANN. § 308A.165 (West 2012) (“[T]he bylaws or amendment is approved by a majority of the votes cast.”); N.Y. COOP. CORPS. LAW § 16 (McKinney 2012) (“By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates.”).

<sup>68</sup> N.Y. COOP. CORPS. LAW § 16 (McKinney 2012) (“By-laws may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates.”).

<sup>69</sup> The bylaws typically specify that the secretary of the corporation shall act as secretary of all meetings of the directors or shareholders and shall keep minutes of such meetings. A typical co-op bylaw describes the role of the secretary as follows: Duties of Secretary: The secretary shall keep or cause to be kept the minutes of meetings of the Board of Directors and of the shareholders .... In the absence or inability of the secretary, an assistant secretary shall have all of the powers to perform all of the duties of the secretary. Nothing herein shall preclude the secretary from delegating any of the ministerial functions of the office to any firm engaged by the Corporation to act as the managing agent of the Corporation. Siegler, *supra* note 47.

<sup>70</sup> Corporations are required to keep minutes of board and shareholders meetings. N.Y. BUS. CORP. LAW § 608 (McKinney 2012).

<sup>71</sup> *Id.* at § 624(a) (requiring that “[e]ach corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, boards and executive committee”). Although the statute does not provide much guidance about how minutes should be kept, practitioners suggest that written “minutes should provide a clear, concise, complete and accurate statement of corporate action taken at a duly called meeting.” Siegler, *supra* note 47.

<sup>72</sup> The minutes provide prima facie evidence of deliberate action taken by the corporation. DFI Communications, Inc. v. Greenberg, 41 N.Y.2d 602, 607-08 (1977) (holding that “duly subscribed minutes of a board meeting could be used as dispositive evidence of the modification of a written agreement”); Siegler, *supra* note 47.

<sup>73</sup> Linden Hill No. 1 Co-op Corp. v. Kleiner, 478 N.Y.S.2d 519, 522 (Civ. Ct. 1984) (“In sum, with respect to the nature of the proprietary lease itself, the courts simply do not distinguish for purposes of landlord-tenant law, between the leases held by co-op tenants and those held by the more traditional tenants.”).

<sup>74</sup> Irwin Cohen, *Your Rights and Obligations*, THE COOPERATOR, <http://cooperator.com/articles/598/1/Your-Rights-and-Obligations/Page1.html> (last visited June 11, 2012).

<sup>75</sup> Brennan v. Breezy Point Co-op., Inc., 484 N.Y.S.2d 510, 512 (N.Y. 1984) (“[T]o effect the desired change in the lease, there must be compliance with both the procedure contained in the by-laws and those contained in the lease.”).

## Appendices

# Implementing a Smoke-Free Policy: Frequently Asked Questions

## **1. Are there any legal barriers to adopting a smoke-free policy for co-ops?**

Federal and state laws allow private property owners and associations to adopt a smoke-free policy for all parts of their property, including individual residential units.

## **2. Is prohibiting smoking discriminating in any way?**

No. Smoking is not a protected right or activity. Also, an individual's status as a smoker is not a protected category of persons. Attempts by smokers to be considered disabled due to an addiction to nicotine have not been successful, so smokers do not receive protection under state or federal disability statutes.

## **3. Will legal liability increase after a smoke-free policy is instituted?**

Co-ops have a duty to act in the best interests of its shareholders. This means that regardless of whether or not the co-op has a smoke-free policy, owners may successfully argue that the board of directors must act to stop secondhand smoke. Implementing a smoke-free policy should deter smoking on the property, decreasing the likelihood of liability claims.

## **4. Is it difficult to enforce a smoke-free policy?**

As with other co-op rules, such as those prohibiting loud music or overcrowding, it is important to create a clear policy with set consequences for policy violations. Further, enforcement must be prompt and consistent. Enforcement may be progressive, perhaps starting with written warnings and increasing to fines. Be sure to consult with those ultimately responsible for ensuring compliance to ensure that the enforcement scheme is realistic.

A smoke-free policy is largely self-enforcing. Conducting a survey of your shareholder-residents may help foresee potential compliance problems and generate thoughtful solutions. Properties that have already adopted smoke-free policies report needing only minimal effort to enforce the policy.

## **5. Is the process of creating a smoke-free cooperative expensive?**

Costs may be nominal and limited to printing educational materials, surveys and the policy (costs eliminated altogether if email is used), "no-smoking" signs for common areas and filing fees to record the by-law amendment. If your cooperative opts to hire an attorney to assist with the drafting process, or elects to construct an outdoor smoking area, it may incur additional costs for these services.



## Creating a Resident Survey

When conducting the survey, consider offering an incentive, such as a gift card or raffle ticket to encourage residents to complete the survey.

State your purpose clearly in the heading. Your objective may be to review your building's smoke-free policy or to determine receptiveness to a smoke-free policy. Advise residents and owners that their participation in the survey will help the cooperative reduce smoking-related complaints and that their answers will be kept confidential. Be sure to leave room for additional comments and include a deadline for completing the survey. At the end, thank them for their time and answers, and let them know you will keep them informed on upcoming meetings or proposed policy changes. A sample survey follows.

## Resident Survey: Cooperative Smoking Policy

The co-op is currently reviewing the smoking policy. Your answers will help us to determine whether smoking is occurring and will help the cooperative reduce smoking related complaints. We greatly appreciate your time and answers to the following questions. All answers will be kept confidential.

**Has someone, including yourself, smoked cigarettes, cigars, or pipes anywhere inside your unit in the past 30 days?**

Yes ☐ No ☐

**How many years have you been a resident of the building?** \_\_\_\_\_

**How many children live in your unit?** \_\_\_\_\_

**Have you smelled tobacco smoke in your home that comes from another apartment or from outside?**

Yes ☐ No ☐

**Does smelling tobacco smoke in your home bother you?**

Yes ☐ No ☐

**Do you or someone who lives with you suffer from an illness such as asthma, chronic bronchitis, heart disease, diabetes or cancer?**

Yes ☐ No ☐

**Would you prefer to live in a non-smoking building?**

Yes ☐ No ☐

**If yes to above, would you prefer that smoking is prohibited everywhere on the property – both inside and outside?**

Yes ☐ No ☐

**What would you do if we made our building smoke-free?**



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**10. Please feel free to leave additional comments on the back of this sheet.**

Please return your survey: in the enclosed envelope / in the following drop off location  
\_\_\_\_\_ by \_\_\_\_\_ (date).

Thank you for your time and answers.

We will keep you informed on upcoming meetings and/or proposed policy changes.



## Sample Letter Proposing a Smoke-Free Rule

[Date]

[Resident-Shareholder & Address]

Dear Resident-Shareholder:

The Board of Directors of \_\_\_\_\_ [Co-op Name] is writing to request your support to designate our property as smoke-free.

Smoking in the building can expose non-smoking residents to secondhand tobacco smoke. Research shows that secondhand smoke can drift under doors and through ventilation ducts, electrical outlets and light fixtures into neighboring units and common areas. Once in neighboring units or common areas, the smoke can stay in the air for hours. The potential for exposure raises serious health concerns for our residents, especially children and those who are particularly susceptible to secondhand smoke. Some of the health effects include the following:

- Non-smokers who are exposed increase their risk of developing heart disease by 25-30 percent.
- Non-smokers who are exposed increase their risk of developing lung cancer by 20-30 percent.
- 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.
- Even brief exposure to secondhand smoke can have immediate adverse effects of triggering asthma attacks and increase the risk of a heart attack.

The risk of fire is also a concern, both for smokers as well as their non-smoking neighbors. Cigarettes are the leading cause of home fire deaths and cause \$418 million in damage each year in the United States. One of four people killed in home fires are not the person whose cigarette caused the fire.

The only effective way to address these concerns is by designating our property as entirely smoke-free. According to the American Society for Heating, Refrigerating and Air Conditioning Engineers, no standard ventilation system or air purifier can completely remove secondhand smoke.

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

The co-op is proposing two options for implementation. The first option is an immediate no-smoking policy throughout the entire condo building including all common areas and individual units. The second option is to grandfather units owned by current residents who smoke, so that smoking would be allowed in a grandfathered unit until it is sold or transferred, at which time the unit would become smoke-free. The grandfathered units would still have to abide by the co-op's existing rule that prohibits nuisances, including secondhand smoke drifting from the unit, if it becomes so severe that it becomes a nuisance.

Before formally proposing and putting it to a vote we want to first obtain as much owner input as possible. For this purpose we will hold an informal informational meeting on \_\_\_\_\_ at \_\_\_\_\_ p.m. If you are unable to attend please contact us with questions and concerns.

Thank you,

Board of Directors

# Sample By-Law Amendment

*SPACE ABOVE INTENTIONALLY LEFT BLANK*

## By-Law Amendment

### Smoke-Free Rule

The undersigned members of the Board of Directors (the “Board”) of the

\_\_\_\_\_ [Name of Co-op] under the Certificate of Incorporation dated  
\_\_\_\_\_ [Date] and recorded with the

\_\_\_\_\_ [Secretary of State ] The organization of resident-shareholders of the  
\_\_\_\_\_ [Name of Co-op] (the “Co-Op), does hereby adopt the  
following administrative resolution as an amendment to the Co-op’s rules and regulations  
pursuant to the by-laws.

WHEREAS, the Board is empowered to manage and operate the co-op. This authority is derived from the articles of incorporation, the by-laws, and the proprietary lease; Resident-shareholders, through the proprietary lease, obtain the right to occupy the space in the building to which their shares are allocated (i.e. his or her apartment unit). The proprietary lease defines the rights and obligations of the resident-shareholder in regards to the premises; WHEREAS, secondhand tobacco smoke contains 250 known toxic chemicals, no less than 60 of which are known or probable human carcinogens, and is itself classified as a “Class A” carcinogen by the United States Environmental Protection Agency; WHEREAS, exposure to secondhand smoke substantially increases the risk in non-smokers of lung cancer, cardiovascular disease and other acute and chronic health conditions; WHEREAS, secondhand smoke is known to drift through common walls and ventilation systems and contaminate air in common areas and individual units; WHEREAS, a vote by the resident-shareholders on the language of this by-law was duly administered; WHEREAS, by said vote, a sufficient percentage of the unit owners, pursuant to the Co-ops’ articles of incorporation and by-laws, approved this by-law amendment, NOW, THEREFORE, BE IT RESOLVED, that the following rule and procedure shall be applicable:

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

of this rule may constitute a nuisance pursuant to the terms and provisions of its constituent documents of the co-op. Smoking shall include carrying, burning, or otherwise handling or controlling any lit or smoldering product containing tobacco or cloves, including but not limited to cigarettes, cigars, or pipes.

Violations of this rule will be enforced as follows: [DETAIL YOUR ENFORCEMENT POLICY HERE.]

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

SO RESOLVED.

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

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

STATE OF NEW YORK

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

On the \_\_\_\_ day in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals, whose names are subscribed to the written instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures of the instrument, the individuals, or the person(s) upon behalf of which the individuals acted, executed the instrument.

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

## Additional Resources

### Smoke-free policies in multi-unit housing:

- The CDC's Healthy Homes Manual  
[http://www.cdc.gov/healthyhomes/Healthy\\_Homes\\_Manual\\_WEB.pdf](http://www.cdc.gov/healthyhomes/Healthy_Homes_Manual_WEB.pdf)
- EPA's Smoke-Free Homes and Cars Program  
<http://www.epa.gov/smokefre/>
- Institute of Medicine Smoke-Free Housing Program  
[http://sites.nationalacademies.org/Tobacco/smokescreen/Tobacco\\_047656](http://sites.nationalacademies.org/Tobacco/smokescreen/Tobacco_047656)
- Comprehensive Health Education Foundation  
<http://www.chef.org/HealthEquityPartners/TobaccoPrevention/tabid/99/Default.aspx>
- Steps to Smoke-Free Housing NY  
<http://www.smokefreehousingny.org/>

### Current smoke-free programs and policies:

- State Tobacco Activities Tracking and Evaluation (STATE) System  
<http://apps.nccd.cdc.gov/statesystem/Default/Default.aspx>
- American Lung Association State Reports  
<http://www.lungusa.org/stop-smoking/tobacco-control-advocacy/>
- New York State Tobacco Free Initiative  
<http://tobaccofreenys.org/Tobacco-Control-Works-NY.html>
- The Tobacco Control Legal Consortium  
<http://www.tclconline.org/>
- Center for Public Health and Tobacco Policy  
<http://www.tobaccopolicycenter.org/>

### Secondhand smoke health concerns:

- American Lung Association reports "About Smoking"  
<http://www.lungusa.org/stop-smoking/about-smoking/>
- EPA's Health Effects of Exposure to Secondhand Smoke  
<http://www.epa.gov/smokefre/healtheffects.html>
- CDC's Tobacco Control section  
[http://www.cdc.gov/tobacco/basic\\_information/index.htm](http://www.cdc.gov/tobacco/basic_information/index.htm)
- The American Cancer Society  
<http://www.cancer.org/Cancer/CancerCauses/TobaccoCancer/QuestionsaboutSmokingTobaccoandHealth/questions-about-smoking-tobacco-and-health-toc>
- RTI Tobacco Control and Prevention information  
[http://www.rti.org/brochures/tobacco\\_control\\_prevent\\_eng.pdf](http://www.rti.org/brochures/tobacco_control_prevent_eng.pdf)



## For information from your Local Health Boards, visit:

- The New York Health Dep't Tobacco Control  
[http://www.health.ny.gov/prevention/tobacco\\_control/](http://www.health.ny.gov/prevention/tobacco_control/)
- New York City's Tobacco Control Program  
<http://www.nyc.gov/html/doh/html/smoke/smoke2-legal.shtml>
- The New York State Tobacco Control Program  
<http://www.nysmokefree.com/>

The Public Health and Tobacco Policy Center is a legal research Center within the Public Health Advocacy Institute. Our shared goal is to support and enhance a commitment to public health in individuals and institutes who shape public policy through law. We are committed to research in public health law, public health policy development; to legal technical assistance; and to collaborative work at the intersection of law and public health. Our current areas of work include tobacco control and childhood obesity and chronic disease prevention. We are housed in Northeastern University School of Law.

## What we do

### Research & Information Services

- provide the latest news on tobacco and public health law and policy through our legal and policy reports, fact sheets, quarterly newsletters, and website

### Policy Development & Technical Assistance

- respond to specific law and policy questions from the New York State Tobacco Control Program and its community coalitions and contractors, including those arising from their educational outreach to public health officials and policymakers
- work with the New York State Cancer Prevention Program to design policies to prevent cancer
- assist local governments and state legislators in their development of initiatives to reduce tobacco use
- develop model ordinances for local communities and model policies for businesses and school districts

### Education & Outreach

- participate in conferences for government employees, attorneys, and advocates regarding critical initiatives and legal developments in tobacco and public health policy
- conduct smaller workshops, trainings webinars, and presentations focused on particular policy areas
- impact the development of tobacco law through *amicus curiae* ("friend of the court") briefs in important litigation

## Find us online

[www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org)

The Center's website provides information about recent tobacco news and case law, New York tobacco-related laws, and more. Current project pages include: tobacco-free outdoor areas; tobacco product taxation; smoke-free multiunit housing; and retail environment policies. The website also provides convenient access to reports, model policies, fact sheets, and newsletters released by the Center.

<http://twitter.com/CPHTP>

<https://www.facebook.com/CPHTP>

Follow us on Twitter and Facebook for informal updates on the Center and current events.

### Requests for Assistance

The Center is funded to support the New York State Tobacco Control Program, the New York State Cancer Prevention Program and community coalitions and educators. The Center also assists local governments and other entities as part of contractor-submitted requests. If we can help with a tobacco-related legal or policy issue, please contact us.

The Center provides educational information and policy support. The Center does not represent clients or provide legal advice.





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