

Table of Contents

TOPIC	PAGE
Smoke-Free Housing is Needed and Wanted	2
Health Risks of Secondhand Smoke	3
Ventilation Does Not Reduce Odor, Nor Health Risks	4
Property Damage Due to Smoking	5
Insurance Premiums	6
Current Law - Areas that Should Be Smoke-Free	7
Designating Smoke-Free Housing	8
Moving Ahead: Making a Smoke-Free Change	9
Establishing Smoke-Free Policies	11
Sample Lease Provisions	12
Enforcing Your Policy	13
For More Information	14
Promote Your Policy: Smoke-Free Housing Registry	15
References	16

This Housing Guide is provided for educational purposes only and is not to be construed as a legal opinion or as a substitute for obtaining legal advice from an attorney. Laws cited are current as of October 1, 2007. Tobacco Free Lancaster County and its partners provide some legal information and education about tobacco and health, but does not provide legal representation. Readers with questions about the application of the law to specific facts are encouraged to consult legal counsel familiar with the laws of their jurisdictions.

Smoke-Free Housing is Needed and Wanted



In June 2004, the Lincoln City Council adopted an ordinance that eliminated smoking in nearly all indoor public places and workplaces known as the Lincoln Smoking Regulation Act (LSRA). A majority of Lincoln citizens agreed and voted in favor of this ordinance which went into effect January 1, 2005. The intent of the ordinance is to further protect the health, safety, and welfare of Lincoln residents, employees, and visitors from the health risks associated with secondhand smoke. What LSRA doesn't do is restrict smoking in homes where children are most exposed to secondhand smoke.

- Once comprehensive smoke-free policies are adopted, the health benefits are immediate. Levels of indoor air pollution decrease by nearly 90%, providing significant benefits to respiratory and cardiac health.¹

- In 2008-2009, 53% of Lancaster County smokers reported having rules against smoking in their homes.²
- In 2008-2009, 88% of all Lancaster County residents reported having rules that do not allow smoking anywhere in their home.²
- In 2010, 86 multi-unit housing buildings with 1,106 units were identified as smoke-free in Lincoln.³
- In 2010, 29 lodging facilities (hotels, motels and bed & breakfasts) were totally smoke-free in Lincoln representing more than 1,972 permanent clean air rooms.⁴



Health Risks of Secondhand Smoke



The Facts about Secondhand Smoke

Smokers are not the only people affected by secondhand smoke--it affects everyone. There is no safe level of secondhand smoke. Even occasional exposure can significantly increase your health risks. For every eight smokers who die, one nonsmoker dies from secondhand smoke exposure. Secondhand smoke contains over 4,000 chemicals, of which 250 are known to be toxic or cause cancer.⁵

- Secondhand smoke is the third leading cause of preventable death in the United States. It kills approximately 53,000 nonsmokers each year.⁶

- The U.S. Environmental Protection Agency (EPA) has classified secondhand smoke as a human carcinogen, similar to asbestos or radon, known to cause cancer.⁷
- In Nebraska, approximately 220 to 400 adults, children and infants die each year from others' smoking (secondhand smoke and smoking while pregnant).⁸

Our Children's Health

More than 15 million U.S. children are exposed to secondhand smoke at home.⁹

Each year, secondhand smoke in the United States is linked to:

- 500,000 physicians visits for asthma
- 1.3 million visits for coughs
- Over 115,000 episodes of pneumonia
- 260,000 episodes of bronchitis
- 2 million cases of earache⁹

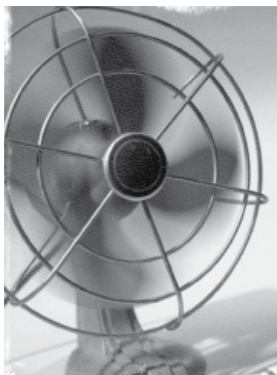
Additionally, infants who are exposed to secondhand smoke are at greater risk for Sudden Infant Death Syndrome (SIDS).⁵

Ventilation Does Not Reduce Odor, Nor Health Risks

Indoor Air Quality

The U.S. Environmental Protection Agency (EPA) “concluded that the widespread exposure to Environmental Tobacco Smoke (ETS) in the U.S. presents a serious and substantial public health risk.” ETS is the same thing as secondhand smoke. The EPA recommends “taking appropriate steps to minimize peoples’ exposure to tobacco smoke in indoor environments.”¹⁰

- Unfortunately, commercial air filtering systems are not designed to remove the odor, or cancer-causing substances.¹¹
- Shared ventilation systems cause tobacco smoke to blow from one room to another. Increased building ventilation alone is not effective in reducing exposure to secondhand smoke generated from smoking areas.¹²
- Under typical conditions of smoking



and ventilation, indoor air becomes massively polluted with fine particle air pollution and more than 2,500 other chemicals found in ETS, jeopardizing human health.¹³



- Secondhand smoke can seep into and out of open windows and doorways.¹⁴
- Secondhand smoke does not quickly clear from a room. Smoke clings to fabrics and clothing.¹⁵
- Unhealthy levels of nicotine particles and other chemicals in secondhand smoke still remain in the air and on surfaces in a room where smoking has occurred up to weeks later.¹⁵

“A total ban on indoor smoking is the only effective means of controlling the health risks associated with ETS exposure.”

American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE), 2005

Property Damage Due to Smoking

Additional Cost

Smoking often causes a variety of expensive property damage, ranging from extra cleaning costs to fire-related repairs. Most of these expenses can be prevented.

- Smoking materials (e.g., cigarettes, cigars, lighters, matches, etc.) are the leading cause of home and total fire deaths in the United States.¹⁶
- According to the United States Fire Administration, the fatality rate due to smoking is nearly four times higher than the overall residential fire rate; injuries are more than twice as likely.¹⁶
- According to the Nebraska State Fire Marshall, in 2008 there were 55 smoking-related fires resulting in damages of over \$544,630.¹⁷



When a tenant who smokes moves out, costly cleaning and repairs are often necessary to prepare the unit for a new tenant:

- Removing nicotine (yellow stains) on walls, cabinets, blinds and fixtures.
- Eliminating smoke odor in drapes, carpets and walls.
- Repairing damaged, burned or singed carpet, tiles and drapes.
- One paint contractor estimated that to paint a one-bedroom apartment of a smoker could cost \$800-\$900, almost double that of painting a nonsmoker's apartment.¹⁸

Tenants who smoke inside their homes cause higher cleaning costs than tenants who don't smoke.

Insurance Premiums

Research suggests that smoke-free apartment buildings may have increased re-sale value, should you ever decide to sell your building. Real estate agents agree; as the number of public places in which a person can smoke has shrunk, so has the number of home buyers who are even willing to consider a house with smoking in its past.¹⁹

Some insurance agencies give a credit or premium reduction for landlords and/or renters on their property/liability insurance if they do not allow smoking in their apartment building (landlord) or their apartment (renter).



Ask your insurance agent about potential reductions in your premium.

Possibilities include:

- Ask your insurance agent whether or not your current policy includes a penalty (explicit or hidden) if you don't presently have a smoke-free policy in your tenant's leases.
- Seek a "credit" for having a smoke-free apartment policy, as some insurers automatically add a "debit" to the premium unless they are shown that leases for the apartment building require all apartments to be smoke-free. One insurance agent stated that she had seen credits of as much as 5% to 10% of the premium.
- Seek a premium reduction especially if your insurer has recently dropped a number of "premium perks" due to unrelated losses in the insurance business. Since the smoke-free apartment credit "perk" may have been dropped, you should negotiate to have it included, seeing as smoke-free apartment policies reduce the likelihood of fires and other cigarette-caused damages.

Current Law - Areas that Should Be Smoke-Free

Certain areas of multifamily units should already be smoke-free. According to both the Nebraska Clean Indoor Air Act and the Lincoln Smoking Regulation Act (LSRA), common or any general use areas of rental apartment buildings must already be smoke-free, including:

- Entry or exit areas
- Lobby areas
- Restrooms
- Laundry rooms
- Recreational rooms
- Elevators
- Gyms
- Indoor swimming pools
- Common traffic areas

For questions about the LSRA, contact the Lincoln-Lanaster County Health Department, Tobacco Prevention Program, 402-441-6225. Questions regarding the Nebraska Clean Indoor Air

Act should be directed to the Nebraska Department of Health and Human Services, Indoor Air Quality Program, 402-471-8320.



Designating Smoke-Free Housing

Although citizens of Lincoln are protected from secondhand smoke where they work, eat, and play, some are still exposed to secondhand smoke where they live. Landlords and property managers can protect tenants from exposure by prohibiting smoking in individual rental units.

Under common law, a landlord has a right to place certain restrictions on tenants, including restrictions on smoking, as long as the landlord does not violate constitutional rights or other laws.²⁰ There is no state or federal constitutional right to smoke.²¹

Landlords not only have the right to prohibit smoking, but in fact may also be liable under a variety of legal theories for failure to prohibit smoking when a tenant is affected by secondhand smoke. A tenant may take action against a landlord using common law remedies, state or local health and safety codes, or the federal Fair Housing Act (FHA).²²

Smoke-free apartments or condominiums are not only good health policy, but they also make sense legally. As more is learned about secondhand smoke and its harmful effects and more environments become smoke-free, increasing numbers of people will likely demand smoke-free living. Landlords and building owners can join this movement by offering smoke-free leases.

Key Points

- Landlords, condominium associations and the like may prohibit smoking or refuse to allow smoking for new, and in many cases existing, occupants. There is no judicially recognized “right to smoke” in a multi-unit dwelling, whether the dwelling is privately owned or public housing.
- Residents of multi-unit dwellings have a variety of common law remedies for stopping secondhand smoke infiltration.
- A resident of a multi-unit dwelling who can show secondhand smoke exposure limits a major life activity may be able to use the federal Fair Housing Act to end the secondhand smoke infiltration.
- Landlords, condominium associations and the like should explicitly address smoking in their leases, bylaws, etc.



Moving Ahead - Making a Smoke-Free Change



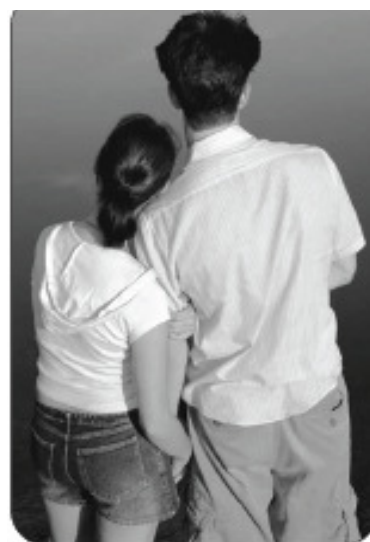
1 Commons areas. Make all commons areas smoke-free immediately as required by law.

2 Survey your tenants. Find out how many smoke in their apartments. Not all households with smokers allow smoking in their homes. You may have to conduct a survey, which will serve two purposes - gathering information and alerting tenants that change may be coming. As you do this, you may want to find out how your tenants would view a smoke-free policy. Once you have the information about smoking habits, plot it on a diagram and see if any patterns emerge. Are the no-smoking apartments clustered in buildings, wings, or floors? Use these patterns to decide which areas you will make smoke-free.

3 Determine a budget for incentives. You can speed up the move toward smoke-free buildings. One way is to offer incentives to tenants to move to other floors, wings, or buildings.

You must decide what up-front expenses you are willing to take on. These expenses could include moving expenses or other incentives (like discounted rent) for tenants willing to relocate to another apartment. For example, if you find that you have only two smoking tenants in Building A, you may want to provide a month's or half a month's free rent, for those tenants to move to Building B so you can declare Building A smoke-free.

4 Set a time frame for the change. Check the date all your leases are due for renewal. Smoke-free policies are harder to implement if you and your tenants are bound by long-term leases. If all your tenants are on month-to-month leases, you can make changes relatively quickly.



Moving Ahead - Making a Smoke-Free Change

5 Notify tenants of your plans. Well ahead of your target date, notify tenants that you intend to make the building or other area smoke-free by a certain date. Provide them with your reasons to be smoke-free which typically include a combination of health, safety and business concerns. You may want to let your current tenants know that you would be glad to have them remain in the building as long as they agree not to smoke.

6 Make tenants aware of community cessation services. Many community agencies and organizations offer smoking cessation classes, groups, and counseling sessions. Below are some resources that you can use:

Nebraska Tobacco Quitline
1-800-QUIT-NOW
(1-800-784-8669)

American Lung Association of
Nebraska
1-800-586-4782

St. Elizabeth Regional Medical Center
(402) 219-7000

BryanLGH Medical Center
Intervent
(402) 481-6307

7 Introduce new leases or addendums. You should include some wording in your leases that makes tenants aware of their obligation not to smoke in their unit and of the consequences if they do not meet these obligations. Make sure that residents also know to call you as the owner/manager of the property right away if they suspect a violation of the policy.

8 Post signs. A few days before the building becomes smoke-free, send out an announcement to tenants and employees. Then post signs at entry ways along these lines:



Establishing Smoke-Free Policies

Statewide and local opinion surveys show that most people, including smokers, prefer to be in a smoke-free environment. In 2008-2009, 85% of Nebraska and 88% of Lancaster County residents stated they have rules against smoking in their home.²

Sample Policy

The following language may be added to a rental or lease agreement to help define the smoking restrictions.



Restrictions

SMOKING: Due to the increased risk of fire, increased maintenance costs, increased insurance costs, and the known harmful health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, whether enclosed or outdoors. This policy applies to all owners, tenants, guests and service persons.

Adapted from the Americans for Nonsmokers' Rights Foundation

Definition

SMOKE OR SMOKING: Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the



possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

Definition taken from the Lincoln Smoking Regulation Act, Lincoln Municipal Code Chapter 8.50.

Some other areas to designate smoke-free could be:

- Indoor or outdoor recreation areas
- Play areas or other areas near children
- A set distance from windows and doors
- Balcony or patio

Sample Lease Provisions

The website links below contain sample language for smoking restrictions in both common areas and individual units. *(Tobacco Free Lancaster County nor its partners endorse any of the cited provisions and is providing the information for informational purposes only. Landlords should seek the advice of their own legal counsel before adding language to their rental agreements.)*

- http://mnsmokefreehousing.org/documents/Smoke_free_addendum.pdf
- http://www.smokefreeapartments.org/Registry_Pix/Smokefree%20Lease%20Addendum.pdf
- http://www.smokefreeapartments.org/Registry_Pix/One-Page%20Lease%20Addendum.pdf
- <http://www.tobaccofreeutah.org/smokefreemodelpolicy.pdf>
- <http://www.tobaccofreeutah.org/nosmokingpolicy-example.pdf>



Enforcing Your Policy

Smoke-free policies generally are self-enforcing and not too time consuming or burdensome to enforce. However, if you do not enforce the no-smoking rules, you will not have smoke-free units. You may decide to issue a warning before you evict someone for breaking the lease. Once they know that you are serious about the policy, most tenants will follow it. Here are some suggestions on how to work through the issue.

1. **Remind residents of the lease clause or addendum.** Remind

the residents that it is a violation to smoke in the building or other designated smoke-free areas.

2. **Tell resident that he or she is in violation of the clause or addendum.** Tell the resident that you know he or she is violating the clause and explain the circumstances.
3. **Warn resident.** Explain to the resident the policies and the consequences for violating the policy.

Sample Letter to Warn Residents

Source: Professional Apartment Management, 2001

Dear Resident,

Section X of your lease prohibits smoking in your apartment, anywhere in the apartment building, or within X feet of the building. Yesterday, at approximately 6:30 P.M., you were observed smoking on the steps leading to your apartment.

This is a violation of your lease. If you violate your lease again, we may take appropriate disciplinary action, which may include eviction. Thank you for your cooperation.

**Yours truly,
The Management**

For More Information

Policy Information, Research, and Implementation Guidance:

Lincoln-Lancaster County Health Dept.
3140 N Street
Lincoln, NE 68510
Phone: (402) 441-6225
Fax: (402) 441-8323
<http://tobaccofreelancastercounty.org>

NE Department of Health and Human
Services
Tobacco Free Nebraska Program
P.O. Box 95026
Lincoln, Nebraska 68509-5026
Phone: (402) 471-2101
<http://www.dhhs.ne.gov/tfn>
E-mail: tfn@dhhs.ne.gov

Nebraska Clean Indoor Air Act:

Nebraska Department of Health and
Human Services
Clean Indoor Air Act Program
P.O. Box 95026
Lincoln, NE 68509-5026
Phone: (402) 471-8320
<http://smokefree.ne.gov>



Funding provided by the Nebraska Department of Health and Human Services/Tobacco Free Nebraska program as a result of the Tobacco Master Settlement Agreement.

Promote Your Policy: Smoke-Free Housing Registry

☐ **Yes, I would like to have my property listed in the Smoke-Free Housing Registry.**

☐ Mr. ☐ Mrs. ☐ Ms. Name _____

Address _____

City, State, Zip _____

Phone (_____) _____ Fax (_____) _____

E-mail _____

Name of Property _____

Address of Property _____

City, State, Zip _____

Phone: _____

Total # of Units _____ # of Smoke-Free Units _____

Grounds Smoke-Free YES / NO (Explain) _____

Name of Property _____

Address of Property _____

City, State, Zip _____

Phone: _____

Total # of Units _____ # of Smoke-Free Units _____

Grounds Smoke-Free YES / NO (Explain) _____

Name of Property _____

Address of Property _____

City, State, Zip _____

Phone: _____

Total # of Units _____ # of Smoke-Free Units _____

Grounds Smoke-Free YES / NO (Explain) _____

To be included in the Smoke-Free Housing Registry, you must include this informational sheet as well as a copy of your lease or policy manual that explicitly states the no-smoking policy. Once this information is received, we will contact you for more information to be included in the Smoke-Free Housing Registry. This Registry will be available to the public.

For more information, feel free to contact us at (402) 441-6225. I certify that the information I am providing is true and accurate.

Signature Property Owner/Manager

Date

Return to: Lincoln-Lancaster County Health Dept., 3140 N Street, Lincoln, NE 68510
Attn: Tobacco Prevention
Fax (402) 441-8323

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