

## SAMPLE POLICY ON SMOKING FOR RESIDENTIAL BUILDING SMOKE-FREE POLICY

Building/Property Address: \_\_\_\_\_

This Smoke-Free Policy Rider consists of additional terms, conditions and rules that are incorporated into your Lease. There is no safe amount of exposure to secondhand smoke. Adults exposed to secondhand smoke have higher risks of stroke, heart disease and lung cancer. Children exposed to secondhand smoke have higher risks of asthma attacks, respiratory illnesses, middle ear disease and sudden infant death syndrome (SIDS). For these reasons, and to help people make informed decisions on where to live, New York City requires residential building owners (referred to in this policy as the "Owner/Manager," which includes the owner of record, seller, manager, landlord, any agent thereof or governing body) in buildings with three or more residential units to create a policy on smoking and share it with all tenants. The building policy on smoking applies to any person on the property, including tenants, subtenants, other residents, licensees and guests.

### Definitions

- a. **Smoking:** inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, little cigar, pipe, water pipe or hookah, herbal cigarette, non-tobacco smoking produce (e.g., marijuana or non-tobacco shisha), or any similar form of lighted object or device designed for people to use to inhale smoke
  
- b. **Electronic Cigarette (e-cigarette):** a battery-operated device that heats a liquid gel, herb or other substance and produces vapor for people to inhale

### Smoke-Free Air Act

New York City law prohibits smoking and using e-cigarettes of any kind in indoor common areas, including but not limited to, lobbies, hallways, stairwells, mailrooms, community rooms, lounges, fitness areas, storage areas, garages and laundry rooms in any building with three or more residential units. NYC Admin. Code, § 17-505.

### Policy on Smoking

Smoking is not allowed in the locations checked below (check all boxes that apply). Even if no boxes are checked, the Smoke-Free Air act bans smoking tobacco or non-tobacco products, and using e-cigarettes in indoor common areas.

- Inside of residential units\*
- Outside of areas that are part of residential units, including balconies, patios and porches
- Outdoor common areas, including play areas, rooftops, pool areas, parking areas, driveways, lawn and garden areas, and shared balconies, courtyards, patios, porches or yards
- Outdoors within 15 feet of entrances, exits, windows, and air intake units on property grounds
- Other areas/exceptions:  
\_\_\_\_\_

\*Rent-stabilized and rent-controlled units may be exempt from a policy restricting smoking inside residential units unless the existing tenant consents to the policy in writing.

You, as tenant shall inform subtenants, other residents, guests, licensees, live-in employees and service workers of this Smoke-Free Policy.

#### **Owner/Manager Not a Guarantor of Smoke-Free Environment**

Tenant acknowledges that the adoption of a smoke-free living environment at [property name/address] does not make the Owner/Manager or any of its agents the guarantor of Tenant's health or of the smoke-free condition of Tenant's unit and the common areas.

However, Owner/Manager shall take reasonable measures to enforce the smoke-free terms of its leases and to make [property name/address] smoke-free. Owner/Manager is not required to take steps in response to smoking unless Owner/Manager actually knows of said smoking or has been given written notice of said smoking, which Owner/Manager is then able to confirm.

#### **Other Tenants are Third-Party Beneficiaries of Tenant's Agreement to Abide by this Smoke-Free Policy**

Tenant agrees that all other Tenants at [property name/address] are third-party beneficiaries of Tenant's written assent to the terms of this Rider. A Tenant may sue another Tenant for an injunction to prohibit smoking or for damages, but does not have the right to sue for the eviction of another Tenant. Any suit between Tenants herein shall not create a presumption that the Owner/Manager breached this Rider. Nor shall Owner/Manager be liable to Tenant for any breach of [property name/address]'s Smoke-Free Policy by any non-party to this Lease and Rider, whether framed as a claim of negligence, trespass, breach of the covenant of quiet enjoyment, nuisance, breach of the warranty of habitability, or any other claim in law or in equity.

#### **Effect of Breach and Right to Terminate Lease**

A Breach of this Rider shall give each party all the rights contained herein, as well as the rights provided for in the Lease. A material breach of this Rider by Tenant shall be a substantial breach of the Lease and grounds for termination of the Lease by Owner/Manager.

Owner/Manager acknowledges that in declaring [property name/address] to be smoke-free, the failure of Owner/Manager to respond to a confirmed report by Tenant of breach of this Smoke-Free Policy shall be treated as equivalent to failure to respond to a request for maintenance.

#### **Disclaimer by Owner/Manager**

Tenant acknowledges that Owner/Manager's adoption of a smoke-free living environment, and the efforts to designate [property name/address] as smoke-free, does not in any way alter the standard of care that Owner/Manager owes to Tenant, to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality than any other rental premises. Owner/Manager specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality compared to any other residential property. Owner/Manager cannot and does not warranty or promise that the premises or common areas will be free of secondhand smoke. Tenant acknowledges that Owner/Manager's ability to police, monitor, and enforce this Smoke-Free Policy is largely dependent upon voluntary compliance by Tenant and Tenant's subtenants, other residents, guests, licensees, live-in employees, and service workers. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are hereby put on notice that Owner/Manager does not assume any higher duty of care to enforce this Rider than any other obligation inuring to Owner/Manager under this Lease.

#### **Complaint Procedure**

Complaints about smoke drifting into a residential unit or common area should be made promptly to the Owner/Manager listed here \_\_\_\_\_.

Complaints should be made in writing and should be as specific as possible, including the date,

approximate time, location where smoke was observed, building address, description of incident and apparent source of smoke.

---

**Acknowledgment and Signatures**

I have read the policy on smoking described above, and I understand the policy applies to the property. I agree to comply with the policy described above.

For rental units, I understand that violating the smoking policy may be a violation of my lease. For condominiums, cooperatives or other owned units, I understand that violations of the policy on smoking may be addressed according to the building's governing rules.

Owner/Manager's printed name \_\_\_\_\_

Owner/Manager's signature \_\_\_\_\_ Date \_\_\_\_\_

Tenant's printed name \_\_\_\_\_

Tenant's signature \_\_\_\_\_ Date \_\_\_\_\_