



# MODEL SMOKE-FREE CONDOMINIUM POLICY



This model smoke-free policy for condo associations prohibits smoking of all commercial tobacco products, including e-cigarettes, everywhere on association property—both inside and outside. It can be modified to fit the association’s needs and should be reviewed by local counsel. Changes to one part of the policy may require changes to other parts as well. This document is provided for educational purposes only and should not be considered legal advice.



## Model Smoke-Free Policy

[ \_\_\_\_\_ ] Homeowners' Association

### Section 1. Findings

**WHEREAS** the U.S. Surgeon General has conclusively determined that (1) there is no risk-free level of exposure to secondhand commercial tobacco smoke; (2) secondhand smoke causes premature death in children and adults who do not smoke; (3) children exposed to secondhand smoke are at increased risk of sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma; (4) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (5) aerosol from electronic delivery devices can contain harmful chemicals and carcinogens that cause serious health effects; (6) eliminating smoking in indoor spaces protects nonsmokers from exposure to secondhand smoke; (7) separating smoking units from nonsmoking units, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke;<sup>1</sup> and

**WHEREAS** the American Society of Heating, Refrigerating and Air-Conditioning Engineers has issued a position document on secondhand commercial tobacco smoke concluding that “the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity”<sup>2</sup>; and

**WHEREAS** studies show that “thirdhand smoke,” or the toxic residue from cigarettes, cigars and other combustible tobacco products and e-cigarettes, can linger on surfaces and furnishings long after the products are extinguished or deactivated; that it clings to walls and ceilings and is absorbed in carpets, clothing, draperies, upholsteries, toys, vehicle interiors, and other items; and that it is harmful, especially to children and pets;<sup>3</sup> and

**WHEREAS** in 2017, smoking was the leading cause of fire-related deaths in Minnesota;<sup>4</sup> and

**WHEREAS** given the proven health risks associated with smoking and breathing secondhand smoke, the Board of Directors (the “Board”) deems it in the best interest of all members of the Association to [approve an amendment to the declaration, or a change to the Rules and Regulations that]<sup>5</sup> prohibit[s] the smoking of commercial tobacco products on the entire property of [ \_\_\_\_\_ ], including, but not limited to, the individual units, indoor and outdoor common elements, and indoor and outdoor limited common elements; and

**WHEREAS** nothing in state or federal law, including the Federal Fair Housing Act, prevents the imposition of smoking prohibitions in multi-unit dwelling buildings.

**THEREFORE**, the Board of [ \_\_\_\_\_ ] adopts the following smoke-free policy:

## Section 2. Purpose

The Board of [ \_\_\_\_\_ ] Association adopts the policy below to protect the residents of [ \_\_\_\_\_ ] from the health risks of exposure to secondhand and thirdhand commercial tobacco smoke.

The policy is also adopted to prevent the risks of injury to residents from fires associated with smoking.

## Section 3. Definitions

**“Business invitee”** shall include, but is not limited to, any contractor, agent, household worker, or other person hired, contracted, or invited by the association, owner, tenant or resident to provide a service, product, or a bid to the association, owner, tenant or resident.

**“Common elements”** means the entire complex, except for the individual units and limited common elements. Common elements include, but are not limited to, lobbies, recreation or multi-purpose rooms, hallways, laundry rooms, stairs, elevators, swimming pools, barbeque areas, playgrounds, sidewalks, and grass and landscaped areas.

**“Electronic smoking device”** means any device that can be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, a(n) e-cigarette, e-cigar, e-pipe, vape pen, Juul, or e-hookah.

**“Limited common element”** means a portion of the common elements allocated by the declaration for the exclusive use of one or more, but fewer than all, of the units.

**“Smoking”** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. “Smoking” also includes the use of an electronic smoking device. [“Smoking” does not include the use of traditional tobacco as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.]

### Note

Some smoke-free policies provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some tribal communities, while prohibiting the use of commercial tobacco. Consider the bracketed language above for your policy. If you would like more information about this area, please visit [www.keepitsacred.org](http://www.keepitsacred.org).

## Section 4. Policy Provisions

- (1) Smoking is prohibited everywhere on the property at [ \_\_\_\_\_ ], including, but not limited to, the individual units, indoor and outdoor limited common elements, and indoor and outdoor common elements.

**(Purpose:** To establish the areas of the property where the policy applies)

- (2) No owner shall smoke, or permit smoking by any occupant, agent, tenant, business invitee, guest of their unit or by any visiting friend, or family member.

**(Purpose:** To identify those parties to whom the policy applies.)

- (3) Smoking in violation of this policy shall constitute a nuisance pursuant to the provisions of the governing documents of the Association.

**(Purpose:** To establish intrusion of secondhand smoke as a nuisance to assist with actions against other occupants or against the board.)

- (4) All owners are required by law to provide to prospective buyers of their units a Resale Disclosure Certificate, in the statutorily prescribed form, together with copies of the Association's Articles of Incorporation, Bylaws, Declaration, Rules and Regulations, current budget, and current financial statements. The Resale Disclosure Certificate must include a description of the smoking prohibition and a reference to the smoke-free policy, and owners selling their units must advise their real estate agents and prospective buyers of the smoking prohibition prior to the time that a purchase agreement for the unit is entered into.

**(Purpose:** To require disclosure of smoking policy in resale documents.)

- (5) Any owner who rents or leases or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all persons who reside within the unit that smoking is prohibited at [ \_\_\_\_\_ ].

**(Purpose:** to require disclosure of smoke-free policy to renters or other occupants of units.)

- (6) The Board will post no-smoking signs at entrances and exits, common areas, and in conspicuous places adjoining the grounds of the property. The Board will also take reasonable steps to promptly remedy known and reported violations of the smoke-free policy.

The Board shall have the authority and power to enact rules and regulations that it deems necessary to enforce this policy, including a schedule of fines, which may be imposed after notice and a hearing.

Violation of the smoke-free policy will be enforced as are other use restrictions for the property.

(**Purpose:** to reinforce ability of the Board to enact rules and regulations to assist with implementation and enforcement of the smoke-free policy.)

### Note

It is important that associations consider graduated penalties in a smoke-free policy. Significant financial penalties can have the unintended consequence of putting persons at risk of losing their housing and potentially increase litigation risk. Efforts should be made to work with owners, recognizing the challenge of nicotine dependence or addiction. The following graduated enforcement language could be included in place of the standard violation language provided above in this model:

Violation of the smoke-free policy shall be enforced accordingly:

- a) The first violation shall result in a verbal warning and reminder of the smoke-free policy.
- b) The second violation shall result in a written warning and provision of smoking cessation resources and materials.
- c) The third and subsequent violations may result in fines or other penalties used by the association for violations of other use restrictions, and provision of smoking cessation resources and materials.

In supplying information and resources on tobacco cessation during the enforcement process, property management, boards, and owners should rely on evidence-based cessation programs, such as the Minnesota Department of Health's "Quit Partner" website, which includes counseling and medication information for youth and adults. Refer tenants to <http://www.quitpartnermn.com> or refer them directly to the Minnesota Quit Partner line at 1-800-QUIT-NOW (784-8669).

- (7) This policy may be enforced in a court of law by any resident or the association. If any resident or the association is required to hire legal counsel to enforce this policy, the resident or the association shall be entitled to recover attorney's fees and costs incurred, whether or not litigation has begun. The association may collect attorney's fees and costs it incurs through the use of a special assessment levied against the owner of the unit and an assessment lien, if necessary.

(Purpose: to define treatment of attorney's fees for action to enforce smoke-free policy.)

## Section 5. Enforcement

The Board will post no-smoking signs at entrances and exits, common areas, and in conspicuous places adjoining the property grounds. The Board will also take reasonable steps to promptly remedy known and reported violations of the smoke-free policy. The Board is not required to take steps in response to smoking unless the Board knows of the violation.

### Resources to Assist with Overcoming Nicotine Dependence

Many free resources are available to help overcome nicotine dependence or addiction. Associations may consider providing residents with the following information.

#### Minnesota-Specific Resources

- Minnesota residents of all ages — whether covered by a health plan or not — have access to free resources to help stop using commercial tobacco products. The first place residents can seek help are the free services provided by the state health department and supporting institutions. Quit Partner, a program maintained by the Minnesota Department of Health, provides free support for Minnesota residents and includes personalized coaching, email and text support, educational materials, and quit medication (nicotine patches, gum or lozenges) delivered by mail. You may refer residents to the toll-free line 1-800-QUIT-NOW (784-8669) or website <https://www.quitpartnermn.com>.
- Quit Partner offers specialized programs for people living with mental illnesses or substance use disorders and those who are pregnant and post-partum. Quit Partner maintains quitlines tailored to American Indian communities (<http://www.quitpartnermn.com/american-indian-quitline>) and youth ages 13-17 (<https://www.mylifemyquit.com>).
- The Minnesota Department of Health's cessation support page ([health.state.mn.us/quit](http://health.state.mn.us/quit)) lists resources for individuals, regardless of age.

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**Resources to Assist with Overcoming Nicotine Dependence** *(continued)*

- Contact Association for Nonsmokers-Minnesota (ANSR MN) at 651-646-3005, your local public health agency, or your health care provider to find local cessation resources.

**National Resources**

- The National Cancer Institute cessation website ([smokefree.gov](https://smokefree.gov)) has tools and tips to quit, including smoke-free texting programs, information on nicotine replacement therapy, smoke-free apps, and building your own quit plan.
- The National Cancer Institute's trained counselors provide information and support for quitting in English and Spanish. Call Monday through Friday 8 a.m. to 8 p.m. CST at 877-44U-QUIT (877-448-7848).
- The Centers for Disease Control and Prevention website ([cdc.gov/tobacco/campaign/tips/quit-smoking/index.html](https://cdc.gov/tobacco/campaign/tips/quit-smoking/index.html)) provides information on quitlines, apps, texting support, developing a quit plan, and much more.
- To learn more about quitline services available outside Minnesota, visit the North American Quitline Consortium website and click on your state ([map.naquitline.org](https://map.naquitline.org)).
- All states have quitlines with counselors who are trained specifically to help smokers quit. Call this number to connect directly to your state's quitline (hours of operation and services vary from state to state): 800-QUIT-NOW (784-8669).

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## Endnotes

- 1 U.S. Dep't of Health & Human Servs., *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General — Executive Summary* (2006), [https://dbh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Executive\\_Summary\\_2nd\\_Hand\\_Smoke\\_SG\\_Report\\_2006.pdf](https://dbh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/Executive_Summary_2nd_Hand_Smoke_SG_Report_2006.pdf).
- 2 American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., *ASHRAE Position Document on Environmental Tobacco Smoke* (June 25, 2008).
- 3 Vasundhra Bahl et al., *Thirdhand Cigarette Smoke: Factors Affecting Exposure and Remediation*, 9 PLOS One e108258 (2014), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0108258>. See also Maciej Goniewicz et al., *Electronic Cigarettes are a Source of Thirdhand Exposure to Nicotine*, 17 NICOTINE & TOBACCO RESEARCH 256 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4837997>.
- 4 Minnesota Department of Public Safety, State Fire Marshal Division, *2017 Fire in Minnesota* (2017), <https://dps.mn.gov/divisions/sfm/mfirs/Documents/Fire%20in%20Minnesota/Fire-in-Minnesota-2017.pdf>.
- 5 This bracketed item is optional.