

SMOKE-FREE HOUSING GUIDANCE

for Individuals in New York State



Secondhand smoke infiltration into multi-unit housing is a serious public health problem. The health concerns related to secondhand smoke are well documented, yet one study estimated that four in ten residents of New York City are exposed to secondhand smoke in their homes.¹

Secondhand smoke poses a serious risk of fire. In 2017, 19 percent of accidental fires in New York City were due to smoking.² Moreover, there is no constitutional right to smoke.³

Adopting a smoke-free policy can help mitigate the harms of secondhand smoke exposure in homes. Also, because disparities in commercial tobacco use, secondhand smoke exposure, and



related health problems exist based on where people live, providing residents protection from secondhand smoke exposure is an issue of health equity as well.⁴ One study showed a 99 percent decrease in self-reported smoking among public housing residents in New York State after a smoke-free policy took effect.⁵ New York State law does not prohibit smoking and vaping in apartments or other private residences, except in areas where child day care centers or health care facilities operate and are open or employees are working,⁶ and New York City law only prohibits smoking or vaping in indoor common areas of residential buildings with three or more units.⁷ As a result, many multi-unit homes are not covered by a smoke-free policy. Also, one study of public housing residents in New York City suggests smoke-free policies are not being effectively enforced.⁸ Where no law is in place, voluntary smoke-free policies can provide protection.

Unfortunately, finding relief from secondhand smoke exposure in multi-unit housing may not be a straightforward proposition. Residents experiencing this issue must navigate several laws at the federal, state, and local level. While relief can be sought through litigation, that is neither a speedy nor an economical approach. Moreover, which law or legal principle is relevant can vary depending on a variety of factors, including —

Factor 1

The ownership of the property (e.g., public housing, a private landlord);

Factor 2

If the building has a smoke-free policy in place;

Factor 3

The resident's status with regard to public assistance (e.g., if the resident receives Section 8 vouchers, if the apartment is rent stabilized);

Factor 4

The type of housing the resident occupies (e.g., apartment, condominium, cooperative);

Factor 5

The product being smoked (e.g., conventional cigarettes, e-cigarettes, cannabis);

Factor 6

The location of the smoking (e.g., private unit, common area, outdoors);

Factor 7

The disability status of either the resident or the person smoking;

Factor 8

The city or county you live in.

This resource highlights relevant laws for multi-unit housing residents in New York State who are experiencing smoke infiltration into their home. It identifies relevant laws depending on the factors listed above, organized by different conditions for each factor. It includes smoke-free laws in place that may already apply in those settings, as well as potential legal theories that could be used should litigation be necessary. Other resources that go into detail on related topics are also flagged.

Factor 1

Ownership of the Property

The ownership of the property can determine which smoke-free laws apply. Specifically, if the property is owned by the government, greater protections are in place than if a property is privately owned.

Condition A: The property is owned by the government (i.e., public housing).

In 2017, the U.S. Department of Housing and Urban Development (HUD) implemented a rule restricting smoking in public housing. This rule restricts smoking in living units, common areas, and in outdoor areas within 25 feet of areas where smoking is restricted. Unfortunately, the HUD rule is not comprehensive. It does not restrict the use of e-cigarettes, nor does it apply to subsidized housing that is privately owned, such as Section 8 housing. However, the rule does allow public housing authorities and property owners to adopt stronger restrictions. For more information on the HUD rule, see the Public Health Law Center publication [*HUD's Smoke-Free Public Housing Rule: An Overview*](#).

Although the HUD smoke-free rule does not address cannabis (marijuana) smoking, other authorities suggest it is prohibited in public housing. Because cannabis use is illegal under federal law, HUD policy is to refuse to allow tenancy by anyone known to use cannabis.⁹ This suggests smoking cannabis in public housing is prohibited, even if cannabis use is allowed under state law.

If you live in public housing and smoking is occurring despite the smoke-free rule, you can notify HUD of the violation. HUD explains its Multifamily Housing Complaints process [here](#). The telephone number to call for making complaints is 1-800-MULTI-70 (1-800-685-8470).

Condition B: The property is owned by a private landlord.

Unfortunately, no law in New York State restricts smoking in the living units of privately owned multi-unit housing. However, New York State's clean indoor air law restricts smoking in places of employment — including common areas in some multi-unit housing, such as

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offices, banquet facilities, restrooms, elevators, and hallways.¹⁰ The law applies to the smoking of conventional tobacco products, e-cigarettes, and cannabis.¹¹ In addition, New York City prohibits smoking and vaping in all indoor common areas of residential buildings with three or more units and in public places,¹² which it defines to include “common areas of a multiple dwelling.”¹³ New York City also has a law requiring owners of multi-unit housing to have a smoking policy in place — although it does not require the policy to be a smoke-free policy — and it requires disclosure of that policy to tenants and prospective tenants.¹⁴

Some cities and counties have adopted ordinances requiring all multi-unit housing — including living units — to be smoke-free. As of January 2024, none of these ordinances are located in New York State. A list of jurisdictions is available [here](#). If city council members or county legislators are open to adopting such an ordinance, the Public Health Law Center has produced a *Smoke- and Vape-Free Multiunit Housing Model Ordinance* for communities in New York State.

Factor 2

Whether the Building Has a Smoke-Free Policy

If no government policy protects your right to breathe clean air in your home, one solution can be a smoke-free policy adopted by your property manager (or condo or co-op board) that applies to your building.

Condition A: The building has a smoke-free policy in place.

If a policy is in place and smoking is still occurring, the violation can be reported, following the process spelled out in the policy. If the policy continues to be unenforced, it may be necessary to bring legal action to enforce your rights.

Condition B: The building has no smoke-free policy.

If no smoke-free policy is in place in your building, you can advocate for the adoption of such a policy. The process for adopting it will vary depending on whether you live in an apartment, a condominium, or a cooperative. See Factor 4 for more information on how to adopt a policy given the building type.

Litigation over smoke infiltration when no smoke-free policy is in place could be challenging in New York State. Cases from New York State suggest litigation is more likely to be successful when a building has a smoke-free policy that is not being followed compared to when no policy exists.¹⁵

Factor 3

Tenant's or Unit's Public Assistance Status

Whether or not a tenant receives public assistance can impact not only if a smoke-free law applies, but also the ability of a landlord to implement a smoke-free policy with regard to a specific tenant.

Condition A: The resident receives Section 8 vouchers.

Unfortunately, the HUD smoke-free rule does not apply to properties subsidized under Section 8.¹⁶ However, owners of such properties can adopt smoke-free policies on their own. The following publications provide additional information about steps that can be taken to protect residents from secondhand smoke:

- [*Making Affordable Housing Smoke-Free: First Steps*](#)
- [*Creating Smoke-Free Affordable Housing*](#)

Condition B: The unit is rent-stabilized.

In New York City, some allowances are made for tenants living in rent-stabilized units. A publication from the New York City Department of Health and Mental Hygiene states that buildings “may adopt a smoke-free policy but must exempt rent stabilized or rent controlled units where the resident does not agree to the policy.”¹⁷ This appears to be based on language in New York City’s Administrative Code which reads “The smoking policy or any material changes thereto shall not be binding on any tenant in occupancy of a rent controlled or rent stabilized dwelling unit prior to the adoption of the initial smoking policy required by this section or on any family member who succeeds to the rights of such tenant, as required by subdivision 4 of section 14 of the public housing law.”¹⁸

In New York State outside of New York City, some allowances may also be made for rent-regulated tenants.¹⁹

Factor 4

Type of Housing

Regardless of the type of housing you occupy, if you are experiencing smoke infiltration in multi-unit housing, the Public Health Law Center publication *Regulating Smoking in Multi-Unit Housing* describes legal options you might want to consider. Other resources, such as the Tobacco Free New York State website (and ATFC webpage) and the American Nonsmokers’ Rights Foundation publication *Secondhand Smoke in Apartments and Condominiums: A Guide for Owners and Managers* might also be helpful. However, the process for creating a smoke-free policy varies depending on whether you live in an apartment, a condominium, or a cooperative. The differences are described below.

Condition A: The unit is an apartment.

Some areas within apartment buildings are already covered by smoke-free laws in New York State and New York City . Please see **Factor 1, Condition B** above for a list of places within privately owned apartment complexes that are required to be smoke-free.

If your apartment is not covered by a smoke-free policy that applies to other parts of the building, you can request that building management adopt such a policy. Apartments are typically made smoke-free through the adoption of lease addendums and changes to the House Rules. If the landlord is receptive to adopting a smoke-free policy, the Public Health Law Center’s *Model Smoke-Free Lease Addendum* could provide a template. The American Nonsmokers’ Rights Foundation also has a Model Smoke-Free Lease Addendum available [here](#).

Condition B: The unit is a condominium.

Some areas within condominiums are already covered by smoke-free laws in New York State. Please see [Factor 1, Condition B](#) above for a list of places within condominiums that are required to be smoke-free.

Condominium residents experiencing secondhand smoke infiltration could advocate for a smoke-free policy within their building. Typically, the process for amending condo rules and regulations — as opposed to the declaration or bylaws — rests with the Board of Managers. While this can be a straightforward process when working with a sympathetic board, the process can present barriers if the Board is unsupportive. If the Board does not support amending the rule, residents can work with fellow condo unit owners to incorporate a comprehensive smoke-free policy directly into the declaration and/or bylaws. The bylaws should outline the process for amending the declaration and bylaws. In particular, language should specify what percentage of unit owners are required to modify or amend the bylaws. Legally, the percentage must be at least two-thirds, according to New York's Condominium Act. The Public Health Law Center's *Model Smoke-Free Common Interest Community Policy* was developed for buildings in Minnesota, but could be used as a starting point for a policy for other buildings.

If the level of smoke intrusion is extensive enough that legal action is realistic, the Public Health Law Center publication *Secondhand Smoke in Condominiums: Legal Options for Owners* explains potential legal theories upon which to base a claim.

Additional information can be found on the [SmokingFreeHousingNY](#) website. The Public Health and Tobacco Policy Center publication *New York Guide to Smoke-Free Condominiums* also contains relevant information. Finally, the New York State Attorney General's Office provides basic information on the rights and responsibilities of condominium unit owners [here](#).

Condition C: The unit is a cooperative.

Some areas within cooperatives are already covered by smoke-free laws in New York State and New York City. Please see [Factor 1, Condition B](#) above for a list of places within coops that are required to be smoke-free.

Cooperative residents experiencing secondhand smoke infiltration could advocate for a smoke-free policy in their building. The process for amending a cooperative's bylaws should be spelled out in the bylaws. The New York State Attorney General has information about cooperatives [here](#).

If the level of smoke intrusion is extensive enough that legal action seems reasonable, the Public Health Law Center publication *Secondhand Smoke in Condominiums: Legal Options for Owners*

explains potential legal theories. While condominiums and cooperatives raise distinct legal issues, this document describes some theories under which residents exposed to secondhand smoke have obtained relief.

Additional information can be found on the [SmokingFreeHousingNY](#) website. Finally, the Public Health and Tobacco Policy Center publication [New York Guide to Smoke-Free Cooperatives](#) contains relevant information.

Factor 5

The Product Being Smoked

Smoke-free laws do not treat all tobacco or nicotine products equally. Some policies do not apply to e-cigarettes or cannabis products.

Condition A: Conventional cigarette, cigar, or pipe smoke is infiltrating another unit.

Please see [Factor 1, Condition B](#) above for a list of places within privately owned multi-unit housing that are required to be smoke-free in New York State.

Condition B: The aerosol/vapor from an e-cigarette is infiltrating another unit.

New York State's smoke-free air act treats vaping similarly to smoking conventional cigarettes. Please see [Factor 1, Condition B](#) above for a list of places within privately owned multi-unit housing that are required to be vape-free in New York State.

Condition C: Cannabis smoke is infiltrating another unit.

New York State's smoke-free air act treats smoking cannabis similarly to smoking conventional cigarettes. Please see [Factor 1, Condition B](#) above for a list of places within privately owned multi-unit housing that are required to be smoke-free (including cannabis smoke) in New York State.

Although smoking cannabis is generally treated the same as smoking conventional tobacco products in clean indoor air laws, if a resident claims that smoking cannabis is needed for medical purposes, some caveats apply. The New York State Office of Cannabis Management has [stated](#) that *"A landlord cannot refuse to rent to a tenant who consumes cannabis, but landlords, property owners, and rental companies can still ban the smoking or vaporizing of cannabis on their premises."* However, [state statute states](#) that no landlord's smoke-free policy *"may be construed to limit the certified medical use of cannabis."*



Factor 6

The Location of the Smoking

Not all areas are covered by smoke-free laws. For example, if the smoking is occurring outside, it might not be prohibited by a smoke-free law.

Condition A: Somebody is smoking in another unit.

Some cities and counties have adopted ordinances requiring all multi-unit housing — including the living units — to be smoke-free. Unfortunately, as of January 2024, none of these municipalities are located in New York State. A list of jurisdictions is available [here](#). If a city council or county legislators are open to adopting such an ordinance, the Public Health Law Center developed a *Smoke- and Vape-Free Multiunit Housing Model Ordinance* for communities in New York State.

Condition B: Somebody is smoking in an indoor common area.

Please see **Factor 1, Condition B** above for a list of common areas within privately owned multi-unit housing that are required to be smoke-free in New York State.

Condition C: Somebody is smoking outdoors.

Although no comprehensive smoke-free regulations apply to areas outside of multi-unit housing in New York State, a few individual areas are covered. For instance, outdoor areas within 25 feet of indoor areas within public housing are required to be smoke-free under the HUD rule.²⁰ Another state law prohibits smoking in playgrounds outside New York City,²¹ and some multi-unit housing facilities might have playgrounds present. New York City law restricts smoking in playgrounds and pedestrian plazas.²²

For areas not covered, residents can advocate for building policies that include outdoor areas.

Factor 7**Disability Status**

Additional protections may apply if a person involved has a disability.

Condition A: The person experiencing smoke infiltration has a disability exacerbated by secondhand smoke.

Tenants with disabilities have rights under various laws. In addition to the Fair Housing Act, this includes local and state laws such as the [New York City Human Rights Law](#) and the [New York State Human Rights Law](#). These laws require an individual analysis to determine the strength of individual rights and related claims. This analysis would include an exploration of whether the tenant meets the definition of a person with a disability according to relevant laws. It would also involve identifying and documenting the tenant's need for a reasonable accommodation to allow them to use and enjoy their apartment.

This [fact sheet](#) offers general guidance regarding reasonable accommodations. Please note that while this fact sheet focuses on public housing agencies (PHAs), the analysis also applies more generally to private housing, such as condominiums, cooperatives, and apartments. The fact sheet is focused on tobacco smoke, but the general description of what constitutes a disability and reasonable accommodation would also apply to cannabis.

If you have a disease or disability caused by or exacerbated by secondhand smoke exposure, you could request reasonable accommodations, such as being moved to a unit that isn't affected by the smoke intrusion. Having a health condition that is exacerbated by secondhand smoke could also classify a person as disabled under the Federal Fair Housing Act. Determining if an individual is "disabled" is made on a case-by-case basis. HUD allows people to submit complaints at [this website](#). HUD typically follows up in a few weeks to get more information about the situation. The New York State Division of Human Rights also has a complaint process for victims of discrimination — including discrimination based on disability status. New York City has a similar process.

Condition B: The person smoking has a disability.

Neither HUD, the Department of Justice, nor any court has yet determined that smoking or nicotine addiction itself requires protection against discrimination. The Public Health Law Center's fact sheet [Smoke-Free Public Housing: Reasonable Accommodations](#) offers some general guidance regarding reasonable accommodations.

Factor 8**The City or County Where the Smoking Is Occurring**

Some laws at the city or county level may provide additional protections. While these can apply in any municipality, this factor looks at laws in New York City and the rest of New York State.

Condition A: The smoking is occurring in New York City.

Although New York City restricts smoking in common areas of multi-unit housing, it does not restrict smoking in private units. New York City has a law requiring owners of multi-unit housing to have a smoking policy in place — although that does not need to be a smoke-free policy — and requires disclosure of that policy to tenants and prospective tenants. The text of that law is available here and a fact sheet is available here. NYC Health has a helpful FAQ document for residents experiencing secondhand smoke infiltration.

If the smoke infiltration is extensive, you could contact a housing attorney who specializes in such matters. Here are a few referral services that might be able to help:

- New York City Bar Association: Lawyer Referral Service & Legal Info in New York | NYC Bar
- New York County Lawyers Association: NYCLA Pro Bono Programs for New Yorkers—New York County Lawyers Association.

Condition B: The smoking is occurring in New York State, but not in New York City.

Please see **Factor 1, Condition B** above for a list of places within privately owned multi-unit housing that are required to be smoke-free in New York State. In addition, you may wish to contact the Advancing Tobacco-Free Communities organization in your county. These organizations are funded by the New York State Department of Health and provide free technical assistance and resources for adopting a smoke-free policy where you live, work, learn, and play. For more information, visit Tobacco-Free NYS.

If you're working on New York State commercial tobacco control issues and need assistance, contact the Public Health Law Center at (651) 290-7506 or phlc.nys@mitchellhamline.edu.

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Endnotes

- 1 NYC Vital Signs, Secondhand Smoke and Smoke-Free Housing in New York City, <https://www.nyc.gov/assets/doh/downloads/pdf/survey/smoke-free-housing.pdf>.
- 2 Fire Department City of New York, Bureau of Fire Investigation Investigative Management and Reporting System 2017 Annual Report (2017).
- 3 Public Health Law Center, *There Is No Constitutional Right to Smoke or Toke* (2019), <https://www.publichealthlawcenter.org/sites/default/files/resources/No-Constitutional-Right-Smoke-Toke-2019.pdf>.
- 4 See Ctrs. for Disease Control and Prevention, *Health Disparities Related to Commercial Tobacco and Advancing Health Equity*, <https://www.cdc.gov/tobacco/health-equity/index.htm>.
- 5 Laurel Curry et al., *Changes in Reported Secondhand Smoke Incursions and Smoking Behavior after Implementation of a Federal Smoke-Free Rule in New York State Federally Subsidized Public Housing*, 19 INT'L J. ENV'TL RESEARCH & PUBLIC HEALTH 3515 (2022), <https://pubmed.ncbi.nlm.nih.gov/35329199>.
- 6 Public Health Law, § 1399-o(1)(a).
- 7 New York City Code, § 17-505-6.
- 8 Lorna Thorpe et al., *Evaluation of Secondhand Smoke Exposure in New York City Public Housing After Implementation of the 2018 Federal Smoke-Free Housing Policy* 3 JAMA NETWORK OPEN (2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2772536>.
- 9 U.S. Dept. Housing & Urban Dev., Use of Marijuana in Multifamily Assisted Properties, Unnumbered Letter (Dec. 29, 2014), <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>
- 10 Public Health Law, § 1399-o(1)(a), § 1399-n(5).
- 11 Public Health Law, § 1399-n(8-9).
- 12 New York City Code, § 17-503(a).
- 13 New York City Code, § 17-502(p).
- 14 New York City Code, § 17-506.1.
- 15 See, e.g., Ewen v. Maccherone (2011), Upper East Lease Associates, LLC v. Cannon (finding that the plaintiffs failed to state a cause of action for private nuisance because the defendants were not prohibited from smoking inside their apartment by any existing statute, condominium rule, or bylaw.).
- 16 Public Health Law Center, *HUD's Smoke-Free Public Housing Rule: An Overview* (2017), <https://www.publichealthlawcenter.org/sites/default/files/resources/HUD-Final-Rule-Smoke-Free-Public-Housing-2017.pdf>.
- 17 NYC Health, *Disclosure of Policies on Smoking in Residential Buildings: What You Need to Know*, <https://www.nyc.gov/assets/doh/downloads/pdf/smoke/smoking-sample-policy-residential.pdf>.
- 18 NYC Administrative Code § 17-506.1(5)
- 19 See, e.g., Helene Hartig, *Who's The Landlord?*, HABITAT MAGAZINE (Sept. 2019), <https://www.habitatmag.com/Archive2/369-September-2019/Who-s-the-Landlord>.
- 20 Public Health Law Center, *HUD's Smoke-Free Public Housing Rule: An Overview, supra*, <https://www.publichealthlawcenter.org/sites/default/files/resources/HUD-Final-Rule-Smoke-Free-Public-Housing-2017.pdf>.
- 21 Public Health Law, § 1399-o-1, <https://www.nysenate.gov/legislation/laws/PBH/1399-O-1>
- 22 § 17-503(c), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-129308>