

Contacts & Resources

**FOR ASSISTANCE DEALING WITH COMPLAINTS
AND VIOLATIONS**

Contact Marin County Tobacco Disease Control Program
10 North San Pedro Road, Suite 1015
San Rafael, CA 94903
415.473.3020
<http://www.smokefreemarin.com>

American Lung Association

<http://www.lung.org/>

Bay Area Smoke-free Housing

(Resources for landlords, tenants, and condo owners)

<http://www.casmokefreehousing.org/>

City of San Rafael

<http://www.cityofsanrafael.org/smokefree>

**SMOKE-FREE
SAN RAFAEL**



Implementation Handbook for
Landlords, Property Managers
and Condominium Associations

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This document was produced by the City of San Rafael in October 2012. It is intended to provide general information to landlords, property managers and condominium associations regarding San Rafael Municipal Code 1908. This document is not intended nor should it be used in lieu of legal advice.

Signage Templates

Visit www.cityofsanrafael.org/smokefree for printable versions of these signs.



Sample Enforcement Letters

Friendly Warning

Dear Resident,

On [insert date] I noticed a very strong odor of cigarettes. I asked if you had been smoking, you said that you were trying to stop. I reminded you that you are not allowed to smoke in your unit.

Per your lease/house rules and San Rafael Municipal Code 1908, smoking is prohibited in any area of the property. I have attached a copy of the house rules for you to review.

Please refrain from smoking in your unit or on the property.

Failure to comply with your lease could result in eviction proceedings. If you have questions or concerns, please contact me at [insert phone number] or stop by the office.

Thank you for your cooperation in this matter.

Violation

Dear Resident,

Pleased be advised that you are in violation of (Property Name's) community policies or local laws.

Per your lease/house rules #____, smoking is prohibited in any area of the property. I have attached a copy of your lease with the applicable rules highlighted. We are aware that you are continuing to smoke (describe where).

You, your family members, roommates and/or visitors must refrain from smoking in your unit or on the property. You are requested to correct this situation by _____.

Your immediate attention to this matter is greatly appreciated. Please contact the management office if you have questions. Failure to comply with your lease could result in eviction proceedings.

If you have questions or concerns, please contact me at [insert phone number] or stop by the office.

Thank you for your cooperation in this matter.

What You Need to Know about San Rafael's New Smoking Ordinance

As of November 14, 2013, smoking is prohibited in all duplex and multi-family residential units that share a common wall. Smoking is also prohibited in all indoor and outdoor common areas of these residential properties. Property owners may create a designated smoking area provided that it meets certain criteria (see page 4).

This ordinance applies to all new and existing properties. Existing properties have until November 14, 2013 to comply. This ordinance does not allow grandfathering rights to smokers in existing units. Landlords and property managers will be required to enforce this ordinance through new lease language or lease amendments.

Why?

Did you know...

- Secondhand smoke is a known carcinogen with no established risk-free level of exposure.
- Unwanted secondhand smoke travels from unit to unit within multi-residence buildings, exposing tenants, not just the smoker, to the dangers of secondhand smoke. Tobacco smoke cannot be adequately contained or vented; prohibiting smoking is the only safe way to prevent exposure.
- Breathing secondhand smoke places residents at greater risk for lung cancer, heart disease, asthma attack, breathing difficulties, sinus and bronchial illnesses. Even pets can be made ill by secondhand smoke.
- Tobacco smoke and product use significantly increases landlord cleaning and repair costs. smoke-free regulations in multi-unit residential buildings could save property owners up to \$18 million a year statewide on the cost of cleaning apartments vacated by tenants who smoke.
- A no smoking policy prohibits the act of smoking and does not prevent smokers from living on the premises.
- In 2010, there were an estimated 7,600 smoking-related fires in residential buildings in the United States resulting in an estimated 350 civilian deaths, 950 civilian injuries and \$286 million in direct property damage.

Designated Smoking Area Criteria

Designated smoking areas can be established by someone with legal control over a property. Duplexes and multi-family residences may designate an outdoor area where smoking is permitted if the area meets all of the following criteria:

- A. The area is located at least 20 feet from any unit or enclosed area where smoking is prohibited. A designated smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring premises are established.
- B. The area does not include, and is at least 100 feet from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, swimming pools, and school campuses.
- C. The area includes no more than ten percent (10%) of the total unenclosed area of the duplex or multi-family residence for which it is designated.
- D. The area has a clearly marked perimeter.
- E. The area is identified by conspicuous signs.
- F. The area is completely within an unenclosed area.
- G. The area does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited.

Enforcement Tips

Steps to Communicate and Enforce the No-smoking Policy:

1. **Put the rule in writing** - Incorporate the no-smoking policy into the written lease through a No-Smoking Addendum or House Rules. Make sure all new and current residents are aware:

- Where smoking is allowed and where it is not
- That the no-smoking policy applies to their guests too
- This policy is required by the City of San Rafael

2. **Post adequate signage** identifying the property/buildings as smoke-free. Obtain signage templates to print out yourself at www.cityofsanrafael.org/smokefree (see examples on page 12).

3. **Enforcement** - Most smoke-free policies are self-enforcing. Residents can be your greatest allies. If a resident complains about being bothered by smoke or knows of another resident who has violated the policy, document the facts and resolve the matter. Treat violating the no-smoking policy like any other lease violation. Lack of enforcement with one resident may hamper enforcement with future residents. Prompt, consistent action will send a clear message to everyone in your property that smoking is not allowed.

Common steps landlords can take to enforce the policy:

- Start with a verbal meeting with the resident who is violating the policy. A resident complaint may prompt a “knock and talk”. The resident does not have to answer the door, nor do they have to let you in, but if the door opens, it is an opportunity to have a friendly talk about the no-smoking policy. Document the visit and whether or not you smelled smoke inside the unit.
- Follow-up the visit with a letter acknowledging the conversation and the outcome – see **Sample Friendly Warning Letter**.
- If the problem repeats, send a First Written Violation letter to the resident – see **Sample Violation Warning Letter**.
- Depending on the circumstances, another repeat violation may result in a final written violation letter.
- If the violation persists, contact Marin County Tobacco Disease Control Program at 415-473-3020.

Sample Condominium Policy Amendment

SMOKING IS NOT ALLOWED IN
ALL COMMON AREAS AND INDIVIDUAL UNITS
Under the Rules and Regulations of the
<Your Association Here>:

1. No owner, family member, tenant, resident, guest, business invitee, or visitor shall smoke cigarettes, cigars, or any other tobacco product, marijuana or illegal substance in outside common areas, enclosed common areas, and exclusive use common areas (balconies and patios included) within the project.
2. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, or similar lighted device, marijuana, or illegal substance.
3. "Business invitee" shall include, but is not limited to, any contractor, agent, household worker, or other person hired by the owner, tenant or resident to provide a service or product to the owner, tenant, or resident.
4. Any unit owner who sells his/her unit shall specifically disclose to all potential buyers and Realtors that smoking is prohibited within all common areas in the project. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all persons who reside within his/her unit that smoking is prohibited within all common areas prior to their residency or occupancy.
5. The Board of Directors shall have the authority and power to enact rules and regulations which it deems necessary to enforce this restriction, including a schedule of fines which may be imposed after notice and a hearing, as described in the Rules and Regulations.

Note: Drifting smoke from within a unit that enters another unit is also prohibited and will be enforced under the nuisance provision of the CC&Rs. Violation of any provision of the CC&Rs, Architectural Guidelines or Rules & Regulations may result in fines.

Adapted from Smoke-free Apartment House Registry,
<http://www.smokefreeapartments.org/condos.html>

**This is a sample and may be incomplete.
Please consult with your legal counsel.**

Implementation Tips

Have a clearly defined policy with clear implementation dates

- Decide if and exactly where you will locate a Designated Smoking Area outside of the residential building.
- Write the no smoking policy into the lease and lease addendums.
- Specify, through written communication, exactly when the new policy will be in place, giving adequate notice between policy notice and implementation. Make sure that every resident is aware.
- Train employees about implementation and enforcement of the policy.

Communicate with tenants throughout the implementation process

It's important to begin communicating with residents both verbally and in writing to give them adequate notice of the upcoming no smoking policy. This will give people time to adjust and can improve compliance.

- Send a positive letter to each resident about the new policy. (see Sample Resident Notification Letter)
 - Ensure that all building and maintenance workers are aware of the letters and how to respond to questions.
 - Request a signed confirmation that residents have received and read the letters.
- Send a copy of the new lease addendum to all residents containing the new no smoking policy. (see Sample Lease Addendum or Condo Policy Amendment)
- Provide a follow up letter to those who have not signed the initial letter or the new lease agreement when it is requested.
- Schedule a group meeting with your tenants to review the policy and answer questions.
- Post signage on property communicating the policy, including the location of a designated smoking area if you decide to provide one.

Sample Resident Notification Letter

Date _____

Dear Resident,

[Property name] is adopting a smoke-free policy in order to provide a healthier environment for all residents and as required by San Rafael Municipal Code 1908. The harmful effects of secondhand smoke, increased maintenance costs, and fire danger caused by indoor smoking are simply too great to ignore.

- As of [date], [building name & address] will be smoke-free. This means that there will be no carrying or use of a lit tobacco product in any units (including balconies and patios) as well as indoor or outdoor common areas of property. This policy includes tenants as well as guests, maintenance personnel, and staff.
- This policy was passed to protect the health of our residents, staff, and guests. Secondhand smoke is a Class A carcinogen, which means it is a cancer causing agent with no risk-free level of exposure. Secondhand smoke can travel through doorways, windows, wall joints, plumbing spaces, and even light fixtures, so secondhand smoke from one unit can adversely affect the health of residents in other units. In addition, fires caused by smoking-related materials are the number one cause of home fire deaths.
- If you or your family members are interested in more information on smoke-free living, please visit the following web-site: www.smokefreemarin.com. The web-site will also link you to a number of resources that can help if you are thinking about quitting smoking.

Please feel free to contact (name of employee, property manager, etc.) or myself if you have any questions. We will be happy to assist you in any way possible to work toward a smooth transition.

Sincerely,
Property Manager's Name
Title
Management Company

Sample Lease Addendum

SMOKE-FREE LEASE ADDENDUM

ADDENDUM TO RENTAL AGREEMENT dated _____, 20____,
between _____, as agent for owner ("Landlord"),
and the undersigned Resident(s):

APARTMENT COMMUNITY: _____
RESIDENT(s) NAME(s): _____
APARTMENT ADDRESS: _____
LEASE EXPIRATION DATE: _____

This Addendum is hereby made part of the Lease Agreement.

A. Resident, any members of the Resident's household or a guest or other person under the Resident's control, acknowledges that the Apartment has been designated as a smoke-free living environment. Smoking is not permitted anywhere in the Apartment rented by Resident, or the Premises which include but are not limited to all patios, decks, balconies, picnic areas, within 20 feet of the building, and all indoor and outdoor common areas.

B. Resident, any members of the Resident's household or a guest or other person under the Resident's control, acknowledges that the Landlord's adoption of a smoke-free living environment, and the efforts to designate the Premises as smoke-free, do not make the Landlord or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's Apartment or Premises. Landlord shall use its best efforts to enforce the smoke-free terms of its lease and to make the Premises smoke-free.

C. Resident, any members of the Resident's household or a guest or other person under the Resident's control, acknowledges that the Landlord's adoption of a smoke-free living environment does not in any way change the standard of care that the Landlord or managing agents would have to a resident's household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other Apartment. Landlord disclaims any implied or express warranties that the building, Premises, or Resident's Apartment will have any higher or improved air quality standards than any other Apartment.

D. A breach of this Lease Addendum shall be a material breach of the Lease and grounds for immediate termination of the Lease by the Landlord. Resident shall be responsible for all damages due to smoking-related activities and costs associated with termination of Lease due to material breach.

Authorized Agent _____

Resident(s) (If more than one, each must sign)

**This is a sample and may be incomplete.
Please consult with your legal counsel.**