

# SMOKE FREE HOUSING



A Toolkit for **Owners/Management Agents** of  
Federally Assisted Public and Multi-family Housing



U.S. Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control

*Produced by North American Management with funding from the US Department of Housing and Urban Development, Contract No. C-PHI-01063.*



Dear Reader:

The U.S. Department of Housing and Urban Development, the Department of Health and Human Services, the American Academy of Pediatrics, and the American Lung Association are joining together to protect everyone living in federally assisted multifamily housing from the dangers of secondhand smoke. Since 2009, HUD has strongly encouraged Public Housing Agencies to adopt smoke-free buildings to protect the health of residents, and now urges federally assisted multifamily property owners to go smoke-free. To assist you in this process, HUD has developed smoke-free housing toolkits to provide user-friendly information on making all buildings smoke-free. There are materials for landlords, including Public Housing Agencies, and for resident organizations.

The U.S. Surgeon General has warned that breathing secondhand smoke for even a short time is dangerous. Children, the elderly and disabled, and low-income and other disadvantaged individuals and families are the most likely to suffer from breathing secondhand smoke. Secondhand smoke causes heart attacks and lung cancer and it makes asthma worse. Smoke-free housing is especially important for kids. Secondhand smoke can hurt their growing lungs, and kids and teens with asthma have difficulty breathing. Secondhand smoke is also associated with Sudden Infant Death Syndrome (SIDS). Research has demonstrated that smoke does not stay contained within individual apartments and as a result can harm residents in non-smoking apartments. For more information on the harmful effects of secondhand smoke on children, please visit the website of the American Academy of Pediatrics at [www.aap.org/richmondcenter](http://www.aap.org/richmondcenter).

Smoke-free housing benefits landlords and managers as well. It reduces fires caused by smoking. In 2007, over 140,000 fires were started by cigarettes, cigars and pipes in the U.S. causing \$530 million in property damage, according to the National Fire Protection Association. Twenty-five percent of people killed in smoking-related fires are not the actual smokers, with many being children of the smokers, neighbors or friends. Smoke-free housing also saves on property maintenance costs from cleaning and painting stained walls and ceilings and repairing burn marks left by smoking. Less damage means less expense to get a unit ready for a new resident. It is completely legal to go smoke-free, and all smoke-free policies don't have to look alike.

Smoking is a powerful addiction and people who smoke need help to quit. There are ways for smokers to get help quitting, including by calling 1-800-QUIT-NOW (1-800-784-8669/TTY 1-800-332-8615). Smokers can also talk with their doctors and other healthcare providers, or visit the American Lung Association's website at [www.lung.org](http://www.lung.org).

Everyone deserves the right to breathe clean air. Please join us by going smoke-free and making sure that smokers know how to get help quitting. While there will be challenges along the way, everyone will benefit from smoke-free multifamily housing!

Sincerely,

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and Lead Hazard Control  
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Prevention

## **ACKNOWLEDGMENTS**

It is well-documented that cigarette smoking and related secondhand tobacco smoke together are the number one cause of preventable disease in the United States. Because exposure to any amount of secondhand smoke can be hazardous and smoke migrates between units in multifamily housing, the U.S. Department of Housing and Urban Development (HUD) is encouraging owners and public housing authorities to implement smoke-free housing policies and programs.

HUD's commitment to the health and safety of families in assisted housing, as well as to aiding agencies with meeting the goal of smoke-free housing, is the catalyst for creating toolkits to assist the process. In this toolkit, HUD's Office of Healthy Homes and Lead Hazard Control and its contract partner, North American Management, have assembled fact sheets, brochures, and resources to guide the process of going and living smoke-free.

We wish to thank our partners for this initiative: The U.S. Department of Health and Human Services, The American Academy of Pediatrics and The American Lung Association. Special appreciation also goes to the myriad agencies and organizations listed in the Resource section of this toolkit, especially the U.S. Environmental Protection Agency (EPA), which provided quantities of its publications.

We also would like to acknowledge our advisory panel, which assisted the process of selecting the materials ultimately included in the toolkits. Members include the EPA, Campus Firewatch, the Smoke-Free Environments Law Project, the Home Safety Council, Smokefree Housing New England, Tenant and Workers United, the Portland Housing Authority, the National Center for Healthy Housing, the National Association of Housing Redevelopment Officials, National Alliance of Resident Services in Affordable and Assisted Housing, and the National Organization of African Americans in Housing.

HUD does not guarantee the accuracy and currency of non-Federal websites that are referred to in this toolkit.

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### Smoke-Free Housing: A Toolkit for Owners/Management Agents

This Smoke-Free Housing Toolkit is provided by the U.S. Department of Housing and Urban Development (HUD) in partnership with the American Academy of Pediatrics, the American Lung Association, and the U.S. Department of Health and Human Services. It is a compilation of educational, “how-to” and resource brochures, pamphlets and other information designed to assist owners/management agents of public and assisted multi-family housing who want safer and healthier homes for residents.

The Toolkit contents include:

#### *A Note for Public Housing Agencies*

**1. Reasons To Explore Smoke Free-Housing**

Detailed brochure outlining reasons to consider smoke-free housing published by the National Center for Healthy Housing, 2009.

**2. The Health Consequences of Involuntary Exposure to Tobacco Smoke**

Cover page of *The Health Consequences of Involuntary Exposure to Tobacco Smoke, A Report of the Surgeon General, Executive Summary*, 2006, U.S. Department of Health and Human Services, Public Health Service, Rockville, MD.

Also included here is a synopsis of the 2006 U.S. Surgeon General's findings of the harmful effects associated with exposure to secondhand smoke.

**3. There Is No Constitutional Right to Smoke**

Fact sheet provides guidance for possible legal challenges from smokers; produced by the Public Health Institute Technical Assistance Legal Center, 2004.

**4. Frequently Asked Questions**

FAQs about benefits of smoke-free housing.

**5. Going Smoke Free: Steps for Landlords**

A brochure highlights the benefits of smoke-free housing, including tips for owners/management agents of federally assisted properties.

**6. A Landlord's Guide to No-Smoking Policies**

A publication of the Smoke Free Housing Project, it provides detailed justification for instituting smoke-free policies. Reprinted with permission from the Portland-Vancouver Metro Area Smokefree Housing Project, a partnership between the American Lung Association of Oregon, Multnomah County Health Department and Clark County Public Health.

**7. Sample Resident Letter and Secondhand Smoke Survey**

**8. Possible Changes to an Owner's House Rules or a PHA's Lease Addendum**

## **9. HUD Notices**

**(a) Notice H-2010-21—HUD Assistant Secretary for Housing—Federal Housing Commissioner**

**(b) PIH-2012-25 (HA) –HUD Office of Public and Indian Housing and Office of Healthy Homes and Lead Hazard Control**

Each HUD notice encourages federally assisted multi-family housing (H-2010-21) and federally assisted Public Housing (PIH-2009-21) to implement smoke-free housing policies.

## **10. Housing Authorities/Commissions with Smoke-Free Policies**

Smoke-Free Environments Law Project, The Center for Social Gerontology, listing updated 1/20/11.

## **11. Select Resource Organizations and How Each Can Help**

## **NOTE for PUBLIC HOUSING AGENCIES**

U.S. Department of Housing and Urban Development (HUD), in Notices PIH-2009-21 and PIH-2012-25 and by issuing this toolkit, encourages Public Housing Agencies (PHAs) to implement smoke-free housing policies and programs.

Towards that end, the Department has created this toolkit, composed of fact sheets, brochures, and other resources that our partners have created to help guide PHAs and Multifamily owners and property managers through the process of implementing smoke-free policies. PHAs should note that because this toolkit is also intended to be useful for participants in HUD's Multifamily Housing program, not all portions of this toolkit are applicable to PHAs.

For example, *A Landlord's Guide to No-Smoking Policies*, created by the Smoke Free Housing Project, states "Just as you might prohibit pets, you can prohibit smoking..." While Multifamily owners and property managers may prohibit pets, PHAs may not.

Accordingly, where there is information that conflicts with HUD's Public Housing regulations and notices, the regulations and notices supersede this toolkit.

Also, there are PHA-specific steps that PHAs should follow when implementing smoke-free policies. While HUD's Office of Multifamily Housing encourages owners to add their smoke-free policy to their house rules, the Office of Public Housing encourages PHAs to engage with their residents when considering a new policy, consult with their resident boards and revise their PHA Plans, lease agreements and/or lease addendums to reflect their new policy.

**These steps are detailed in Notice PIH-2012-25, which is included in this toolkit for easy reference.** Additionally, if PHAs institute smoke-free policies, they should ensure that there is consistent application among all projects and buildings in their housing inventory in which smoke-free policies are being implemented.

# REASONS TO EXPLORE SMOKE-FREE HOUSING

## WHY PURSUE SMOKE-FREE HOUSING?

This document is for property owners, landlords, and property managers who are interested in exploring a smoke-free policy for their multi-unit buildings. Read on, if you are interested in a policy that can help you save money, reduce tenant complaints, improve the health of your tenants and building, and increase your market share.

Smoke-free apartment policies are quickly becoming the standard for multi-unit housing in the U.S. A smoke-free policy is simple and straightforward. There is no Federal or State law that prohibits a property owner from implementing a smoke-free policy for their buildings or grounds, and instituting a policy does not preclude someone who smokes from living in the building. It simply requires that all tenants abide by the policy while on the property. Going smoke-free in your multi-unit buildings is one of the best moves you can make for your tenants and your bottom line. The Smoke-Free Environments Law Project conducted an analysis of federal and state laws, HUD rules, and legal cases and found “unequivocally that a ban on smoking for new tenants who move into public or section 8 housing is permissible in all 50 states.”<sup>1</sup>

### Reduces Operating Costs

- Apartment turnover costs can be two to seven times greater when smoking is allowed, compared to the cost of maintaining and turning over a smoke-free unit.
- Some insurance companies offer discounts on property casualty insurance for multi-unit owners with a

100% smoke-free policy. Ask your carrier today!

- Smoking is a leading cause of residential fire and the number one cause of fire deaths in the U.S..

### Tenants Prefer Smoke-Free Housing

- Several statewide surveys demonstrate that as many as 78% of tenants, including smokers, would choose to live in a smoke-free complex.<sup>2,3,4</sup>
- Secondhand smoke complaints and requests for unit transfers drop following the implementation of a smoke-free policy. Nationwide, less than 21% of the general population smokes<sup>5</sup>, so it makes sense that a vast majority of tenants want to live in a smoke-free environment.

### Tenant Health Improves with Smoke-Free Housing

- There is **no** risk-free level of exposure to secondhand smoke<sup>6</sup> and the EPA has identified secondhand smoke as a Class A carcinogen, the most toxic class of chemicals that are known to cause cancer in humans.<sup>7</sup>
- Secondhand smoke is a leading trigger of asthma attacks and other respiratory problems, and a known cause of Sudden Infant Death Syndrome (SIDS).<sup>8</sup>
- Secondhand smoke is classified as a “toxic air contaminant,” putting it in the same class of other contaminants

Some insurance companies offer discounts on property casualty insurance for multi-unit owners with a 100% smoke-free policy.



National Center for  
Healthy Housing

## REASONS TO EXPLORE SMOKE-FREE HOUSING

EARLY FALL 2009

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- > EXISTING LAWS ALLOW FOR SMOKE-FREE HOUSING
- > KEY DECISIONS AND STEPS
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# The Monetary Impact

Cost to Rehabilitate a Unit Where Smoking is Prohibited vs. a Unit Where Smoking is Allowed

	Non-Smoking	Light Smoking	Heavy Smoking
General Cleaning	\$240	\$500	\$720
Paint	\$170	\$225	\$480
Flooring	\$50	\$950	\$1,425
Appliances	\$60	\$75	\$490
Bathroom	\$40	\$60	\$400
<b>TOTAL</b>	<b>\$560</b>	<b>\$1,810</b>	<b>\$3,515</b>

Data reflects surveys from housing authorities and subsidized housing facilities in New England. Collected and reported by Smoke-Free Housing New England, 2009.



including asbestos, lead, vehicle exhaust and a host of other chemicals strictly regulated in the U.S.<sup>9</sup>

- Ventilation systems do not protect families from secondhand smoke. Most air filter systems are designed to remove odors, not the toxic particles from tobacco smoke. According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking."<sup>10</sup>
- Research demonstrates that up to 65% of air can be exchanged between units and that smoke travels through tiny cracks, crevices and chasing, involuntarily exposing individuals in adjacent units.<sup>11</sup>

## Other Policy Benefits

### Self enforcing.

Smoke-free policies are largely self-enforcing. Because tenants expect and tend to prefer a smoke-free environment, they will abide by the policy. Guardian Management, a group managing over 12,000 smoke-free units nationwide, recently released survey results showing that more than three-quarters of their residents are "happy" with the smoke-free policy.<sup>12</sup>

### Gain green building credits.

Numerous "Green Building" programs, such as the U.S. Green Building Council's LEED program and the Enterprise Community Partner's Green Communities initiative, provide credit in their programs for smoke-free properties.

### Access to state affordable housing tax incentives.

Several states (Maine, California and New Hampshire) currently offer tax credit

incentives to developers of low-income housing for new housing projects that include a smoke-free policy.

### HUD strongly encourages public housing authorities to pursue smoke free housing.

On July 31, 2009 HUD issued a notice that unequivocally stated the Department's support for non smoking policies at public housing authorities (PIH-2009-21 (HA)).

## EXISTING LAWS ALLOW FOR SMOKE-FREE HOUSING

- There are no federal, state, or local laws that prohibit a landlord, housing authority or condominium association from adopting a 100% smoke-free policy. You can make your entire property smoke-free, including all apartment units and outdoor spaces.<sup>13</sup>
- Smoking is not a legal right. Smoke-free policies do not infringe on the legal rights of individuals.<sup>14</sup>
- Smokers are not a protected class under any state or federal law.<sup>15</sup> Smoke-

free policies are like any other lease provision, such as trash disposal or pet restrictions, and should be implemented and enforced as any other lease policy.

- Both public and private facilities have the right to adopt smoke-free policies. If you are a public housing authority, or owner of a subsidized facility, ensure your tenants receive adequate notice (30 days or more) of lease change and that HUD and/or your local housing authority approve of any changes to the model lease.<sup>16,17</sup>

Smoking is not a legal right. Smoke-free policies do not infringe on the legal rights of individuals.

## KEY DECISIONS AND STEPS

### For New Buildings

#### Start Fresh.

The easiest way to implement a smoke-free policy is to make buildings 100% smoke-free as you develop them. Include explicit language in your lease that notifies incoming tenants of the policy. You can view sample lease language by visiting [www.smokefreehousingne.org](http://www.smokefreehousingne.org).

#### Modify leases.

When adopting a smoke-free policy, include a lease provision or addendum that outlines the restrictions and penalties under your policy. When new or renewing tenants sign the lease, have them initial that they have read and understand the policy.

#### Advertise as smoke-free.

Include “smoke-free” in all advertisements for your vacant units. Smoke-free policies are amenities, no different than the inclusion of heat or hot water. Approximately 75% of tenants want to live in a smoke-free environment, and including a notice that your building is smoke-free can attract more attention to your listing.

#### Inform potential tenants.

Include information regarding your smoke-free policy on all housing applications to ensure incoming tenants are aware of the rules before they move in to your building. Also, include adequate signage and communication to remind existing tenants, incoming guests and maintenance workers of the policy.

### For Existing Structures with Tenants

#### Build tenant support.

When you're not sure how tenants feel about a smoke-free policy, and you want their input, a brief survey might be in order. Asking questions such as “has secondhand smoke from another

unit ever bothered you” or “if available, would you prefer to live in a smoke-free environment”, can help you determine what type of policy to implement. For sample survey language, visit [www.smokefreehousingne.org](http://www.smokefreehousingne.org).

#### Communicate widely.

The success of your smoke-free policy will be relative to how well you communicate the policy with your tenants. This does not have to be complicated, or overly time consuming, but things like including articles in your tenant newsletter, holding tenant meetings so opinions can be voiced, sending a letter to tenants, providing adequate signage and supplying information on the harmful effects of secondhand smoke will all help with policy enforcement down the road.

#### Offer support.

Many existing developments offer some type of cessation services (quit smoking support) to their tenants. Look to your State or municipal health department, Lung Association, Cancer Society or local hospital for free cessation support. Though you are not asking people to quit smoking with a smoke-free policy, this type of policy provides incentive and support to those who were considering quitting. Providing tenants with local cessation information is a way to show that you care about their well-being.

#### Give plenty of notice.

Notifying residents about your policy well in advance of making it effective isn't only a good idea—it's the law. Neglecting to tell both your new and old residents about your smoking policy is a breach of the duty to provide notice. You may only be required to give 30 days notice per your lease agreement when implementing a smoke-free policy, but it is recommended that you provide at least 90 days advance warning. This extra time will give those who smoke a chance to adjust their lifestyle to the new policy. Your posted

notifications should include the wording that will be in your leases or covenants. Providing poorly worded or incomplete lease provisions in these notices is also considered a breach of duty.

#### Consider your options.

There are many options to consider with a new policy. Will you prohibit smoking on the entire property grounds, 25 feet from doorways/entrances/windows or only in the building? If you allow smoking on the grounds, where will those tenants go to smoke? Will you provide a space?



Approximately 75% of tenants want to live in a smoke-free environment.

What about patios and balconies? All these questions and more need to be thought through with staff, administrators and possibly tenants as well.

## Leases

### Follow the rules.

With existing buildings, be sure to follow the rules of your lease before adopting new

policies. After a lease has been signed by both parties, it cannot be modified without the consent of both of the parties. Therefore, residents who have fixed term leases will be exempt from the smoke-free policies.

### Start with new and renewing tenants.

When new tenants sign a lease include a clear smoke-free provision in your contract.

## All Buildings

### Implications for workers and guests.

Remember, smoke-free policies not only impact residents, but their guests and your employees. When you adopt a smoke-free policy, make it clear that all guests, maintenance workers and staff are prohibited from smoking as well. ■

## RESOURCES

For more detailed information about how to implement a smoke-free policy in your new or existing development, including for example sample surveys, notification letters, and lease addenda, visit any of the following websites.

- Capital District Tobacco Free Coalition [www.smokefreecapital.org](http://www.smokefreecapital.org)
- Smoke-Free Housing New England [www.smokefreehousingne.org](http://www.smokefreehousingne.org)
- Michigan Smoke-Free Apartments [www.mismokefreeapartments.org](http://www.mismokefreeapartments.org)
- Smoke-Free Housing Coalition of Maine [www.smokefreeforme.org](http://www.smokefreeforme.org)
- Minnesota Smoke-Free Housing [www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)
- Tobacco Technical Assistance Consortium [www.ttac.org](http://www.ttac.org)

## REFERENCES

- <sup>1</sup> [http://www.tcsg.org/sfelp/public\\_housing24E577.pdf](http://www.tcsg.org/sfelp/public_housing24E577.pdf).
- <sup>2</sup> Smoke-Free Housing Coalition of Maine. *2004–2006 Surveys*. (Portland, ME: 2007).
- <sup>3</sup> Washington State Department of Health, Tobacco Prevention and Control Program. *2003 Tenant Surveys*. (Olympia, WA: 2003).
- <sup>4</sup> Oregon Smoke Free Housing Project, *2006 Market Surveys*. American Lung Association of Oregon. (Tigard, OR: 2006).
- <sup>5</sup> United States, Center for Disease Control and Prevention. *Prevalence of Current Smoking among Adults Aged 18 Years and Over: United States, 1997–June 2008*. (Atlanta: Department of Health and Human Services, 2008).
- <sup>6</sup> United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006).
- <sup>7</sup> United States, Office of Health and Environmental Assessment, Health Effects of Exposure to Secondhand Smoke. (Washington, DC: Environmental Protection Agency, 1992).
- <sup>8</sup> United States, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. (Atlanta, GA: Department of Health and Human Services, 2006).
- <sup>9</sup> California Environmental Protection Agency. *Environmental Tobacco Smoke: A Toxic Air Contaminant*. (Sacramento, CA: California Air Resource Board, 2006).
- <sup>10</sup> American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). *Environmental Tobacco Smoke Position Document*. (Atlanta: June 30, 2005).
- <sup>11</sup> Center for Energy and Environment. *Reduction of Environmental Tobacco Smoke Transfer in Minnesota Multifamily Buildings Using Air Sealing and Ventilation Treatments*. (Minneapolis, MN: 2004).
- <sup>12</sup> Oregon Public Health, Guardian Management. "Guardian Management, LLC Tenant Survey Reveals Majority of Residents Please with No Smoking Policy." (Portland, OR: November 18, 2008).
- <sup>13</sup> Schoenmarklin, Susan. *Analysis of the authority of Housing Authorities and Section 8 multiunit housing owners to adopt smoke-free policies in their residential units*. (Ann Arbor, MI: Smoke-Free Environments Law Project, May, 2005).
- <sup>14</sup> Technical Assistance Legal Center. *There is no constitutional right to smoke*. Public Health Institute (Oakland, CA: 2005).
- <sup>15</sup> Ibid.
- <sup>16</sup> Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.5.
- <sup>17</sup> Public Housing Occupancy Guidebook, HUD, Part 5, Chapter 17.3.

**Remember, smoke-free policies are about the smoke, not the smoker. Smoke-free policies do not preclude someone who smokes from living in the building; rather, they simply require that all tenants abide by the policy while on the property.**

# The Health Consequences of Involuntary Exposure to Tobacco Smoke

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A Report of the Surgeon General

2006

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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Rockville, MD

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Includes bibliographical references.

1. Tobacco Smoke Pollution -- adverse effects. I. United States. Public Health Service. Office of the Surgeon General. II. United States. Office on Smoking and Health.

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Use of trade names is for identification only and does not constitute endorsement by the U.S. Department of Health and Human Services.

# **The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General, U.S. Department of Health and Human Services**

## **6 Major Conclusions of the Surgeon General Report**

Smoking is the single greatest avoidable cause of disease and death. In this report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, the Surgeon General has concluded that:

1. Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control.

### Supporting Evidence

- Levels of a chemical called cotinine, a biomarker of secondhand smoke exposure, fell by 70 percent from 1988-91 to 2001-02. In national surveys, however, 43 percent of U.S. nonsmokers still have detectable levels of cotinine.
  - Almost 60 percent of U.S. children aged 3-11 years—or almost 22 million children—are exposed to secondhand smoke.
  - Approximately 30 percent of indoor workers in the United States are not covered by smoke-free workplace policies.
2. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke.

### Supporting Evidence

- Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic (cancer-causing), including formaldehyde, benzene, vinyl chloride, arsenic, ammonia, and hydrogen cyanide.
  - Secondhand smoke has been designated as a *known human carcinogen* (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer (IARC). The National Institute for Occupational Safety and Health has concluded that secondhand smoke is an occupational carcinogen.
3. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma. Smoking by parents causes respiratory symptoms and slows lung growth in their children.

### Supporting Evidence

- Children who are exposed to secondhand smoke are inhaling many of the same

cancer-causing substances and poisons as smokers. Because their bodies are developing, infants and young children are especially vulnerable to the poisons in secondhand smoke.

- Both babies whose mothers smoke while pregnant and babies who are exposed to secondhand smoke after birth are more likely to die from sudden infant death syndrome (SIDS) than babies who are not exposed to cigarette smoke.
  - Babies whose mothers smoke while pregnant or who are exposed to secondhand smoke after birth have weaker lungs than unexposed babies, which increases the risk for many health problems.
  - Among infants and children, secondhand smoke cause bronchitis and pneumonia, and increases the risk of ear infections.
  - Secondhand smoke exposure can cause children who already have asthma to experience more frequent and severe attacks.
4. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.

#### Supporting Evidence

- Concentrations of many cancer-causing and toxic chemicals are higher in secondhand smoke than in the smoke inhaled by smokers.
  - Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system and interferes with the normal functioning of the heart, blood, and vascular systems in ways that increase the risk of a heart attack.
  - Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25 - 30 percent.
  - Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20 - 30 percent.
5. The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke.

#### Supporting Evidence

Short exposures to secondhand smoke can cause blood platelets to become stickier, damage the lining of blood vessels, decrease coronary flow velocity reserves, and reduce heart rate variability, potentially increasing the risk of a heart attack.

- Secondhand smoke contains many chemicals that can quickly irritate and damage the lining of the airways. Even brief exposure can result in upper airway changes in healthy persons and can lead to more frequent and more asthma attacks in children who already have asthma.
6. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and

ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.

#### Supporting Evidence

- Conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke.
- Routine operation of a heating, ventilating, and air conditioning system can distribute secondhand smoke throughout a building.
- The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the preeminent U.S. body on ventilation issues, has concluded that ventilation technology cannot be relied on to control health risks from secondhand smoke exposure.

*The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* was prepared by the Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC). The Report was written by 22 national experts who were selected as primary authors. The Report chapters were reviewed by 40 peer reviewers, and the entire Report was reviewed by 30 independent scientists and by lead scientists within the Centers for Disease Control and Prevention and the Department of Health and Human Services. Throughout the review process, the Report was revised to address reviewers' comments.

#### **Citation**

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## There Is No Constitutional Right to Smoke<sup>1</sup>

February 2004

### I. INTRODUCTION

Laws that limit how and where people may smoke should survive a legal challenge claiming that smoking is protected by the state or federal constitution. Smoking is not mentioned anywhere in either constitution. Nevertheless, some people may claim that there is a fundamental “right to smoke.”<sup>2</sup> These claims are usually made in one of two ways: (1) that the fundamental right to privacy in the state or federal constitution includes the right to smoke, or (2) that clauses in the state and federal constitutions granting “equal protection” provide special protection for smokers. Neither of these claims has any legal basis. Therefore, a state or local law limiting smoking usually will be judged only on whether the law is rational, or even plausibly justified, rather than the higher legal standard applied to laws that limit special constitutionally protected rights.

### II. THERE IS NO FUNDAMENTAL RIGHT TO SMOKE

The argument that someone has a fundamental right to smoke fails because only certain rights are protected by the constitution as fundamental, and smoking is not one of them. The U.S. Supreme Court has held that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in the guarantee of personal liberty.”<sup>3</sup> These rights are related to an individual’s bodily privacy and autonomy within the home.

Proponents of smokers’ rights often claim that smoking falls within the fundamental right to privacy, by arguing that the act of smoking is an individual and private act that government cannot invade. Courts consistently reject this argument. The privacy interest protected by the U.S. Constitution includes only marriage, contraception, family relationships, and the rearing and educating of children.<sup>4</sup> Very few private acts by individuals qualify as fundamental privacy interests, and smoking is not one of them.<sup>5</sup>

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<sup>1</sup> This material was made possible by funds received from the California Department of Health Services, under contract # 99-85069. This fact sheet was created to provide general information only and is not offered or intended as legal advice.

<sup>2</sup> Common usage of the term “rights” conflates two distinct legal meanings: those rights that are specially provided for or protected by law (e.g., free speech); and those rights that exist simply because no law has been passed restricting them (e.g., the right to use a cell phone while driving). The latter type of right is always subject to potential regulation. Therefore, this memo addresses only those rights provided for or protected by law. This memo also does not address whether an employer may refuse to employ someone who smokes. While prohibiting smoking at work is permissible, Cal. Labor Code §96(k) protects employees from discrimination based on off-work conduct, though one court held that this statute does not create new rights for employees but allows the state to assert an employee’s independently recognized rights. *Barbee v. Household Auto. Finance Corp.*, 113 Cal. App. 4th 525 (2003).

<sup>3</sup> *Roe v. Wade*, 410 U.S. 113, 152 (1973).

<sup>4</sup> See, for example, *Griswold v. Connecticut*, 381 U.S. 479, 484 (1964) (recognizing the right of married couples to use contraceptives); *Meyers v. Nebraska*, 262 U.S. 390 (1923) (recognizing the right of parents to educate children

**Example:** A firefighter trainee challenged a city fire department requirement that trainees must refrain from cigarette smoking at all times, by arguing that “although there is no specific constitutional right to smoke, [there is an] implicit . . . right of liberty or privacy in the conduct of [ ] private life, a right to be let alone, which includes the right to smoke.”<sup>6</sup> The court, however, disagreed and distinguished smoking from the recognized fundamental privacy rights.<sup>7</sup> The court went on to find that the city regulation met the fairly low standard for regulating non-fundamental rights because there was a perfectly rational reason for the regulation, namely the need for a healthy firefighting force.

### III. SMOKERS ARE NOT A PROTECTED GROUP OF PERSONS

The second common constitutional claim made by proponents of smokers’ rights is that laws regulating smoking discriminate against smokers as a particular group and thus violate the equal protection clause of the U.S. or the California constitutions. No court has been persuaded by these claims.

The equal protection clauses of the United States and California constitutions, similar in scope and effect,<sup>8</sup> guarantee that the government will not treat similar groups of people differently without a good reason.<sup>9</sup> Certain groups of people – such as groups based on race, national origin and gender – receive greater protection against discriminatory government acts under the U.S. and California constitutions than do other groups of people.<sup>10</sup> Smokers have never been identified as one of these protected groups.<sup>11</sup> Generally, the Supreme Court requires a protected group to have “an immutable characteristic determined solely by the accident of birth.”<sup>12</sup> Smoking is not an “immutable characteristic” because people are not born as smokers and smoking is a behavior that people can stop. Because smokers are not a protected group, laws limiting smoking must only be rationally related to a legitimate government purpose.<sup>13</sup>

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as they see fit); and *Moore v. East Cleveland*, 431 U.S. 494 (1977) (protecting the sanctity of family relationships).

<sup>5</sup> *City of North Miami v. Kurtz*, 653 So.2d 1025, 1028 (Fla. 1995) (city requirement that job applicants affirm that they had not used tobacco in preceding year upheld because “the ‘right to smoke’ is not included within the penumbra of fundamental rights protected under [the federal constitution’s privacy provisions]”).

<sup>6</sup> *Grusendorf v. City of Oklahoma City*, 816 F.2d 539, 541 (10th Cir. 1987).

<sup>7</sup> *Id.* The court relied heavily on the U.S. Supreme Court decision *Kelley v. Johnson*, 425 U.S. 238 (1976). In *Kelley*, the Court held that a regulation governing hair grooming for male police officers did not violate rights guaranteed under the Due Process Clause even assuming there was a liberty interest in personal appearance.

<sup>8</sup> U.S. Const. amend. XIV, Cal. Const. art.1 §7. See *Serrano v. Priest*, 5 Cal. 3d 584, 597 n.11 (1971) (plaintiff’s equal protection claims under Article 1 §11 and §21 of state constitution are “substantially equivalent” to claims under equal protection clause of Fourteenth Amendment of U.S. Constitution, and so the legal analysis of federal claim applies to state claim).

<sup>9</sup> Equal protection provisions generally permit legislation that singles out a class for distinctive treatment “if such classification bears a rational relation to the purposes of the legislation.” *Brown v. Merlo*, 8 Cal. 3d 855, 861 (1973).

<sup>10</sup> See, for example, *Brown v. Board of Education*, 347 U.S. 483 (1954) (race); *Sugarman v. Dougall*, 413 U.S. 634 (1973) (exclusion of aliens from a state’s competitive civil service violated equal protection clause); *Craig v. Boran*, 429 U.S. 190 (1976) (classifications by gender must serve important governmental objectives and must be substantially related to the achievement).

<sup>11</sup> Even some potentially damaging classifications, such as those based upon age, mental disability and wealth, do not receive any special protections. See, for example, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (mentally disabled adults are not protected under Equal Protection Clause); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973) (education and income classifications are not protected).

<sup>12</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>13</sup> *Fagan v. Axelrod*, 550 N.Y.S. 2d 552, 560 (1990) (rejecting the argument that a state statute regulating tobacco smoking in public areas discriminated against members of a subordinate class of smokers on the basis of nicotine

The equal protection clause not only protects certain groups of people, the clause also prohibits discrimination against certain fundamental “interests” that inherently require equal treatment. The fundamental interests protected by the equal protection clause include the right to vote, the right to be a political candidate, the right to have access to the courts for certain kinds of proceedings, and the right to migrate interstate.<sup>14</sup> Smoking is not one of these recognized rights.

**Example:** In upholding a high school campus ban on smoking, a North Carolina court stated that “[t]he right to smoke in public places is not a protected right, even for adults.”<sup>15</sup> The court upheld a school regulation that permitted smoking by teachers in the teachers’ lounge but prohibited students from smoking. The smoking students claimed they were a discrete group suffering from discrimination (since teachers, another group, could smoke under the ban but students could not). The court found that the rule did not violate equal protection principles because of rational, reasonable differences in prohibiting smoking by minors and not by adults.

If a government classification affects an individual right that is not constitutionally protected, the classification will be upheld if there is any reasonably conceivable set of facts that could provide a rational basis for it.<sup>16</sup> So long as secondhand smoke regulations are enacted to further the government goal of protecting the public’s health from the dangers of tobacco smoke, the regulation should withstand judicial scrutiny if challenged.<sup>17</sup>

#### IV. CONCLUSION

There is no constitutional right to smoke. Claims to the contrary have no legal basis. The U.S. and California constitutions guarantee certain fundamental rights and protect certain classes of persons from all but the most compelling government regulation. However, no court has ever recognized smoking as a protected fundamental right nor has any court ever found smokers to be a protected class. To the contrary, every court that has considered the issue has declared that no fundamental “right to smoke” exists. So long as a smoking regulation is rationally related to a legitimate government objective such as protecting public health or the environment, the regulation will be upheld as constitutional.

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addiction by holding that “the equal protection clause does not prevent state legislatures from drawing lines that treat one class of individuals or entities differently from others, unless the difference in treatment is ‘palpably arbitrary’”). Note, too, that nonsmokers also are not recognized as a protected class, so equal protection claims brought by nonsmokers exposed to smoke in a place where smoking is permitted by law are unlikely to succeed.

<sup>14</sup> See, for example, *Baker v. Carr*, 369 U.S. 186 (1962) (improper congressional redistricting violates voters’ rights under equal protection); *Turner v. Fouche*, 396 U.S. 346 (1970) (all persons have a constitutional right to be considered for public service); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (residency requirement for receipt of state benefits violates equal protection).

<sup>15</sup> *Craig v. Buncombe County Bd. of Educ.*, 80 N.C.App. 683, 685 (1986).

<sup>16</sup> *People v. Leung*, 5 Cal. App. 4th 482, 494 (1992).

<sup>17</sup> *Dutchess/Putnam Restaurant & Tavern Ass’n, Inc. v. Putnam County Dep’t of Health*, 178 F. Supp. 2d 396, 405 (N.Y. 2001) (holding that County code regulating smoking in public places does not violate equal protection rights); *City of Tuscon v. Grezaffi*, 23 P.3d 675 (2001) (upholding ordinance prohibiting smoking in bars but not in bowling alleys because it is rationally related to legitimate government interest); *Operation Badlaw v. Licking County Gen. Health Dist. Bd. of Health*, 866 F.Supp. 1059, 1064-5 (Ohio 1992) (upholding ordinance prohibiting smoking except in bars and pool halls); *Rossie v. State*, 395 N.W.2d 801, 807 (Wis. 1986) (rejecting equal protection challenge to statute that banned smoking in government buildings but allowed it in certain restaurants).



# Frequently Asked Questions

- 1. *What is considered a smoke-free dwelling or apartment?*** A smoke-free apartment is one where smoking is not permitted in the unit and adjacent units sharing the same common air handling or HVAC system. This assures that cigarette smoke will not drift from one unit to another.
- 2. *Is it illegal for a landlord or owner to designate units smoke-free?*** It is legal for a landlord or apartment building owner or manager to designate rental units as smoke-free. Because increasingly renters prefer smoke-free properties, it is also an economic advantage for landlords and owners to market at least some properties as smoke-free. In some cases, residents are willing to pay a premium to rent smoke-free apartments.
- 3. *What is the US Department of Housing and Urban Development's (HUD) position regarding smoke-free dwellings?*** In July 2009, HUD issued PIH-2009-21, and in May 2012, issued PIH-2012-25, which strongly encourage PHAs to adopt smoke-free housing policies. On September 15, 2010, the Assistant Secretary for Housing issued Notice H 2010-21 to encourage owners and management agents in HUD's Multifamily Housing rental assistance programs to also implement smoke-free housing policies.
- 4. *Don't individuals have a "right" to smoke in their homes if they choose?*** There is no legal right to smoke. Smokers are not a protected class under the Civil Rights Act of 1964 or other federal law.
- 5. *Why aren't all assisted housing, multi-family and rental apartments smoke-free?*** Currently, there is no federal law requiring assisted housing to be smoke-free. The Smoke-Free Environments Law Project notes that as of January, 2011, there are at least 230 federally assisted properties in 27 states that have adopted smoke-free policies.
- 6. *What is the landlord and/or owner's role in protecting residents from second-hand smoke?*** Reasonable accommodation for a resident with a disability made worse by exposure to secondhand tobacco smoke may be required under the Fair Housing Act.



# Frequently Asked Questions

7. ***Won't a landlord's or owner's insurance protect him/her from liability for residents' injuries resulting from second-hand smoke?*** If a resident is injured or made seriously ill by involuntary exposure to smoke and chooses to take legal action, insurance might not cover that liability, especially if there is a pollution exclusion in the owner's commercial general liability policy.
8. ***Why is there such concern about secondhand smoke in workplaces, public places and living spaces?***
- According to the Centers for Disease Control and Prevention (CDC), approximately 50,000 deaths occur annually in the United States as a result of secondhand smoke-related illnesses, including from heart disease, asthma, lung cancer and other respiratory ailments.
  - It is a Group A carcinogen – a substance known to cause cancer in humans for which there is no safe level of exposure.
  - Increased risk of Sudden Infant Death Syndrome and middle ear infections in children have also been linked to second-hand smoke.
  - According to the American Association of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), the only means of effectively eliminating health risks associated with indoor exposure to tobacco smoke is to ban smoking activity.

*For more information, see HUD Notices and Resources included in this Toolkit.*

## Common Myths

### ***Myth 1: If I implement a smoke-free policy, I will lose money.***

Not only have there been documented maintenance savings resulting from reduced wear and tear on units, there are considerable savings on cleaning and re-painting costs.

### ***Myth 2: A smoke-free policy will alienate residents.***

Surveys conducted across the country document a preference by a majority of renters to live in smoke-free housing.

### ***Myth 3: Enforcing a smoke-free policy will be too difficult.***

Enforcing a smoking policy is a lot less of a headache than mediating disputes between smokers and non-smokers without a policy in place. Landlords must be prepared to follow through with all legal consequences.

## What's in It for Me?

### **Safety and Health:**

- More people die in fires started by smoking materials than in any other type of fire.
- Second-hand smoke is extremely hazardous, especially to children and the elderly.

### **Legal:**

- There is no legal right to smoke in federally subsidized housing .
- Fair housing laws may be applicable when second-hand smoke infiltrates non-smoking housing units. For more information, see: <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>

### **Savings (\$):**

- Fewer instances of burned counter tops, floors and carpets.
- Reduced labor and materials needed to turn over a unit after smoking occupants move out.
- Reduced risk of property destruction by fire, smoke and water damage.

***For more information and resources, see the Resources listing in this Toolkit.***

## Going Smoke-Free:

## Steps for Owners/ Management Agents Making the Transition to Smoke-Free Housing



## ***Survey Residents***

Conduct a survey, which will serve two purposes:

- gathering information
- alerting residents of possible changes

## ***Set a Timeframe for Change***

Well ahead of your target date, notify residents that you want to make the building(s) smoke-free by a certain date. Let them know that there will be meetings to discuss the benefits of smoke-free housing.

## ***Inform Residents of Benefits***

Let residents know the merits of smoke-free housing. Reasons typically include a combination of health, safety and business concerns, such as:

- Protecting residents from secondhand smoke
- Reducing the danger of fires
- Reducing maintenance and cleaning costs



## ***Include New Policies in Lease or House Rules***

Include language in your House Rules to make residents aware of any new policies or changes to existing leases.

If you allow smoking on a specific part of the property, specify in the lease or House Rules where smoking is allowed and advise leaseholders that they must inform their guests of non-smoking policies.

Sample smoke-free House Rules/Lease Addendum is included in this Smoke-Free Housing Toolkit.

## ***Promote Smoke-Free Policies***

In addition to working with residents to implement smoke-free policies and changes to leases, keep all residents informed with regular updates using announcements and postings in common areas; letters that are addressed and mailed to each lease holder; flyers and notices on bulletin boards, in newsletters and posted in all common areas.

Signs and notices should also be posted in appropriate exterior locations and on the grounds to advise residents where smoking is permitted.

## ***Accommodate Smokers***

Although you are under no obligation to provide outdoor smoking areas, if your policy allows outdoor smoking, it is advisable to assign smoking areas for residents and visitors, especially if your policy is new.

Because many smokers would like to quit but are addicted to nicotine, provide them with cessation resources to assist them.

Organizations to assist smokers are included in this toolkit.

## ***Enforce the Policy***

In worksites and other public areas, smoking policies have been largely self-enforcing.

To ensure that smoke-free policies are enforced, it is important to let violators know that there will be consequences, including possible eviction, should no-smoking policies be ignored.

## ***Enjoy the Benefits***

Smoke-free policies may offer benefits:

- Fewer complaints from nonsmokers
- Reduced risks of fires
- Protection from secondhand smoke
- Decreased maintenance and clean-up costs
- Greater appeal to prospective renters

A Landlord's  
Guide to

# No-Smoking Policies



**HIGHER PROFITS**

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**HAPPIER TENANTS**

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**SAFER HOUSING**





“For me it was the repainting each time,  
the extent of cleaning, professional carpet  
cleaners, hoping you would get the smell out.  
I just finally decided it wasn’t worth it.”



The Portland-Vancouver Metro Area Smokefree Housing Project is a partnership between the American Lung Association of Oregon, Multnomah County Health Department and Clark County Public Health. Together with our Advisory Board, we want to show landlords how no-smoking rules are a win-win for business and for health.

## NON-SMOKING HOUSING

**"... being an early implementer of smoke-free policies, a property management company could earn a reputation in the market for doing a better job of recognizing and offering the amenities tenants want, while at the same time ensuring higher retained earnings as a result of lower maintenance and related costs."**

— John Campbell, national landlord trainer and consultant

### **Good for Business and Health**


Have you been thinking about a no-smoking rule for your rentals? If you are like other landlords, you are sick and tired of the time and money it takes to repaint, replace carpet, and turn over apartments where tenants have been smoking indoors. You know that smoking is a major fire hazard and a liability. Maybe your tenants have complained about tobacco smoke drifting from neighboring units. You have heard that other landlords have eliminated these headaches by adopting a no-smoking rule, and you are wondering if it will work for you, too.

Well, good news! You can adopt a no-smoking rule. Just as you might prohibit pets, you can prohibit smoking at your rental properties, even inside individual units and in outdoor areas. It is entirely legal.

On our website, [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com), we have additional resources for landlords and tenants to help address this issue. See the last page of this booklet for a list of helpful articles and handouts that can be found on our website.

**"The debate is over. The science is clear: secondhand smoke is not a mere annoyance, but a serious health hazard."**

— U.S. Surgeon General Richard Carmona, 2006

A low-angle, black and white photograph of a woman with long, dark, curly hair. She is looking upwards and to the right, holding a mobile phone to her ear with her right hand. In the foreground, a large, crumpled white paper shopping bag is visible. The background shows the entrance of a brick building with a dark door featuring a multi-paned arched window. The overall scene suggests a busy, urban environment.

“We had an entire building lease up in just 30 days, because people were calling specifically for non-smoking units.”

## Marketing Tips

- Wherever you list vacancies, make sure to include “non-smoking” in the amenities.
- List your properties on [housingconnections.org](https://www.housingconnections.org), a free resource that lets you indicate your smoking policy.
- Put “No Smoking” signs on the front door, hallways, common areas and outdoor areas to let prospective tenants know about your policy.
- Order no-smoking stickers at [smokefreehousingNW](https://www.smokefreehousingNW.com).

## MARKET DEMAND

## Non-smoking housing is an exciting market opportunity for Portland-Vancouver metro area landlords.

*In the summer of 2006, we commissioned research on both landlords and tenants in the Portland-Vancouver metro area. Here is what we found:*

### Most renters would prefer non-smoking buildings

- Three-quarters would rather live in a non-smoking building.
- 52% would even pay extra rent.
- Three-quarters say it is okay for landlords to prohibit smoking inside rental units to keep secondhand smoke from drifting into other units.
- Most renters, regardless of income, age, or gender, would prefer a no-smoking rule.
- Over a third of renters in multi-unit buildings say they are regularly exposed to a neighbor's secondhand smoke.

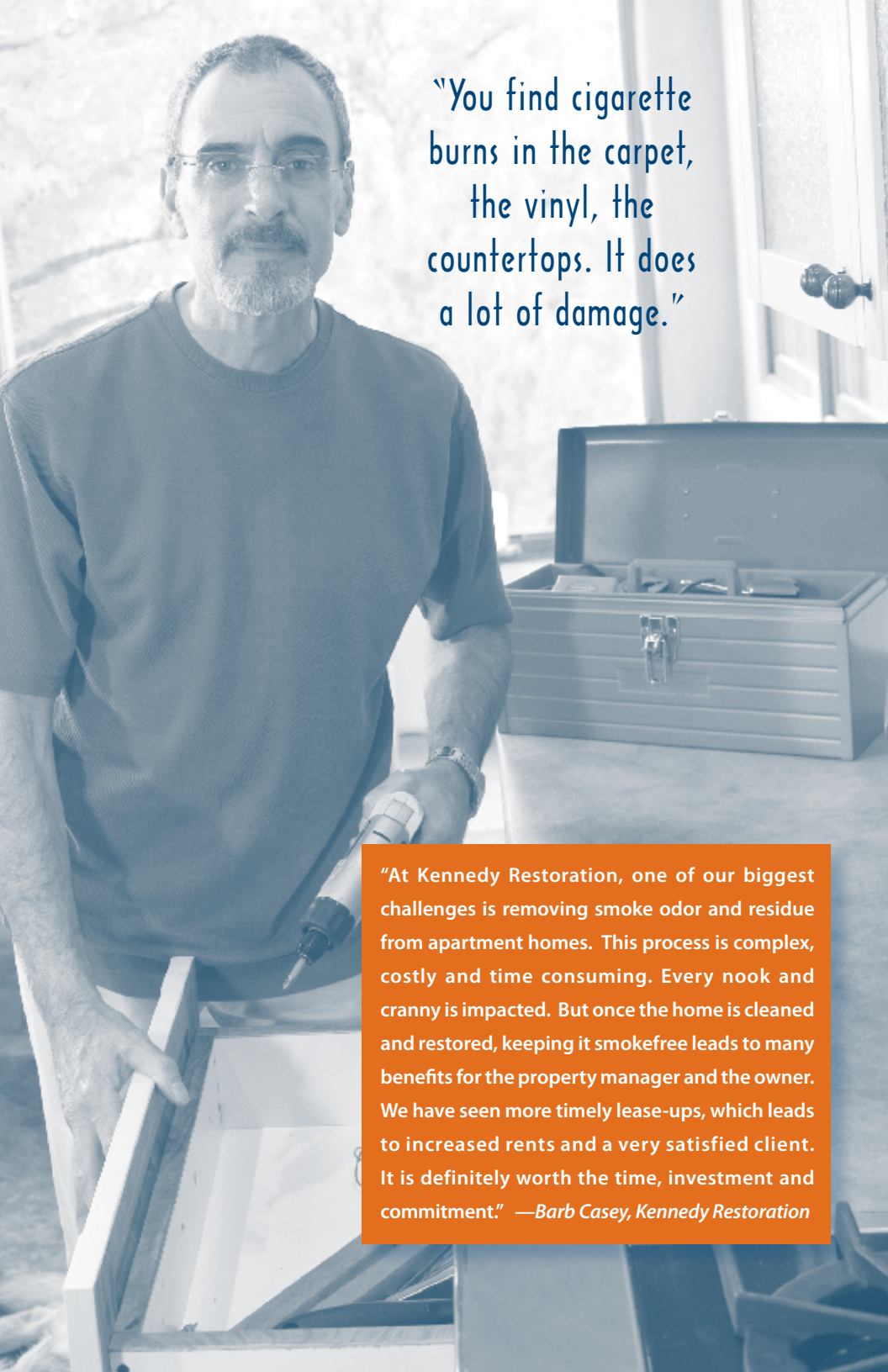
### Most renters don't smoke and most smokers smoke outside

- Three-quarters of renters do not smoke at all.
- 19% of renters smoke daily—but only 11% smoke inside regularly.
- Two-thirds of smokers agree that even small amounts of secondhand smoke are hazardous to your health.

*Statistics are from the market survey report, "Smoke-free Rental Housing in the Portland Metro Area." Campbell DeLong Resources, Inc, 2006.*



**Many landlords say that a no-smoking rule helps them attract and keep tenants who take good care of their units.**



“You find cigarette burns in the carpet, the vinyl, the countertops. It does a lot of damage.”

“At Kennedy Restoration, one of our biggest challenges is removing smoke odor and residue from apartment homes. This process is complex, costly and time consuming. Every nook and cranny is impacted. But once the home is cleaned and restored, keeping it smokefree leads to many benefits for the property manager and the owner. We have seen more timely lease-ups, which leads to increased rents and a very satisfied client. It is definitely worth the time, investment and commitment.” —Barb Casey, Kennedy Restoration

## ASSET MANAGEMENT

**Your property is an important investment. Protect it! A no-smoking rule will help you save money by reducing damage to your property, preventing fires, and avoiding liability.**

**A no-smoking rule is one of the easiest ways to reduce damage to your units and keep your costs down:**

If you have tenants who smoke, you know what it does to your property: burn marks on the counters, yellow walls, trashed carpets, a horrible odor, and worse. A no-smoking rule will help you spend less time and money on cleaning, repairs and painting. It will keep your units in better condition, making them more attractive to prospective tenants and to buyers if you decide to sell.

**A no-smoking rule will also protect your property from fires:**


The Hartford Insurance Company reports that more people die in fires caused by smoking than by any other type of fire. Smoking is the #1 cause of residential fire deaths in Oregon and Washington, causing more expensive property damage than most other types of fires. A no-smoking rule will reduce the risk of fires at your rental properties and you may even be able to get an insurance discount. Ask your broker.

**A no-smoking rule will help you avoid potential legal liability due to nonsmoking tenants' exposure to secondhand smoke:**

Several common law theories, including constructive eviction and breach of the warranty of habitability, have been used to bring successful legal action against landlords and smoking tenants. Tenants with certain disabilities may also be able to request reasonable accommodations to protect them from secondhand smoke. Ventilation and air sealing technologies are not effective ways to eliminate secondhand smoke according to the American Society of Heating, Refrigerating and Air Conditioning Engineers.



**Landlords who adopted no-smoking rules tell us they would never go back.**



“It started with a couple floors. We told people that in a year it would be non-smoking, and we’d give them resources to help them quit.”

## Policy Checklist

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- List the places where smoking is and is not allowed.
- State who the policy applies to (tenants, guests, staff, service persons).
- Set the effective date of the policy.
- Define smoking.
- Optional: Designate a smoking area outside at least 25 feet away from doors, windows, and major walkways.

## DEVELOPING YOUR NO-SMOKING RULE

When you are opening a new building or complex, the easiest thing to do is prohibit smoking from the beginning. When converting an existing building or complex, you may need to phase in the policy as you fill vacancies or as leases are renewed. You can also “go smokefree” after a certain date if you follow landlord-tenant law requirements, including giving advance notice and having tenants agree to the changes in writing.

### Use our sample lease language or order forms through:

- [www.metromultifamily.com](http://www.metromultifamily.com) 800-632-3007
- [www.oregonrentalhousing.com](http://www.oregonrentalhousing.com) 503-364-5468
- [www.stevensness.com](http://www.stevensness.com) 503-223-3137

### Sample Lease Language



**SMOKING:** Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, smoking is prohibited in any area of the property, both private and common, indoors and within 25 feet of the building(s) including entryways, balconies

and patios. This policy applies to all owners, tenants, guests and service persons. Tenants are responsible for ensuring that family members, roommates and guests comply with this rule.

#### (If you are “phasing in” the policy)

All new and renewed leases in your building prohibit smoking as described here. Please be aware that, until all leases have been renewed, you may have neighbors whose current lease does not prohibit smoking.

#### DEFINITION

**SMOKING:** The term ‘smoking’ means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other tobacco product in any manner or any form.

Please visit our website [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com) for additional resources.



“We do an addendum to the lease, and tenants have to sign it.”



## Helpful Talking Points

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- Tenants and their families will be safer from fires.
- The air will be healthier for everybody who lives in a non-smoking building.
- There will be less damage to the units.
- A no-smoking rule is not a 'no-smoker rule.' Smokers will simply have to step outside (as most smokers already do), and away from the building.
- If a smoker is ready to quit, free resources include the Tobacco Quit Line at 1-800-QUIT-NOW and Freedom From Smoking at [lungusa.org](http://lungusa.org).

## HOW TO ENFORCE YOUR NO-SMOKING RULE

**A no-smoking rule is just like any other rule you enforce.**

### Tips for Getting Tenants to Comply:

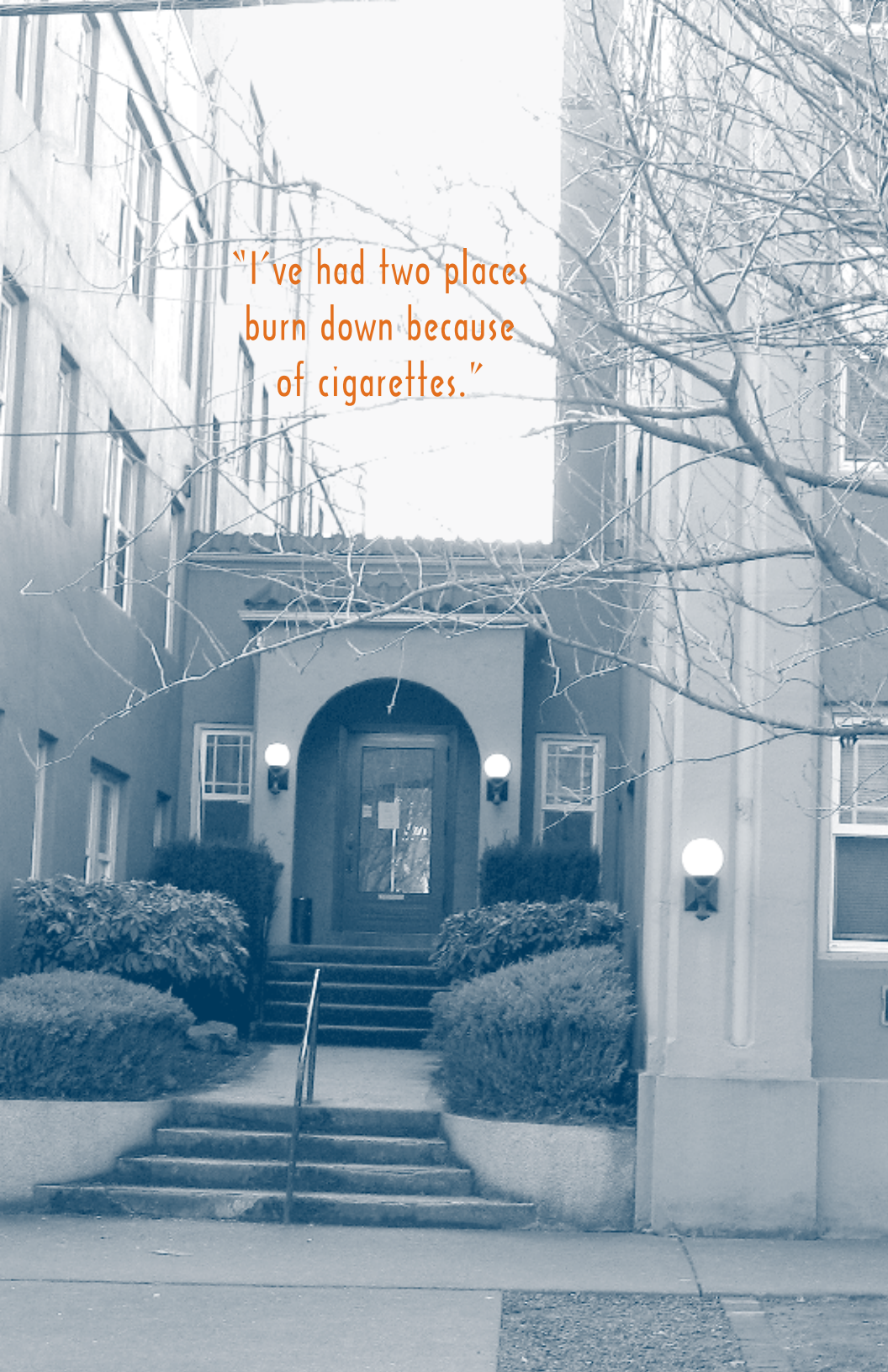
1. Advertise the units as non-smoking to attract tenants who either don't smoke or only smoke outside. Talk to prospective tenants about it when showing the property.
2. Put the no-smoking rule in the lease agreement and read through the rule with tenants as they sign their lease.
3. Post signs in the building and on the property.
4. Inform tenants that if they smoke in their units, they will be financially responsible for bringing the unit back to rentable condition, which could cost thousands of dollars.
5. Use the same warning/enforcement methods for smoking rule violations that you use for any other rule.
6. Visit the properties regularly and perform inspections, just as should always be done for all rentals.
7. Optional: Provide a designated smoking area outside, away from windows and doors (25 feet is a good distance).



### Talking to Your Tenants:

Giving your tenants advance notice about the no-smoking rule will help you gain compliance with the policy. You might want to go “over and above” your normal procedures for announcing rule changes. A little bit of extra work at the beginning could help you avoid headaches later on. Some landlords choose to survey their tenants to find out how many smoke inside their units, how many would prefer a no-smoking rule, and how many would want to move. [SmokefreehousingNW.com](http://SmokefreehousingNW.com) has sample survey questions and a sample tenant handout to help you explain your rule to tenants.

**Enforce your no-smoking rule just like any other rule.**

A blue-tinted photograph of a building entrance. The entrance features a central arched doorway with a glass door, flanked by two windows. There are two spherical wall sconces on either side of the doorway. A set of concrete steps leads up to the doorway, with a metal handrail on the left side. The building is surrounded by bare tree branches in the foreground. The overall scene is dimly lit, suggesting an overcast day.

"I've had two places  
burn down because  
of cigarettes."

## FREQUENTLY ASKED QUESTIONS

### **Q. What do I have to gain from a no-smoking rule?**

**A.** A no-smoking rule will help protect your property from damage and fires. You will save money on turnover expenses because apartments will cost less to clean, repair, and repaint. As more people become aware of the health hazards of secondhand smoke, no-smoking is an amenity that most Portland-Vancouver metro area tenants want.

### **Q. Is a no-smoking rule legal?**

**A.** Yes. It is legal to prohibit smoking at your properties, inside and out. It is your property and you have the right to set reasonable rules to protect it. It is not discrimination to prohibit smoking. Keep in mind a no-smoking rule is not a no-smoker rule. Smoking is a behavior, not an inborn characteristic. It is not a disability and smokers are not a protected class. As when changing any rule, be sure to follow landlord-tenant law (give notice, have tenants sign their agreement with the rule change, apply it equally, etc.).

### **Q. Can I adopt a no-smoking rule in HUD-assisted housing?**

**A.** Yes. You can adopt a no-smoking rule for new tenants at HUD-assisted housing, but you may have to “grandfather” existing tenants until their leases renew. If you want to change the model lease, you will have to get HUD approval, but changes can be made to “House Rules” without HUD approval.

### **Q. Do no-smoking rules work only in higher end properties?**

**A.** No. Many local landlords are already enjoying success with no-smoking rules at all kinds of properties, in all sections of the metro area. Three quarters of renters, even those with household incomes under \$25,000, would rather live in a non-smoking building. Three out of four metro area renters are nonsmokers. Our survey found that only 19% of metro area renters smoke on a daily basis, but only 11% smoke inside.

### **Q. My tenants are complaining about secondhand smoke. What can I do about it until the no-smoking rule goes into effect?**

**A.** Ask tenants to smoke outside or away from the building. You could try to reduce the secondhand smoke drifting between your tenants’ units by sealing the units off or by improving the ventilation, but be aware that neither will eliminate the problem.

## **REFERENCES:**

### **LOCAL RESEARCH**

Smokefree Rental Housing in the Portland Metropolitan Area, Campbell DeLong Resources, July 2006. [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com)

Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies & Practices, Campbell DeLong Resources, Inc. November 2006. [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com)

### **HOUSING REGULATIONS**

"The Americans with Disabilities Act: Effective legal protection against secondhand smoke exposure" Clifford Douglas. 2004. [www.wmitchell.edu/tobaccolaw/resources/douglas.pdf](http://www.wmitchell.edu/tobaccolaw/resources/douglas.pdf)

"Analysis of the authority of Housing Authorities and Section 8 multiunit housing owners to adopt smoke-free policies in their residential units" Susan Schoenmarklin, Esq. May 2005. [www.tcsg.org/sfelp/public\\_housing24E577.pdf](http://www.tcsg.org/sfelp/public_housing24E577.pdf)

"The Federal Fair Housing Act and the protection of persons who are disabled by secondhand smoke in most private and public housing" Smokefree Environments Law Project. Sept. 2002. [www.tcsg.org/sfelp/fha\\_01.pdf](http://www.tcsg.org/sfelp/fha_01.pdf)

### **LEGAL ANALYSES**

"Infiltration of secondhand smoke into condominiums, apartments and other multi-unit dwellings" Susan Schoenmarklin. April 2004. [www.wmitchell.edu/TobaccoLaw/resources/SchoenmarklinWeb.pdf](http://www.wmitchell.edu/TobaccoLaw/resources/SchoenmarklinWeb.pdf)

"There is no constitutional right to smoke" Public Health Institute, Technical Assistance Legal Center. February 2004. [www.talc.phlaw.org/pdf\\_files/0074.pdf](http://www.talc.phlaw.org/pdf_files/0074.pdf)

### **SECONDHAND SMOKE**

"The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General." June 27, 2006. [www.surgeongeneral.gov/library/secondhandsmoke/](http://www.surgeongeneral.gov/library/secondhandsmoke/)

"Environmental Tobacco Smoke Position Statement." The American Society of Heating, Refrigerating, and Air-Conditioning Engineers. June 2005. [www.ashrae.org/doclib/20058211239\\_347.pdf](http://www.ashrae.org/doclib/20058211239_347.pdf)

### **FIRES**

"2005 Annual Report." The Oregon State Fire Marshall. 2005. [www.oregon.gov/OSP/SFM/docs/Data\\_Services/2005\\_Annual\\_Report\\_FINAL.pdf](http://www.oregon.gov/OSP/SFM/docs/Data_Services/2005_Annual_Report_FINAL.pdf)

"Fire in Washington." The Washington State Fire Marshal. 2004. [www.wsp.wa.gov/fire/2004firpt.pdf](http://www.wsp.wa.gov/fire/2004firpt.pdf)

## RESOURCES FOR LANDLORDS



Visit [www.smokefreehousingNW.com](http://www.smokefreehousingNW.com) for the following resources:

- Order form for signs & stickers.
- Tenant Handout—to explain the benefits of a no-smoking rule.
- Sample Tenant Survey—to find out how many tenants would prefer a no-smoking rule.
- Market Survey Report: “Smoke-free Rental Housing in the Portland Metro Area.”
- Landlord Focus Group Report “Opinions of Experienced Metro-Area Landlords Regarding Smoking Policies and Practices.”
- Fact sheet on Secondhand Smoke.
- Articles about HUD-assisted housing, the Fair Housing Act, the American with Disabilities act, legal cases and how they relate to secondhand smoke and no-smoking policies.

### Secondhand Smoke Facts

- Secondhand smoke kills 53,000 non-smoking Americans and 800 non-smoking Oregonians every year.
- Secondhand smoke contains more than 43 cancer-causing agents and many other toxins, including formaldehyde, cyanide, carbon monoxide and arsenic.
- Secondhand smoke exposure causes heart disease and lung cancer in adults and sudden infant death syndrome and respiratory problems in children.
- There is no risk-free level of secondhand smoke exposure: even brief exposure adversely affects the cardiovascular and respiratory systems.
- Only smokefree environments effectively protect people from secondhand smoke exposure indoors.

## Smokefree Housing Advisory Board:

Metro Multi-Family Housing Association  
Oregon Rental Housing Association  
City of Portland Bureau of Housing & Community  
Development, Healthy Homes Initiative  
HousingConnections.org  
Fair Housing Council of Oregon  
Tualatin Valley Fire & Rescue  
Kennedy Restoration  
Housing Authority of Portland  
Vancouver Housing Authority  
Portland Development Commission  
Tobacco Free Coalition of Clark County  
Tobacco-Free Coalition of Oregon  
Tobacco Free Tri-Counties  
IRCO/Asian Family Center  
Lifeworks  
Native American Rehabilitation Association  
Oregon Human Development Corporation

*This project is funded by generous grants in **Oregon** from American Legacy Foundation, Kaiser Permanente Community Fund at Northwest Health Foundation and the Oregon Public Health Division and in **Washington** from Community Choices 2010 and Steps to a Healthier Clark County.*



503.924.4094



503.988.4163



360.397.8000 ext 7378

*The information and materials contained in this brochure are for informational purposes only and are not offered or intended to be and should not be construed to be legal advice nor to be a substitute for obtaining legal advice from a licensed attorney.*



## Sample Resident Letter and Secondhand Smoke Survey for Use by Owners and Property Managers

[Date]

Dear Residents:

We are pleased that you have chosen to reside at [name of building/property]. The [name of management company, apartment building or Public Housing Agency] has been studying the changes that are occurring in the management of apartments. Many owners are deciding to regulate the use of tobacco products within their properties.

Apartment building owners are adopting smoke-free policies for a number of reasons. Secondhand smoke is a health hazard, especially for children, the elderly and persons with chronic diseases. There is no safe level of exposure to secondhand smoke. (Source: US Surgeon General, 2006). In addition, smoking materials are the leading cause of fire deaths in the United States. (Source: US Fire Administration/National Fire Data Center).

To ensure the health and safety of all persons living here, we are considering adopting a no-smoking policy for our building(s) and individual units. We would like to hear from you! Let us know what you think about having rules about tobacco use in the building and on the grounds. Please fill out the short survey below and return it to [name of office, etc.]. As a thank you for returning the survey, enclosed [insert incentive, if desired].

Sincerely,

[Property Manager's name]



Cut here

### Do you smoke in your unit?

- Yes, I smoke in my unit or I allow others to smoke in my unit.
- No, I do not smoke or allow others to smoke in my unit.

### Can you smell smoke in your unit? Check all that apply.

- Yes, I can smell secondhand smoke coming into my unit from another unit.
- The smoke smell bothers me/The smoke smell makes me ill.
- I'm worried about the effects the secondhand smoke has on my health or the health of people who live with me.

### Would you like to live in a smoke-free building?

- Yes, I would like our building to be smoke-free, including the units.
- No, I would like our building to continue to allow smoking in the units.
- I have no preference.
- Building Name: \_\_\_\_\_

### Comments:

### Optional Information:

Name: \_\_\_\_\_ Unit #: \_\_\_\_\_ Phone: \_\_\_\_\_



## Possible Additions to an Owner's House Rules or a PHA's Lease Addendum

*Property managers, owners or PHAs may adjust this document depending on the scope and details of the smoke-free policy.*

**1. Purpose of Smoke-Free Housing:** The parties desire to mitigate (i) the irritation and known health effects caused by secondhand smoke; (ii) the maintenance, cleaning, and redecorating costs attributable to smoking; (iii) and the increased risk of fire from smoking.

**2. Definition of Smoking:** "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant.

**3. Smoke-Free Complex:** Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident's household have been designated as a smoke-free living environment. Resident and members of Resident's household shall not smoke anywhere in the unit rented by Resident, in the building where the Resident's dwelling is located or in any of the common areas (or adjoining grounds of such building or other parts of the rental community), nor shall Resident permit any guests or visitors under the control of Resident to do so.

**4. Property Manager/Owner to Promote No Smoking Policy:** Property Manager/Owner shall post no smoking signs at entrances and exits, common areas, and hallways (and in conspicuous places on the grounds adjoining the apartment complex).

**5. Property Manager/Owner Not a Guarantor of Smoke Free Environment:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke free, do not make the Property Manager/Owner or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, Property Manager/Owner shall take reasonable steps to enforce the smoke-free terms of its Leases/House Rules and to make the (designated areas of the) complex smoke-free.

Property Manager/Owner is not required to take steps in response to smoking unless Property Manager/Owner knows of said smoking or has been given a report of said smoking.

**6. Effect of Breach and Right to Terminate Lease:** A breach of this Addendum/House Rules shall give each party all the rights contained herein, as well as the rights provided for in the Lease. A material breach of this Addendum by the Resident shall be a material

breach of the Lease and grounds for immediate termination of the Lease by the Property Manager/Owner.

Property Manager/Owner acknowledges that in declaring this building (or portion of the building) to be smoke-free, the failure to respond by Property Manager/Owner to a complaint filed by the Resident shall be treated as equivalent to failure to respond to a request for maintenance.

**7. Disclaimer by Property Manager/Owner:** Resident acknowledges that Property Manager/Owner's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not in any way change the standard of care that the Property Manager/Owner would have to a Resident 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 rental premises. Property Manager/Owner specifically disclaims any implied or express warranties that the building, common areas, or Resident's premises will have any higher or improved air quality standards than any other rental property. Property Manager/Owner cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Resident acknowledges that Property Manager/Owner's ability to police, monitor, or enforce the agreements of the Addendum is dependent in significant part on voluntary compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Property Manager/Owner does not assume any higher duty of care to enforce this Lease Addendum/House Rules than any other Property Manager/Owner obligation under the Lease.

***Paragraph for existing rental communities adopting smoke-free policies that grandfather residents for a period of time:***

**8. Grandfathering Current Residents:** Resident acknowledges that current residents residing in the complex under a prior Lease will not be immediately subject to the smoke-free policies. As current residents move out, or enter into new Leases, the smoke-free policy will become effective for their new unit or new Lease.

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Manager/Owner

\_\_\_\_\_  
Date



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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### Special Attention of:

NOTICE: H 2010-21

Multifamily Hub Directors  
Multifamily Program Center Directors  
Rural Housing Services (RHS) Directors  
Supervisory Housing Project Managers  
Housing Project Managers  
Contract Administrators  
Multifamily Owners and Management Agents

Issued: September 15, 2010

Expires: September 30, 2011

Cross References:

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### Subject: **Optional Smoke-Free Housing Policy Implementation**

#### **I. Purpose**

The purpose of this Notice is to encourage owners and management agents (O/As) participating in one of the Multifamily Housing rental assistance programs listed in Section III of this Notice to implement smoke-free housing policies in some or all of the properties they own or manage. This Notice provides instructions to O/As on the requirements for implementing smoke-free housing policies and only applies to O/As who choose to establish such policies.

#### **II. Background**

It has been proven that exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer. In 2006, the U.S. Department of Health and Human Services published *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. This document expounds on health effects due to involuntary exposure to tobacco smoke. The report defines secondhand smoke, in the past referred to as environmental tobacco smoke (ETS), as smoke composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker). The report lists several major conclusions, all based on scientific data, including the following: 1) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; and 2) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure of nonsmokers to secondhand smoke.

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Below are relevant statistics and conclusions from *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*.

- According to a 2005 estimate by the California Environmental Protection Agency, Office of Environmental Health Hazard Assessment, approximately 50,000 excess deaths result annually in the United States from exposure to secondhand smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory infections, ear problems, and more severe asthma.
- Secondhand smoke has been designated as a known human carcinogen (cancer-causing agent) by the U.S. Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer.
- Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing heart disease by 25-30 percent.
- Nonsmokers who are exposed to secondhand smoke at home or at work increase their risk of developing lung cancer by 20-30 percent.
- The National Toxicology Program estimates that at least 250 chemicals in secondhand smoke are known to be toxic or carcinogenic (cancer causing).

In addition to the negative health effects of secondhand smoke, smoking is a proven hazard to physical structures. The United States Fire Administration (USFA) indicates smoking as the number one cause of home fire deaths in the United States. Furthermore, about 1,000 people are killed every year in their homes by fires caused by cigarettes and other smoking materials. The USFA states 25 percent of people killed in smoking-related fires are not the actual smokers; of this percentage, 34 percent of the victims were children of the smokers, and 25 percent were neighbors or friends of the smokers.

### **III. Applicability**

This Notice applies to:

- A. Project-based Section 8
  1. New Construction
  2. State Agency Financed
  3. Substantial Rehabilitation
  4. Section 202/8
  5. Rural Housing Services Section 515/8
  6. Loan Management Set-Aside (LMSA)
  7. Property Disposition Set-Aside (PDSA)
- B. Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 811 PRAC

- 
- F. Section 236
  - G. Rental Assistance Payment (RAP)
  - H. Section 221(d)(3) Below Market Interest Rate (BMIR)

#### **IV. Update to House Rules/Policies and Procedures**

O/As choosing to implement a smoke-free housing policy must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements. O/As are encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.

In carrying out any smoke-free housing policy, O/As must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105, including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act; Section 109 of the Housing and Community Development Act of 1974.

#### **V. Requirements for Implementing Smoke-free Housing Policies**

O/As who choose to establish smoke-free housing policies may establish policies that allow smoking in individual units but prohibits smoking in all common areas or policies to create a totally smoke-free property.

A. The O/A's policies must:

1. Be in accordance with state and local laws.
2. Address smoking in a tenant's unit, common areas, playground areas, areas near any exterior window or door, and areas outside a tenant's unit.
3. Designate specific smoking areas and identify these areas with clear signage unless the O/A establishes a totally smoke-free policy.

B. The O/A must not have policies that:

1. Deny occupancy to any individual who smokes or to any individual who does not smoke who is otherwise eligible for admission.
2. Allow the O/A to ask at the time of application or move-in whether the applicant or any members of the applicant's household smoke. However, if the O/A has established a smoke-free building as of a certain date, the O/A must inform applicants after that date that the building is a totally smoke-free building. The O/A must not maintain smoking or nonsmoking specific waiting lists for the property.

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3. Allow the O/A to ask at the time of recertification, whether the tenant or any members of the tenant's household smoke.
  4. Require existing tenants, as of the date of the implementation of the smoke-free housing policies, to move out of the property or to transfer from their unit to another unit.

#### C. Grandfathering

O/As are not required to grandfather current tenants living at their property, however, they do have the option to do so. Such policies must be clearly defined (e.g. whether current tenants are allowed to smoke in their units).

#### D. Non-smoking wings, buildings, floors, or units

O/As are not restricted from establishing smoke-free wings, buildings, floors, and/or units at their property. When a unit becomes available, regardless of where this unit is located, it must be offered to the first eligible household on the waiting list. Waiting lists must be maintained according to existing procedures found in HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 4 and the removal of names from the waiting list according to HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraph 4-20.

O/As who have already established smoke-free policies may continue to enforce their current policies so long as the policies do not violate state or local laws or any of the above guidance.

## VI. **Implementation**

O/As must implement any new smoking-related House Rules in accordance with HUD Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, paragraphs 6-9 and 6-12.

- A. **New admissions.** O/As are required by existing HUD policies to provide the House Rules to all new tenants.
- B. **Existing tenants.** O/As must notify existing tenants, who have completed their initial lease term, of the modifications to the House Rules 30 days prior to implementation. Notification is accomplished by forwarding a copy of the revised House Rules to existing tenants. For those tenants who have not yet completed their initial lease term, the owner must provide the tenant with 60 days notice, prior to the end of their lease term, of the change in the House Rules.

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**VII. Penalties for Violating the House Rules**

Repeated violations of the non-smoking policy may be considered material noncompliance with lease requirements and may result in termination of tenancy. When pursuing eviction due to material noncompliance with lease requirements, existing HUD procedures found in HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, Chapter 8 must be followed.

**VIII. Further Information**

If you have any questions regarding the requirements in this Notice as they pertain to the Office of Housing's programs, please contact your local HUD Field Office.

/s/

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David H. Stevens  
Assistant Secretary for Housing -  
Federal Housing Commissioner



**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Healthy Homes and Lead Hazard Control**

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**SPECIAL ATTENTION OF:**

NOTICE: PIH-2012-25

Regional Directors; State and Area  
Coordinators; Public Housing Hub  
Directors; Program Center Coordinators;  
Troubled Agency Recovery Center Directors;  
Special Applications Center Director;  
Administrators; Resident Management  
Corporations Public Housing Agencies;  
Healthy Homes Representatives

Issued: May 29, 2012

Expires: Effective until amended,  
revoked or superseded

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Cross Reference:

24 CFR 903.7 (e)(1)

24 CFR 966.3

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Subject: Smoke-Free Policies in Public Housing

1. **Purpose.** This notice is a reissuance of PIH Notice 2009-21 which strongly encourages Public Housing Authorities (PHAs) to implement smoke-free policies in some or all of their public housing units. According to the American Lung Association, cigarette smoking is the number one cause of preventable disease in the United States. The elderly and young populations, as well as people with chronic illnesses, are especially vulnerable to the adverse effects of smoking. This concern was addressed by the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31, signed by the President on June 22, 2009. It is possible for Environmental Tobacco Smoke (ETS) to migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects for those living in neighboring residences. Therefore the Department is encouraging PHAs to adopt smoke-free policies. By reducing the public health risks associated with tobacco use, this notice will enhance the effectiveness of the Department's efforts to provide increased public health protection for residents of public housing. The Department is currently developing additional guidance to assist PHAs with the consideration and adoption of smoke-free policies.

2. **Applicability.** This notice applies to Public Housing.

3. **Background.** Secondhand smoke, also known as Environmental Tobacco Smoke, is the smoke that comes from the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers. ETS is involuntarily inhaled by non-smokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. According to the U.S. Environmental Protection Agency (EPA) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke ([www.epa.gov/smokefree/healtheffects.html](http://www.epa.gov/smokefree/healtheffects.html)). Also the 2006 Surgeon General's report identified hundreds of chemicals in secondhand smoke that are known to be toxic. The report



*(The Health Consequences of Involuntary Exposure to Secondhand Smoke)* can be found at <http://www.surgeongeneral.gov/library/smokeexposure/report/fullreport.pdf>. According to this report, secondhand smoke causes an estimated 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and approximately 46,000 from heart disease. This can have a significant impact on people who live in close proximity to smokers.

Currently there are more than 1.2 million families who reside in public housing. Residents between the ages of 0-17 represent approximately 39 percent of public housing residents, with those over the age of 62 representing approximately 15 percent of public housing residents. Residents in these age groups account for at least 54 percent of public housing residents, and represent a population that could be at increased risk to the adverse effects of ETS. Additionally, there are a considerable number of residents with chronic diseases such as asthma and cardiovascular disease who may also be particularly vulnerable to the effects of ETS as secondhand smoke lingers in the air hours after cigarettes have been extinguished and can migrate between units in multifamily buildings.

Smoking is the leading cause of fire deaths in multifamily buildings with 26 percent of these casualties reported in 2005 [www.usfa.dhs.gov/downloads/pdf/publications/Residential\\_Structure\\_and\\_Building\\_Fires.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/Residential_Structure_and_Building_Fires.pdf). Data from the U.S. Fire Administration of the Department of Homeland Security estimates that in 2006 there were 18,700 smoking-material fires in homes. These fires resulted in 700 civilian deaths (not including firefighter casualties), 1,320 civilian injuries, and \$496 million in direct property damage [www.nfpa.org/assets/files/PDF/OS.Smoking.pdf](http://www.nfpa.org/assets/files/PDF/OS.Smoking.pdf).

4. **Indoor Air Quality (IAQ).** According to the U.S. Green Building Council (USGBC), toxin free building materials used in green buildings help combat indoor air pollution. Achieving good IAQ involves minimizing indoor pollutants such as ETS; therefore it would be advantageous for a PHA to restrict indoor smoking as it would be easier for a property to achieve good IAQ in its buildings. During construction or renovation of projects, PHAs should consider the following actions: installing direct vent combustion equipment and fireplaces; providing for optimal, controlled, filtered ventilation and air sealing between living areas and garage or mechanical areas, and the use of paints and other materials that emit no or low levels of volatile chemicals (volatile organic compounds or VOCs). Sixty-five percent of the public housing inventory was built prior to 1970. In order for a PHA to implement retrofits that would improve IAQ significantly, it would be likely that renovation would need to take place. If a PHA performs renovations to improve IAQ without also implementing a non-smoking policy, the IAQ benefits of the renovation would not be fully realized. Therefore, a non-smoking policy is an excellent approach for those PHAs that are trying to achieve improved IAQ without additional retrofit costs.

5. **Maintenance.** It is well known that turnover costs are increased when apartments are vacated by smokers. Additional paint to cover smoke stains, cleaning of the ducts, replacing stained window blinds, or replacing carpets that have been damaged by cigarettes can increase the cost to make a unit occupant ready. Therefore, a non-smoking policy is another good approach for reducing maintenance costs. View the Sanford Maine Housing Authority case study at

<http://www.smokefreeforme.org/landlord.php?page=Save+Money%2C%3Cbr%3ESave+Your+Building>.

6. **Policy Discretion.** PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law. Some PHAs have established smoke-free buildings. Some PHAs have continued to allow current residents who smoke to continue to do so, but only in designated areas and only until lease renewal or a date established by the PHA. Some PHAs are prohibiting smoking for new residents. According to a state-funded anti-smoking group, the Smoke-Free Environment Law Project of the Center for Social Gerontology, there are more than 225 PHAs and housing commissions across the country that have implemented non-smoking policies. PHAs should consult with their resident boards before adopting non-smoking policies at their properties.

7. **PHA Plans.** PHAs opting to implement a non-smoking policy should update their PHA plans. According to 24 CFR 903.7(e), their plan must include their statement of operation and management and the rules and standards that will apply to their projects when the PHA implements their non-smoking policy. PHAs are encouraged to revise their lease agreements to include the non-smoking provisions. If PHAs institute non-smoking policies, they should ensure that there is consistent application among all properties and buildings in their housing inventory in which non-smoking policies are being implemented.

8. **Smoking Cessation National Support.** Smoking tobacco is an addictive behavior, therefore PHAs that implement non-smoking policies should provide residents with information on local smoking cessation resources and programs. Local and state health departments are sources of information on smoking cessation. The toll-free number of the National Network of Tobacco Cessation Quitlines, 1-800-QUIT-NOW (1-800-784-8669), connects users directly to their State quitline, the National Cancer Institute's website [www.smokefree.gov](http://www.smokefree.gov) provides tips on quitting tobacco use, and the American Lung Association's Web page on State Tobacco Cessation Coverage [www.lungusa2.org/cessation2](http://www.lungusa2.org/cessation2) provides information on cessation insurance programs, both public and private, in all states and the District of Columbia. In addition, information on quitting from National Cancer Institute counselors can be accessed by calling the toll-free number 1-877-44U-QUIT (1-877-448-7848). Hearing or speech-challenged individuals may access these numbers through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339. PHAs that implement non-smoking policies should be persistent in their efforts to support smoking cessation programs for residents, adapting their efforts as needed to local conditions.

9. **Further Information.** For further information related to this notice, please contact Shauna Sorrells, Director, Office of Public Housing Programs at (202) 402-2769.

\_\_\_\_\_  
/s/  
Sandra B. Henriquez  
Assistant Secretary for Public and Indian  
Housing

\_\_\_\_\_  
/s/  
Jon L. Gant,  
Director, Office of Healthy Homes  
and Lead Hazard Control

**Smoke-Free Environments Law Project  
The Center for Social Gerontology**

2307 Shelby Avenue  
Ann Arbor, Michigan 48103-3895  
734 665-1126 Fax 734 665-2071  
sfelp@tcs.org  
<http://www.tcs.org/sfelp/home.htm>

***Public Housing Agencies that have adopted smoke-free policies\****  
(updated 1/20/11)

The Smoke-Free Environments Law Project maintains this updated listing of all the Public Housing Agencies in the United States that have adopted smoke-free policies for one or more of their apartment buildings. As of January 20, 2011, at least 230 Public Housing Agencies had adopted smoke-free policies for some or all of their apartment buildings, with about 214 being adopted since the beginning of January 2005; an average of about 2.9 per month. The 27 states with such policies, with the number of individual Public Housing Agencies with smoke-free policies in parentheses, include: Michigan (55), Minnesota (34), Nebraska (24), Maine (20), Colorado (16), Washington (14), Oregon (14), New Hampshire (10), New Jersey (9), California (8), Alaska (4), Idaho (3), Utah (3), Wisconsin (2), Arkansas (2), Florida, Montana, Indiana, Kentucky, Pennsylvania, Texas, Massachusetts, Connecticut, Vermont, Illinois, New York and Kansas. Access the listing in pdf format at <http://www.tcs.org/sfelp/SFHousingAuthorities.pdf>.

**Alaska**

Aleutian Housing Authority, AK June 1, 2009 66 units total: 31 elderly and 35 family  
North Pacific Rim Housing Authority, AK September 7, 2007 83 units in all  
elderly/disabled/family housing in 8 communities  
Petersburg Indian Association, AK September 1, 2008 12 units family  
Tlingit and Haida Regional Housing Authority, AK Effective May/June, 2010; several  
hundred units

**Arkansas**

Little Rock, AR November 2009 Effective January 1, 2010; 3 buildings 596 units (428  
age 50+ and 168 family)  
Polk County, AR November, 2009 Effective January 1, 2010 6 buildings, 182 units

**California**

Alameda, CA April, 2008 3 buildings, 298 units elderly & family  
Madera, CA  
Oxnard, CA March 25, 2008 2 buildings, 150 units elderly  
Port Hueneme, CA April 2, 2008 60 units elderly/disabled, 30 units family  
Plumas County, CA October, 2008

## California *(continued)*

Rancho Mirage, CA December 7, 2006 4 complexes, 228 units  
San Joaquin County, CA Adopted July 1, 2010; effective fall, 2010. All properties  
Santa Barbara, CA Nov. 16, 2005 36 units elderly

## Colorado

Aurora, CO November, 2010 1 building w/ 121 units for elderly; phasing in by 2012  
Boulder (city), CO April, 2008 9 buildings  
Boulder County, CO April 29, 2008; 126 buildings by 12/09  
Carbondale, CO March, 2009 64 units elderly  
Delta, CO November, 2010 1 building w/ 48 units  
Denver, CO Effective January, 2010 2 buildings w/ 90 units  
Estes Park, CO 1 building, 24 units elderly  
Fort Collins, CO October, 2008 27 units elderly now smoke-free; other elderly units by 11/09; all units by 7/1/10  
Grand County, CO 6 buildings, 64 units  
Lakewood, CO 2 buildings, 188 units smoke-free by end of 2009  
Littleton, CO Effective sometime in 2009. 1 assisted living building w/110 units  
Longmont, CO Effective sometime in 2009. 3 buildings w/172 units  
Loveland, CO date unknown 1 building, 49 units elderly  
Rifle, CO February, 2009 4 buildings, 28 units  
Salida, CO 17 buildings, 50 units smoke-free by June, 2009  
Wellington, CO October, 2008 14 elderly units by 11/09; 28 family units by 7/10/10

## Connecticut

Milford, CT Adopted March 16, 2010; Effective 3/17/10 for all new residents; 11/1/10 for all current residents. 465 units, elderly/family

## Florida

Fort Pierce, FL 1996

## Idaho

Boise City/Ada County, ID Nov. 1, 2009 All 214 units; elderly, disabled & family  
Caldwell, ID January 1, 2009 234 units family/elderly/disabled  
Nampa, ID August 8, 2007 142 units elderly/disabled/family

## Illinois

Winnebago County, IL Adopted July 5, 2010

## Indiana

Kokomo, IN May 21, 2007 560 units in 6 buildings, 2 duplexes and 45 scattered site houses

## Kansas

Lawrence-Douglas County, KS; adopted June 28, 2010; effective 1/1/11, all 6 properties w/ 823 units

## Kentucky

Danville, KY April, 2008 1 building, 5 units disabled

## Maine

Auburn, ME September, 2004

Bangor, ME May, 2007

Bath, ME July, 2008 Effective for everyone on 1/1/09

Brewer, ME June, 2006; in January, 2009, all buildings were made smoke-free

Bar Harbor, ME May, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Brunswick, ME June, 2007

Ellsworth, ME June, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Fort Fairfield, ME September, 2006

Lewiston, ME September, 2008 Effective 11/1/08; grandfathering until 4/1/09

Mount Desert Island, ME June, 2006 (Mount Desert Island and Ellsworth Housing Authority)

Old Town, ME July, 2006

Pleasant Point Passamaquoddy Reservation, ME adopted in 2008 (new building with 60 units, family)

Portland, ME Adopted October 7, 2010. Effective July 1, 2011. 10 buildings w/ 574 family units & 418 elderly/disabled units; total, 992 units. Plus a 169-unit elderly/disabled building it manages

Presque Isle, ME March 31, 2009

Sanford, ME September, 2005

South Portland, ME July, 2008 Effective 1/1/09; grandfathering until 7/1/09 Sanford, ME September, 2005

Southwest Harbor, ME June, 2006 (Mount Desert Island and Ellsworth Housing

Tremont, ME March, 2008

Waterville, ME March 1, 2007

Westbrook, ME March, 2008 Effective 1/09; no grandfathering

## Massachusetts

Boston, MA Effective October, 2009 for 14 units; plan to have all 12,000+ units smoke free in 3-4 years

## Michigan

Algonac, MI October 28, 2008 Effective 1/1/09 for all residents; 50 elderly/disabled & 20 family townhouses

Allen Park, MI September 5, 2006 60 units

## Michigan *(continued)*

Alma, MI October 31, 2006 2 buildings, 59 units  
Bangor, MI April, 2007 24 units elderly/disabled & 20 units family  
Bedford Township, MI April 16, 2007 97 units elderly/disabled  
Belding, MI Jan. 25, 2007 4 buildings/complexes 140 units - 30 family, 110 elderly/disabled  
Bessemer, MI April 16, 2007 30 units elderly/disabled  
Big Rapids, MI Adopted January 13, 2011; effective April 1, 2011; current residents who smoke are grandfathered until April 1, 2016. 1 building w/23 units  
Boyne City, MI Effective 2008, 2 buildings w/ 30 elderly & 53 elderly/disabled  
Cadillac, MI July 20, 2005 Kirtland Terrace 84 units; elderly & disabled; March 15, 2010  
Caseville, MI Adopted April 28, 2010; effective immediately, 11 buildings, 47 units elderly/disabled  
Charlevoix, MI October 20, 2009 1 building w/ 62 units elderly/disabled  
Cheboygan, MI Effective 2010, 1 elderly building w/ 8 units  
Coldwater, MI Adopted October 7, 2010. Effective 1/1/11. 1 building w/ 97 units elderly/disabled; Cornerstone Apartments w/ 50 units, 40 family & 10 elderly  
Detroit, MI Adopted December 16, 2010; effective January 1, 2011. 15 buildings (10 elderly w/1440 units & 5 family) w/ 678 units) w/ 2118 total units  
Dundee, MI Adopted April 20, 2010; effective June 20, 2010. 1 building, 75 units elderly  
East Jordan, MI June 13, 2006 Lakeview Manor 20 units  
East Tawas, MI Effective October 1, 2010 for 1 building w/ 44 units, and effective Nov 20, 2010 for 1 building w/ 41 units, 2 buildings w/ 85 units total  
Eastpointe, MI May 23, 2007 164 units elderly/disabled  
Elk Rapids, MI June 20, 2006 20 units  
Escanaba, MI December 17, 2007 174 units elderly/disabled/family  
Ewart, MI July 24, 2007 53 units elderly/disabled  
Gladstone, MI Adopted on July 13, 2010; effective August 1, 2010, but current smokers grandfathered for as long they live in unit. 2 buildings w/ 102 units for elderly & disabled  
Grand Rapids, MI June 26, 2007 about 9 developments w/ 900 units elderly/disabled/family  
Hancock, MI Adopted March 17, 2010; effective April 1, 2010, 2 buildings w/ 94 units elderly/disabled. New 24-unit building for disabled to be constructed soon will open smoke-free.  
Hillsdale, MI Adopted January 20, 2011; effective immediately, w/current smokers grandfathered as long as they live in unit. 1 building w/60 units- family, elderly, disabled  
Ishpeming, MI Jan. 11, 2007 1 building, 88 units elderly/disabled  
Kingsford MI July 16, 2008 2 buildings, 41-unit elderly/disabled, 2-unit family duplex  
Lansing, MI Adopted July 28, 2010; effective July 1, 2011. 834 total units in 4 buildings/developments and 250 scattered site units  
Livonia, MI August 17, 2006 388+ units  
Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians, a.k.a. Gun Lake Tribe, MI Effective 2010. 9 houses  
Manistee, MI Adopted November 24, 2009; effective Jan. 1, 2010. 2 duplexes & all future substantially repaired units  
Marquette, MI April 24, 2007 a portion of 140 units elderly/disabled  
Marysville, MI March 15, 2007 132 units elderly/disabled

## Michigan *(continued)*

Melvindale MI July 10, 2006 199 units  
Menominee, MI August 1, 2009 83 elderly & 44 family units  
Middleville, MI November 18, 2007 50 units elderly/disabled  
Monroe, MI Effective Nov. 1, 2009 All 293 units: 148 elderly/disabled; 115 family;  
30 scattered site  
Montcalm County, MI Adopted May 25, 2010; effective June 1, 2010 & Dec. 1, 2010 for  
current smokers. 20 units elderly/disabled and 20 family scattered site units  
Negaunee, MI September 11, 2007 80 units elderly/disabled/family  
Niles, MI Adopted November 18, 2010. 1 high-rise w/ 129 units elderly/disabled/family  
& 50 scattered site family homes. Effective 1/1/11 for all indoor and outdoor common  
areas; effective 1/1/12 for all indoor areas, including living units  
Northville MI July, 2008 1 building w/ 100 units elderly/disabled  
Nottawaseppi Huron Band of Potawatomi Indian Housing Authority, MI Effective 2010.3  
single family homes; plus 5 homes to be built in 2011  
Paw Paw, MI March, 2007, 81 units elderly/disabled  
Plymouth, MI Jan. 18, 2006 Tonquish Creek Manor 108 units  
Pokagon Band Housing Authority, MI Effective 2010. 13 houses  
Reed City, MI Adopted September 16, 2010. Effective January 1, 2012. 7 buildings w/  
101 total units: 6 family with 33 units, and 1 elderly building w/ 68 units  
Rogers City, MI May 15, 2008 1 building, 38 units elderly/disabled/family  
Sault Ste. Marie, MI December 13, 2006 3 buildings, 120 units  
Sault Tribe, MI Adopted April 19, 2010; effective May, 2010 for 4 existing duplexes; 3  
elderly triplexes to be built in 2011  
South Haven, MI May 31, 2007 80 units elderly/disabled  
Sturgis, MI Adopted August 24, 2010; effective Dec. 1, 2010 for new residents & Sept. 1,  
2011 for all residents. 1 building w/ 71 units for elderly & disabled  
Traverse City, MI Dec. 19, 2006 2 buildings, 116 units elderly/disabled; 20 units family  
Wakefield, MI Adopted November, 2010. Effective December 20, 2010. Totally smoke-free  
on 12/20/11. 1 building w/ 30 units elderly.  
West Branch, MI Adopted July 21, 2010; effective August 1, 2010, 2 buildings w/ 87 units  
for elderly/disabled; Jan. 1, 2011 for current smokers

## Minnesota

Austin, MN January 1, 2005 2 buildings w/ 159 units  
Benson, MN October 1, 2005  
Breckenridge, MN September 1, 2008  
Cambridge, MN Dec., 2005 45 units  
Carver County, MN sometime in 2006 2 elderly, market-rate buildings, 65-units in  
Chanhassen & 68 units in Waconia  
Cloquet/Carlton, MN 2003 2 properties  
Columbia Heights, MN September 15, 2009 2 properties w/ 145 units Dakota County, MN  
September 1, 2008 1 building, with another in 9/09  
Dakota County, MN September 1, 2008 1 building, with another in 9/09  
Delano, MN May, 2006 1 building 16 units elderly, 1 building 30 units family  
Detroit Lakes, MN July 1, 2009 1 building w/ 60 units

## Minnesota *(continued)*

Duluth, MN November 25, 2009 Effective May 1, 2010  
Ely, MN October, 2009 145 units  
Fergus Falls, MN April 10, 2002  
Frazee, MN 2007 8 units elderly  
Jackson, MN July 1, 2009  
Little Falls, MN January 1, 2008  
Long Prairie, MN January 1, 2009  
Melrose, MN February, 2002  
Minneapolis, MN March 1, 2006 102 units in 1 building for elderly  
Montevideo, MN June 1, 2009 1 building w/ 58 units  
Montgomery, MN October 1, 2007  
Mountain Lake, MN September 12, 2007 42 units  
North Mankato, MN March 29, 2004  
Northwest Multi-County Housing Authority, MN October 1, 2007  
Pequot Lakes, MN 2007 4 buildings  
Perham, MN December 1, 2008  
Plymouth, MN Effective May 1, 2010, 2 buildings w/ 195 units total for elderly  
Sauk Center, MN April 22, 2003  
Sleepy Eye, MN March 1, 2008  
Swift County, MN January 1, 2010 36 townhouses  
Two Harbors, MN Effective October 1, 2009 1 building w/ 58 units  
Wadena, MN September 1, 2009 1 building w/ 120 units  
Windom, MN January 1, 2007 implemented for 1 building w/ 30 units elderly/disabled  
Winona, MN April 1, 2009 2 buildings w/ 39 senior/disabled units

## Montana

Helena, MT March 27, 2007 366 units

## Nebraska

Ainsworth, NE December 7, 2009 All 8 buildings w 30 units  
Aurora, NE 2008 2 buildings w/ 30 units  
Bassett, NE September 1, 2003 5 buildings w/ 16 units  
Blair, NE September 13, 2006 3 buildings, 12 units  
Bridgeport, NE May, 2010 2 buildings w/ 8 units  
Broken Bow, NE June 1, 2010 1 building w/ 40 units  
Cambridge, NE August 11, 2009 1 building w 4 units  
Chappell, NE May, 2010 4 buildings w/ 19 units  
Coleridge, NE Effective May 11, 2004. 6 buildings w/ 20 units  
Douglas County, NE 2005 103 buildings w/ about 200 units  
Fremont, NE October, 2007  
Friend, NE January 13, 2010 6 buildings w/ 25 units  
Gibbon, NE  
Hall County, NE March, 2010 All, 1 building w/ 60 units  
Henderson, NE May 5, 2008 All 5 buildings w/ 20 units



## Nebraska *(continued)*

Imperial, NE January 1, 2010 All 11 buildings w/ 44 units  
Kearney, NE 1996 15 buildings w/ 90 units  
Lincoln, NE January 10, 2008 2 buildings, 211 units elderly  
McCook, NE July 1, 2010 4 buildings w/ 34 units  
Minden, NE  
Nebraska City, NE April 6, 2005 2 buildings w/67 units  
St. Paul, NE 2008 All 15 buildings w/ 82 units  
Sutherland, NE May 1, 2010 1 building w/ 4 units  
Syracuse, NE January 1, 2010 2 buildings w/ 11 units

## New Hampshire

Claremont, NH  
Dover, NH Effective July, 2010  
Exeter, NH June 6, 2008 1 building, 85 units elderly/disabled  
Keene, NH Effective April 1, 2010 for all 546 units  
Laconia, NH Effective August 1, 2010 for new residents; effective August, 2011 for all other residents  
Lebanon, NH 2004  
Newmarket, NH Effective July, 2010  
Portsmouth, NH June 11, 2008 Effective Jan. 1, 2009, w/ grandfathering until July 1, 2009, 284 family/elderly/disabled units in 5 buildings, & 3 managed buildings w/150 units  
Rochester, NH Effective January 1, 2009  
Salem, NH Effective October, 2008

## New Jersey

Cliffside Park, NJ Effective October, 2009 354 units elderly  
Highlands, NJ Effective January 2, 2010 95 units elderly  
Ocean City, NJ 2004 (not sure of month)  
Madison, NJ Effective October 1, 2010  
Middletown, NJ Effective November 1, 2010 252 units  
Newton, NJ Summer, 2010 80 units  
Paterson, NJ Effective Dec. 31, 2009  
Summit, NJ 2009 123 units elderly  
Woodbridge, NJ about September, 2007

## New York

Gloversville, NY Adopted May, 2010; effective September 1, 2010. All buildings

## Oregon

Clatsop County, OR Effective January, 2009. All 15 buildings w/ 104 units  
Columbia Cascade, OR Effective March, 2010. All properties.  
Coos-Curry, OR October, 2009 Effective March 1, 2010 for all buildings  
Grand County, CO 6 buildings, 64 units

## Oregon *(continued)*

Jackson County, OR Effective December, 2009. 3 buildings w/ 224 units  
Lane, OR (Housing & Community Services Agency) Effective January, 2011; 28 properties w/1,426 units  
Linn-Benton, OR Effective January 1, 2010; 8 buildings w/ 185 units  
Marion County, OR November 1, 2008 28 units; 242 other units will go SF in early 2010  
North Bend, OR October, 2009 Effective March 1, 2010 for all buildings  
Northwest Oregon, OR Effective March , 2010. 7 properties w/ 218 units  
Portland, OR on August 1, 2009 37 properties with 1,993 units of public housing; possibly in August, 2010, an additional 3,760 units of other affordable housing  
Salem, OR Effective February, 1992. 1 building w/ 54 units for elderly. Their 7 more buildings will become totally smoke-free, phased in from Sept., 2009 thru Sept. 2011  
Umatilla County, OR Effective May 1, 2010. All 8 properties w/ 364 units  
Washington County, OR Effective January, 1, 2010 for 12 buildings w/ 521 units & effective July, 2010 for 243 units (131 units are single family homes)  
West Valley/Polk County, OR Effective August, 2010. All properties w/ 378 units

## Pennsylvania

Titusville, PA Effective August 1, 2009 for 1 building; effective June 1, 2010 for another

## Texas

Decatur, TX Effective October, 2009 All 28 units

## Utah

Davis Community Housing Authority in Farmington, UT August 1, 2009 158 units, plus 28 Section 8 units  
Provo, UT June 1, 2005 203 units  
Tooele County, UT Effective January 1, 2010 22 units

## Vermont

Burlington, VT Adopted February, 2010; Effective Nov. 1, 2010 3 buildings, 274 units

## Washington

Bellingham/Whatcom County, WA June, 2010 1 building & new properties  
Bremerton, WA 2009 all buildings  
Clallam County, WA Effective January 1, 2010 all properties, 480 units  
Everett, WA Adopted March 22, 2010; Effective for all 1,047 units on June 30, 2011  
Franklin County, WA January 1, 2008 280 units  
Island County, WA 2005 all buildings, 166 units  
Kennewick, WA Adopted February, 2010; all units and buildings effective July 1, 2010, 205 units (72 units - elderly & disabled; 9 units - HIV/AIDs; 124 - multifamily housing)  
King County, WA December 17, 2007 222 units  
Pierce County, WA 1 building  
Seattle, WA 2001

## Washington *(continued)*

Tacoma, WA 1 elderly high-rise

Vancouver, WA May, 2009 1 elderly/disabled building; another in June, 2009

Walla Walla, WA March 17, 2008 all buildings and units – about 300+ units

Yakima, WA sometime in 2005 for elderly units

## Wisconsin

Baraboo, WI August 2, 2005 2 buildings; about 80 units; elderly & disabled

DePere, WI Nov. 13, 2003

\* Note: many of the smoke-free policies grandfather current residents who are smokers for as long as they remain living in their apartment unit. Thus, many of these buildings are transitioning to being totally smoke-free. Others are already totally smoke-free.

## Select Resource Organizations

### **Nationwide Tobacco Quitline**

This nationwide toll-free telephone number connects you to counseling and information about quitting smoking in your state.

[1-800-QUIT-NOW](tel:1-800-QUIT-NOW)

### **Health**

#### **American Academy of Pediatrics**

Julius B. Richmond Center of Excellence  
Department C, ETS, PO Box 927, Elk Grove Village, IL 60009  
Phone: (847) 228-5005

[www.aap.org](http://www.aap.org)  
[richmondcenter@aap.org](mailto:richmondcenter@aap.org)

The mission of the AAP Julius B. Richmond Center of Excellence is to improve child health by eliminating exposure to tobacco and secondhand smoke. See also <http://www.kidslivesmokefree.org> and [http://www2.aap.org/richmondcenter/Smoke\\_freeHousing.html](http://www2.aap.org/richmondcenter/Smoke_freeHousing.html).

#### **American Cancer Society**

1599 Clifton Rd, NE, Atlanta, GA 30329  
Phone: (800) 227- 2345

[www.cancer.org](http://www.cancer.org)

The American Cancer Society (ACS) provides information learn about the health hazards of smoking and how to become an ex-smoker. Check online or call 1-800-227-2345 to find your local office.

#### **American Heart Association**

7272 Greenville Avenue, Dallas, TX 75231  
Phone: (214) 373-6300  
(800) 242-8721 (for local chapter)

[www.americanheart.org](http://www.americanheart.org)

The American Heart Association (AHA) provides books, tapes, and videos on how smoking affects the heart and also has a guidebook on weight control in quit-smoking programs.

#### **American Legacy Foundation**

1001 G Street, NW, Suite 800, Washington, DC 20001  
Phone: (202) 454-5555

[www.americanlegacy.org](http://www.americanlegacy.org)

The American Legacy Foundation® develops programs that address the health effects of tobacco use, especially on vulnerable populations.

#### **American Lung Association**

1301 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20004  
Phone: (202) 785-3355

1-(800) LUNG-USA for local chapter

[www.lungusa.org](http://www.lungusa.org)

The American Lung Association helps smokers who want to quit through its Freedom From Smoking® self-help quit-smoking program available online at [www.ffsonline.org](http://www.ffsonline.org). The Lung Association also provides public information on the health effects of smoking on its website above or by calling 1(800) LUNG-USA.

### **Asthma and Allergy Foundation of America**

1233-20<sup>th</sup> Street, NW, Suite 402, Washington, DC 20036

Phone: (202) 466-7643

(800) 727-8462

[www.aafa.org](http://www.aafa.org)

The Asthma and Allergy Foundation of America (AAFA) and its volunteers work to develop and implement public policies to improve the quality of life for people with asthma and allergies.

### **Public Health Institute**

555 12<sup>th</sup> Street, 10<sup>th</sup> Floor, Oakland, CA 94607

Phone: (510) 285-5500

Fax: (510) 285-5501

[www.phi.org](http://www.phi.org)

The Public Health Institute (PHI) is an independent, nonprofit organization dedicated to promoting health, well-being and quality of life for people throughout California, across the nation and around the world.

## **Housing and Legal**

### **The Centers for Social Gerontology**

Smoke-Free Environments Law Project

2307 Shelby Avenue, Ann Arbor, MI 48103

Phone: (734) 665-1126

Fax: (734) 665-2071

[www.tcsq.org/sfelp/home](http://www.tcsq.org/sfelp/home)

The Smoke-Free Environments Law Project (SFELP) is a project that provides information, consultation and advice for businesses, government, and individuals in Michigan on policies and practices to protect employees and the general public from the harmful effects of environmental tobacco smoke.

### **Global Advisors on Smokefree Policy (GASP)**

7 Cedar St., Suite A

Summit, NJ 07901

Karen Blumenfeld, Esq.

Executive Director

908-273-9368 phone

908-273-9222 fax

karen.blumenfeld@verizon.net

[www.njgasp.org](http://www.njgasp.org)

Global Advisors on Smokefree Policy promotes 100% smokefree environments and provides customized technical assistance including up-to-date educational materials on the health, economic and environmental benefits of smokefree housing policies.

### **National Center for Healthy Housing**

10320 Little Patuxent Parkway, Suite 500, Columbia, MD 21044

Phone: (877) 312-3046

[www.nchh.org](http://www.nchh.org)

The National Center for Healthy Housing is a nonprofit corporation dedicated to creating healthy and safe homes for children with a focus on indoor health hazards.

**National Consumer Law Center**

7 Winthrop Square, Boston, MA 02110-1245

Phone: (617) 542-8010

Fax: (617) 542-8028

[www.nclc.org](http://www.nclc.org)

The National Consumer Law Center is a nonprofit advocacy organization for economically disadvantaged Americans.

**Public Health Law & Policy**

2201 Broadway, Suite 502, Oakland, CA 94612

Phone: (510) 302-3380

Fax: (510) 444-8253

[www.phlpnet.org](http://www.phlpnet.org)

Public Health Law & Policy (PHLP) partners with government, advocates, and other community leaders to provide practical solutions to a wide range of public health problems.

**Rental Protection Agency**

Phone: (866) 828-9101

[www.rentalprotectionagency.com](http://www.rentalprotectionagency.com)

The Rental Protection Agency is the consumer protection agency for the rental industry and provides free resources for the remediation of landlord/resident disputes.

**Tobacco Control Legal Consortium**

875 Summit Avenue, St. Paul, Minnesota 55105

Phone: (651) 290-7506

[www.tclconline.org](http://www.tclconline.org)

The Tobacco Control Legal Consortium is a network of legal programs supporting tobacco control policy change throughout the United States.

**Government**

**Centers for Disease Control and Prevention**

Office on Smoking and Health

Mailstop K-50, 4770 Buford Highway, NE, Atlanta, GA 30341

Phone: (770) 488-5705

(800) 232-4636

[www.cdc.gov/tobacco/osh](http://www.cdc.gov/tobacco/osh)

The Office on Smoking and Health, a program office within the Centers for Disease Control and Prevention (CDC), funds booklets on smoking topics such as relapse, helping a friend or family member quit smoking, the health hazards of smoking, and the effects of parental smoking on teenagers.

**National Cancer Institute**

Building 31, Room 10A24, 9000 Rockville Pike, Bethesda, MD 20892

Phone: (877) 448-7848

[www.cancer.gov](http://www.cancer.gov)

The National Cancer Institute (NCI) website provides two key tools to help you quit smoking: *LiveHelp*, an online text messaging service, and the toll-free number to NCI's Smoking Quitline (877-44U-Quit). Also see "Clearing the Air, Quit Smoking Today," [http://www.smokefree.gov/pubs/clearing-the-air\\_acc.pdf](http://www.smokefree.gov/pubs/clearing-the-air_acc.pdf).

### **Smokefree.gov**

[www.smokefree.gov](http://www.smokefree.gov)

The information and professional assistance available on this website can help to support both your immediate and long-term needs as you become, and remain, a nonsmoker.

### **United States Department of Housing and Urban Development**

Office of Healthy Homes and Lead Hazard Control  
451- 7<sup>th</sup> Street, SW, Room 8236, Washington, DC 20410  
202-755-1785, Ext. 7698

[www.hud.gov/lead](http://www.hud.gov/lead)

The office enforces HUD's lead-based paint regulations, provides public outreach and technical assistance to help protect children and their families from other health and safety hazards in the home.

### **United States Environmental Protection Agency (EPA)**

Indoor Air Quality Information Clearinghouse  
P.O. Box 37133, Washington, DC 20013-7133  
Phone: (703) 356-4020 ▪ (800) 438-4318

[www.epa.gov/smokefree](http://www.epa.gov/smokefree)

EPA has developed a number of free resources, including the *Smoke-free Homes Community Action Kit*, *Planning Guide for Pledge Events*, and *Local Programs Promoting Smoke-free Homes Booklets*, that are designed to help you start a local smoke-free homes program and educate the public about the health risks associated with exposure to secondhand smoke.

## **Other**

### **Americans for Nonsmokers' Rights**

Publications & Merchandise Order Form  
2530 San Pablo Avenue, Suite J, Berkeley, CA 94702  
(510)-841-3060

[www.no-smoke.org](http://www.no-smoke.org)

Americans for Nonsmokers' Rights is the leading national lobbying organization dedicated to nonsmokers' rights and protecting nonsmokers from exposure to secondhand smoke.

### **Rent Control and Drifting Smoke**

(Article for Landlords)

[www.smokefreeapartments.org](http://www.smokefreeapartments.org)

Smoke-free Apartments is an on-line registry for apartment owners who have chosen to establish a total or partial non-smoking policy in their buildings.