

# MISmoke-free Apartment

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## **A SMOKE-FREE APARTMENT POLICY IS LEGAL AND PROTECTS HEALTH WHILE SAVING MONEY**

### **A Smoke-free Apartment Policy Protects Health**

Landlords can play a role in eliminating a significant cause of illness in the home and a major cause of preventable death in the United States: secondhand smoke. Secondhand smoke is not just a nuisance; according to the Environmental Protection Agency, it is a substance known to cause cancer in humans for which there is no safe level of exposure. Secondhand smoke kills almost 2,500 annually in Michigan.<sup>1</sup>

The Centers for Disease Control (CDC) recently warned people with heart problems to avoid all buildings that permit smoking indoors.<sup>2</sup> As little as 30 minutes of exposure to secondhand smoke can have serious and possibly lethal effects to those with heart conditions, according to the British Medical Journal (BMJ).<sup>3</sup> Children exposed to cigarette smoke in the home are twice as likely to develop and suffer persistently from asthma.<sup>4</sup>

### **Secondhand Smokes Spreads Throughout Apartment Buildings**

Unfortunately, secondhand smoke doesn't respect boundaries, seeping through light fixtures, ceiling crawl spaces, and doorways into all areas of a building with smokers.<sup>5</sup> Air quality surveys in apartment buildings in Chicago revealed that 60% of the air in apartments comes from other units.<sup>6</sup>

Secondhand smoke cannot be controlled by ventilation, air cleaning or the separation of smokers from non-smokers.<sup>7</sup> *The only complete solution to this problem is to make buildings smoke-free.*

### **Restricting or Banning Smoking in Apartment Buildings is Legal**

Apartment owners have the legal right to make their rental property smoke free, just as they are free to decline to rent to pet owners. Michigan's Attorney General in a 1992 Opinion stated that under Michigan and federal law a landlord may choose to rent only to nonsmokers and may prohibit smoking in individual units, as well as in common areas.<sup>8</sup> It is legal for a landlord to advertise an apartment as "smoke free." There is no state or federal constitutional right to smoke.<sup>9</sup>

<sup>1</sup> Michigan Department of Community Health, Vital Records & Health Data Development, SAMMEC 3.1; 2002.

<sup>2</sup> Pechacek TP, Babb S, Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke? *Brit. Med. J.*, Vol. 328, Apr.24, 2004.

<sup>3</sup> Whincup PH et al, *Passive smoking and risk of coronary heart disease and stroke: prospective study with cotinine measurement*, *BMJ*. 2004 Jul 24; 329 (7459):200-5.

<sup>4</sup> Samet, J., *Risk Assessment and Child Health*, *Pediatrics* 113 (4 Supp.) 952-56 (April 2004).

<sup>5</sup> John Howard, M.D., Chief of the California Division of Occupational Safety and Health, Testimony before the Labor and Employment Committee, California Assembly (Oct. 20, 1994).  
at a legislative hearing, 1994.

<sup>6</sup> Diamond RC, Feustel HE, Dickerhoff DJ. *Ventilation and infiltration in high-risk apartment buildings*. LBL Report # 38103 p.4, UC 1600, March, 1996.

<sup>7</sup> American Society of Heating, Refrigerating, and Air Conditioning Engineers report, June 30, 2005, [www.ashrae.org](http://www.ashrae.org).

<sup>8</sup> Mich. Op. Att'y Gen. 6719 (May 4, 1992)

<sup>9</sup> See Samantha Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke*, 2005;

Owners of section 8 housing have the same right to ban or otherwise restrict smoking, according to the U.S. Department of Housing and Urban Development.<sup>10</sup> However, if owners seek to make their complexes smoke-free, they must grandfather in (exempt) those smoking residents currently residing at the complex,<sup>11</sup> but only until lease renewal or until such time as adequate notice of the change is given.

Not only do landlords have the right to prohibit smoking, but they may in fact be liable under local health or safety codes, the Federal Fair Housing Act, or other common law legal theories for failure to prohibit smoking when a tenant is sensitive to secondhand smoke. In a number of cases, tenants affected by secondhand smoke were able to recover against their landlords for failing to protect them from secondhand smoke.<sup>12</sup>

### **Renters Overwhelmingly Prefer Smoke-free Apartments**

Providing smoke-free apartments will help attract tenants, because the demand for smoke-free housing is strong. According to a recent survey conducted in the Midwest, nearly three quarters of renters would prefer to live in smoke-free apartments.<sup>13</sup> Surveys taken in other parts of the country show a similar preference for smoke-free apartments.<sup>14</sup> In Michigan, 75% of renters do not smoke, and yet most renters cannot find smoke-free apartments to rent.

### **Smoke-free Apartments are A Smart Investment**

Smoke-free policies save owners money by reducing cleaning and re-painting costs and lowering the risk of fire. Cigarettes are a leading cause of fires in buildings,<sup>15</sup> and cause at least \$36 million a year in damages in Michigan.<sup>16</sup> Further, recent research suggests that smoke-free apartment buildings may have increased re-sale value. Real estate agents agree that as the number of public places in which a person can smoke has shrunk, so has the number of buyers who are even willing to consider the property of a smoker.<sup>17</sup>

### **Smoking Restrictions are Largely Self Enforcing**

A recent survey of owners with smoke-free policies found that an overwhelming majority of them reported that staff time spent on managing the building did not increase after the establishment of a smoke-free policy.<sup>18</sup> In fact, enforcing a smoking policy is a lot less of a headache than mediating disputes between smokers and non-smokers without a policy in place.

*Learn more about the benefits of smoke-free apartments, get tips for going smoke-free, and look at model lease language at: [www.mismokefreeapartment.org](http://www.mismokefreeapartment.org).*

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<sup>10</sup>July 18, 2003 letter from Sheila Walker, Chief Counsel, HUD, Detroit Field office. (See <http://www.mismokefreeapartment.org/hudletter.pdf> )

<sup>11</sup> In re HUD and Kirk and Guilford Management Corp. and Park Towers Apartments, HUD Case No. 05-97-0010-8, 504 Case No. 05-97-11-0005-370 (1998); In re Kearney, Nebraska Public Housing Authority Tenant/Unit Assignment According to Smoking Preference Compatibility with Tenant Selection, HUD Opinion (June 27, 1996); In Re City of Fort Pierce, Florida Housing Authority, HUD Opinion (July 9, 1996).

<sup>12</sup> Susan Schoenmarklin, Tobacco Control Legal Consortium, *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings* (2004)

<sup>13</sup>D Henrikus, P R Pentel and S D Sandell, *Preferences and practices among renters regarding smoking restrictions in apartment buildings*, Tobacco Control 2003;12:189-194

<sup>14</sup>For example, Tacoma-Pierce and Kitsap County Health Department surveys of Washington state residents in their counties, 2004, 67% support for smoke-free apartments; American Lung Assn of CA Center for Tobacco Policy survey of CA residents, 2004, 69% support for smoke-free apartments. See <http://www.tcsg.org/sfelp/public.htm> for these public opinion surveys.

<sup>15</sup>Federal Emergency Management, U.S. Fire Administration/National Fire Data Center, *Residential Smoking Fires and Casualties*, Topical Fire Research Series, Volume 5-Issue 5 (June 2005).

<sup>16</sup> Michigan Fire Marshal, *Frequently Reported Statistics Year 2003*. This amount does not include the costs of fires started by matches and cigarette lighters, for which no information is available.

<sup>17</sup> NY Times, "Real Estate & Secondhand Smoke: On Tobacco Road, It's a Tougher Sell," February 8, 2004

<sup>18</sup> Initiative for Smoke-Free Apartments, *Adopting a No-Smoking Policy in Apartment Buildings: A Guide for Owners and Manager*, St. Paul, Minnesota