

MI Smoke-free Apartment

Smoke-Free Public Housing: It's Legal, Profitable & HUD Supports It

Texas Housing Association Annual Conference Aug. 26, 2009

MI Smoke-free Apartment Presenter

Jim Bergman, J.D.
Smoke-Free Environments Law Project
The Center for Social Gerontology, Inc.
Ann Arbor, Michigan
734 665-1126
jbergman@tcsg
www.mismokefreeapartment.org
www.tcsg.org/sfelp/home.htm

MI Smoke-free Apartment

Why smoke-free apartments?

- It's legal & HUD strongly encourages it
- Cost savings are significant
- Fire risk and damage reduced
- Health risks of secondhand smoke
- Secondhand smoke cannot be controlled
- Tenants want smoke-free apartments
- Legal liability issues due to SHS intrusions
- Competition from SF affordable housing



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

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

NOTICE PHH-2009-21 (HA)
Issued: July 17, 2009
Expires: July 31, 2010
Cross Reference:
24 CFR 903.7(b)(3)
24 CFR 903.7(c)(1)

Subject: Non-Smoking Policies in Public Housing

1. **Purpose.** This notice strongly encourages Public Housing Authorities (PHAs) to implement non-smoking 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 recently addressed by Executive Order 13526, signed by the President on June 22, 2009. Because Environmental Tobacco Smoke (ETS) can migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects in neighboring families, the Department is encouraging PHAs to adopt non-smoking 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. Smoking is also an important source of fires and fire-related deaths and injuries. Currently, there is no Departmental guidance on smoking in public housing.

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

3. **Background.** Secondhand smoke, which is also known as environmental tobacco smoke (ETS), 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 nonsmokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. The 2006 Surgeon General's report on secondhand smoke identifies hundreds of chemicals in it that are known to be toxic. The report (*The Health Consequences of Involuntary Exposure to Secondhand Smoke*) is located at www.dhs.gov/tobacco-data-statistics/secondhand.htm. Secondhand smoke causes almost 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease.

Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke according to the U.S. Environmental Protection Agency (EPA).
www.epa.gov/smokefree/healtheffects.html.

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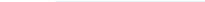
Smoke-Free Policies are Legal

- Many HUD letters state that public & subsidized housing operators are **free under federal & state laws to make their buildings totally smoke-free**, so long as they adhere to state law notice requirements.
- Grandfathering only required for as long as the state law requires.

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Smoke-Free Policies are Legal

- As the HUD letters have stated:
"The right to smoke or not to smoke is not a right that is protected under the Civil Rights Act of 1964 because smokers are not a protected class under federal law."



Smoke-Free Policies are Legal

- Smoke-free policies are legal in market-rate and affordable housing, including HUD-subsidized.
- Neither federal nor state law prohibits an owner from making their apartment building totally smoke-free.**

Leading Our Nation to Healthier Homes:

The Healthy Homes Strategic Plan



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



HUD Stimulus Funds Give Point for Smoke-Free Policies Under CFRC Grant Program



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
[Docket No. FR-5511-N-01]
HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA) for
the Capital Fund Recovery Competition Grants

AGENCY: Office of the Secretary, HUD.

ACQUISITION: Notice of Intent to Award, Availability (PIFAS) for HUD's Assistance Recovery and Intermediary Act Capital Fund Assistance Competitive (PIFAS) Grants.

REMARKS: On February 1, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (H.R. 12335). This legislation includes the following provisions of Capital Fund for public housing agencies (PIFAS) to carry out repair and replacement activities, to address needs across seven of the United States' largest cities (H.R. 12335 Sec. 1707 (a)(7)). The Recovery Act requires the HUD to develop a competitive process. HUD will announce the solicitation by February 15, 2009 through the Federal Acquisition Regulation (FAR) process.

ADDITIONAL INFORMATION: HUD will announce the information and instructions for making a PIFAS grant. HUD will be awarded through the CHRF Grants. Also, the assistance with the Recovery Act, the Department is withholding the PIFAS to HUD will announce the competitive grant funding under the Recovery Act and will be open to be used in accordance with implementing the Recovery Act.

[illegible]

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Smoke-Free Housing Authorities
Nationwide

August, 2009: about 120 housing authorities in 17 states.

Dec. 31, 2003: about 13 housing authorities in 7 states had smoke-free policies for some or all their buildings.

An increase of about 920% in 68 months.
About 1.6 new housing authorities per month

Kokomo Housing Authority



Adopted 100% smoke-free policy on May 21, 2007.
Went into effect at that time for all new residents.
Went into effect for all current residents on January 1, 2008.
Covers all 6 apartment buildings, with 510 units, and all 45 scattered site houses.

Changing Lives One Home at a Time

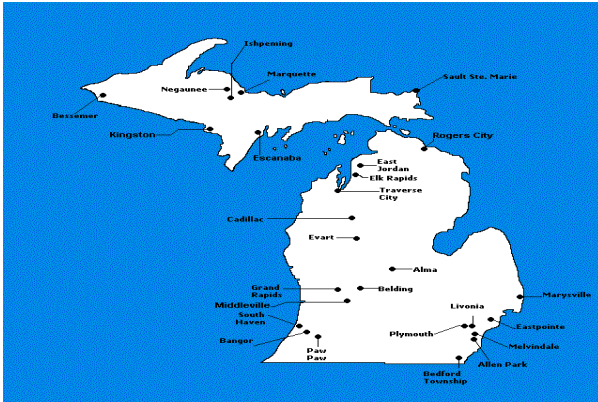
Sault Ste. Marie Housing Commission

Are you or a loved one ready to make the move to convenient, low-maintenance housing? Comfortable apartments, duplexes, and quadrplexes are perfect for seniors, near elderly and those dealing with disabilities. **Our facilities offer a number of favorable features and amenities, including:**

- * 24 hour emergency maintenance
- * Secure units with extra safety precautions
- * Conveniently located near grocery stores, medical offices, & area churches
- * Spacious Parking
- * Carpeted Units with Curtain Rods provided
- * Kitchen stove and refrigerator provided
- * Barrier Free Units
- * Laundry Facilities or Laundry Hook-up
- * Emergency Call System in Each Unit
- * Hard-wired smoke detectors provided
- * Cable T.V. at a Reduced Rate
- * Lovely Community Room with Kitchen Facilities
- * Patio & Container Gardening space
- * **Smoke-free buildings for senior & disabled housing**



Smoke-Free Housing Commissions



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Costs of allowing smoking

Smoking damages residential property:

- Causes cigarette burn damage and stench to carpets, counters, etc
- Leaves smoke residue on walls and curtains
- Poses fire hazard

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Costs of allowing smoking

Smoking residue increases cost of rehabilitating apartment when smoker moves out.

Owners estimate it costs \$500 to \$8,000 more to rehab an apartment in which a smoker lived than a non-smoker.

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Cigarette-caused Fires

Nationally:

- Smoking was the cause of just 9% of apartment fires, but
- Smoking was the cause of 40% of deaths from apartment fires, and
- Smoking was the cause of 16% of injuries from apartment fires

NFIRS, 2002

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Costs of allowing smoking


- Fire damage can cause apartment units to go off-line for months
- Water and smoke damage to adjoining units can take them off-line, as well
- Former residents have to find alternative housing and probably won't return

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What's the problem?

Secondhand smoke spreads throughout multi-unit dwellings:

Air quality studies in apartment buildings show that anywhere from 5% to 60% of the air in apartment units comes from other units in the building.



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Secondhand smoke problem

Secondhand smoke cannot be controlled by ventilation or air cleaning: On June 30, 2005, the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) issued their latest position document on secondhand smoke. It states: "At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity." www.ashrae.org




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Secondhand smoke problem

- It is a **Toxic Air Contaminant**, putting secondhand smoke in the same category as the most toxic automotive and industrial air pollutants.

California Air Resources Board Report, issued January 26, 2006 by the California Environmental Protection Agency.



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Secondhand smoke problem

- There is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful.
- The only way to fully protect yourself and your loved ones from the dangers of secondhand smoke is through 100% smoke-free environments.

Surgeon General's Report on Secondhand Smoke, issued June 27, 2006




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Tenants want smoke-free apts

- Healthy Androscoggin in Auburn, Maine surveyed 850 tenants; 76% would choose to live in a smoke-free apartment complex
- Twin Cities (MN): random sample survey -- 55% of renters said they had moved or would move from an apartment because of secondhand smoke seepage
- ALA-California in 2006 surveyed apt owners: 67% favored a SF apt law when they learned it would protect people from SHS and could reduce their fire insurance premiums. In 2004 survey, 69% of renters favored requiring all apt buildings to have SF sections. For opinion surveys: www.tcs.org/sfelp/public.htm



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Smoke-free Households Are the Norm and Increasing

In 2003, 72% of U.S. households were smoke-free. (In Texas, 79% of households were smoke-free.)

In 1998-99, 60% of U.S. households were smoke-free

In 1992-93, 43% of U.S. households were smoke-free

An increase in the U.S. of 67% between 1992 & 2003, and it's growing every year

-- Morbidity & Mortality Weekly Report, CDC, May 25, 2007



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Smoke-free is the norm, but ...

Smoke-free homes are the norm in the U.S. and Texas, not the exception.

But, currently, most apartment & condo buildings, including affordable housing, are not smoke-free. A family with a smoke-free policy in their apartment or condo can easily have secondhand smoke intrusions.

Residents want housing that meets their desire to have a smoke-free home.

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The market for smoke-free housing is huge

About 80% of U.S. adults don't smoke (Texas, 81%)

Over 90% of persons 65+ don't smoke

Non-smoking rates among minority populations: 77% of African Americans; 85% of Hispanics; 90% of Asians, excluding NH/PI

Many smokers don't want smoke in their home

Most apartment buildings allow smoking -- the marketplace is way behind demand

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Economics: Market is there

The market for smoke-free housing is huge, regardless of income level

Almost 70% of people in **Michigan** households with incomes under \$20,000 don't smoke

About 75% of people in **Michigan** households with incomes between \$20,000 & \$75,000 don't smoke

Over 87% of people in **Michigan** households with incomes over \$75,000 don't smoke

~ 2005 Michigan BRFES Estimates

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Legal Liability

- Residents negatively impacted by secondhand smoke actually have the right to **seek legal action against owners** who do not make adequate provisions to protect them from second hand smoke.
- Fair Housing Act complaints can be filed seeking a "reasonable accommodation".
- Possible violation of warranty of habitability or peaceful enjoyment.

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Marketplace is changing

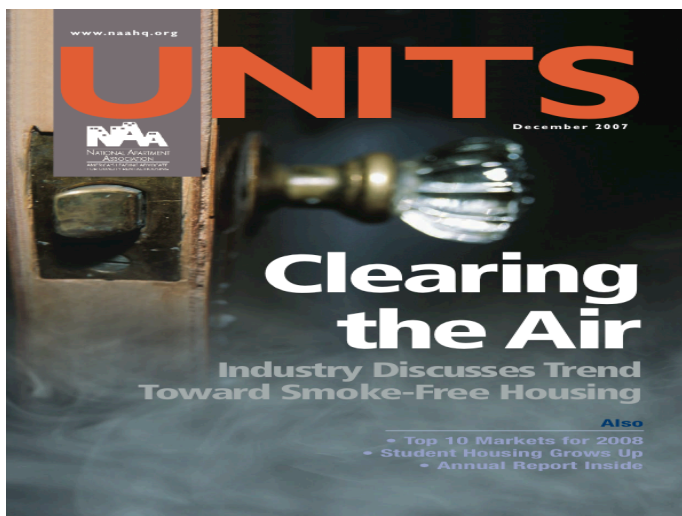
Multi-unit housing associations & their publications are focusing on the benefits of smoke-free policies:

NAA and NMHC policy memos, Feb., 2008

UNITS magazine, Dec., 2007

Assisted Housing Management Insider, March, 2007

MultiFamily Executive, Nov., 2006



Property Management UPDATE

February 1, 2008

NO-SMOKING POLICIES IN APARTMENTS

Smoking bans have become the indisputable norm in the workplace and are now a clear trend in restaurants, entertainment venues and social hotels. In July 2006, the country's largest hotel chain, Marriott International, banned smoking in all of its U.S. and Canadian rooms. Multifamily firms are now considering property-specific and property-specific smoking bans, as well as less restrictive policies that limit smoking to certain floors or buildings within a community.

What is optional now may not be for long. This month, the California, CA City Council joined several other California cities in restricting smoking in apartments. The California ordinance, which is scheduled to go into effect on February 10, requires at least 80 percent of apartment buildings to be permanently designated nonsmoking. Owners have until 2012 to comply. The trend is actually more common in public housing than privately owned apartments at this point; at least 47 public housing agencies have banned smoking on their properties. This issue of the Property Management Update reviews the key financial and legal issues related to smoking bans and offers best practices for implementing one.

Legal Considerations

One of the biggest reasons many apartment firms have been hesitant to adopt smoke-free policies is a mistaken belief that restricting a tenant's ability to smoke on their property or within their apartment could violate the law. However, there is no "right to smoke" and smokers are not a protected class under fair housing laws. In fact, firms can actually reduce their legal liability by restricting or banning smoking.

It is well settled among state and federal courts that the act of smoking is not a protected activity under the U.S. Constitution. The courts have ruled that when a policy singles out or places particular burdens on smokers, individually or as a group, the policy does not in and of itself violate the Constitution's Equal Protection Clause (NVC Cities, Inc. v. New York, 319 F. Supp. 2d 461 (S.D.N.Y. 2004)). Other courts have said simply that "there is no state or federal constitutional right to smoke" (Kurtz v. City of North Miami, 553 So.2d 1025 (Fla. 1989)) and "there is no more a fundamental right to remove cigarettes than there is to shoot up or snort heroin or cocaine or run a red light (Fagan v. Axelrod, 550 N.Y. 524 522, 550 (1999)).

An addition to tobacco, nicotine or smoking is not considered to be a disability under the Fair Housing Act or the Americans with Disabilities Act. In fact, the U.S. Department of Housing and Urban Development (HUD) has specifically stated that smokers are not a protected class under federal fair housing regulations. While HUD has not promulgated a policy that requires landlords to make a "reasonable" accommodation for smokers, HUD has stated that "individual property owners as long as these policies are consistent with applicable state and local laws. According to HUD, rules restricting smoking in rental housing must be "reasonable" and require a legitimate concern for the health of tenants and the condition of individual apartment units and the property generally. For example, a reasonable policy would "prohibit" smoking in rental housing or general leased upon renewal, not during an existing lease term. Federally assisted properties that are required to use the HUD model lease, however, must obtain prior approval of a smoke-free lease amendment just as any other lease amendments must be approved.

In contrast to conventional wisdom, apartment owners may be held more legally liable by allowing smoking than by restricting it. Residents have become more knowledgeable about the risks of secondhand smoke and aware about pursuing legal options to protect their health. State courts have ruled against apartment owners and have ordered significant rent reductions and other penalties under the rationale, warranty of habitability, and quiet enjoyment theories of law. In fact, some may actually be entitled to a "reasonable accommodation" under the Fair Housing Act.

Firms that decide to restrict or ban smoking should consider implementing a prospective policy of lease renewal and for new leases instead of trying to amend current lease agreements. The lease language should make clear the purpose of the policy, define prohibited activities and hold both owner and resident responsible. Importantly, lease language should limit an owner's liability for violations of the policy when the owner takes all reasonable steps to enforce the policy. The lease should not contain an implied warranty that a property's smoking policy will ensure safety, whether

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Marketplace is changing

- Online apartment listing companies are adding “smoke-free” as an amenity item on their listings, e.g., RentLinx
- “Smoke-free” is becoming more common as an amenity item in marketing by apartment owners/managers

Smoke-free Apartment

Where there's smoke, there can also be a smoke-free apartment. How you can make it happen.

[Landlords](#) [Tenants](#)

Tenants' Rights

Your Resources
[Smoke-Free Apartment Listing](#)
[Useful Links](#)
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Did You Know

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Your Resources
Smoke-Free Apartment Living

Find a Smoke-Free Apartment

Use the form below to search for smoke-free rental housing in Michigan.

Location:
(city, zip code or exact address)

Min Bedrooms: Any Number

Max Rent:

Keywords:

Amenities: ☒ Smoke Free
☐ Dogs Allowed
☐ Cats Allowed

List a Smoke-Free Apartment

Property managers, [list your smoke-free rental housing](#) on our website for free. Our apartment listing is powered by [RentLinx](#), the Rental Housing Multi-List.

- [Instructions to list your smoke-free property](#)

Smoke-Free Apartment Listing

The following is a listing of Michigan rental properties whose owners have stated that they are entirely smoke-free dwellings. This listing is updated regularly, with new smoke-free rental units added almost weekly.

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Competition is going smoke-free

- Many other affordable housing providers are adopting smoke-free policies, including HUD-subsidized, tax credit-subsidized, etc.
- The marketplace is changing rapidly, and smoke-free is the hot new amenity.

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Smoke-Free Properties:
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 The Cottages at Bayberry Farms
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 Main Office
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 989 772-3261



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 Contact: Rob Couch, President

All buildings smoke-free.
Over 50 smoke-free buildings in 7 states; about 20 in Michigan.



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info@heritageseniorcommunities.com

Smoke-Free Properties:

Village at Appledorn, Holland
Village at Park Terrace,
Muskegon



Smoke-free community:

Country View Apartments & Town Homes

1928 East Britain Avenue
Benton Harbor, MI 49022

Telephone: (269) 926-8068



WARREN PLAZA

Preservation Management

707 Sable Oaks Drive
S. Portland, ME 04106

Office: (207) 774-0501
Office: (888) 553-2020

Smoke-free MI properties:
Warren Plaza, Detroit



Flo-Mar Apartments

Flo-Mar Apartments

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Phone: (734) 483-2240

All 30+ properties
smoke-free.



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A Community.*

Jewish Apartments & Services

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Oak Park, MI. 48237
Phone: 248.592.1102

All properties smoke-free;
over 800 units.



Smoke-Free Properties:
Cherry Creek Village,
Marquette
Other buildings in Upper
Peninsula and Wisconsin

Lutheran Social Services of Wisconsin and Upper Michigan, Inc.

647 West Virginia Street
Milwaukee, Wisconsin 53204
Telephone: 414-281-4400
E-Mail: info@lsswis.org

CHERRY CREEK VILLAGE



*Affordable Housing for
Older Adults*


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Transitioning to Smoke-Free

- To implement a smoke-free policy in a multi-unit dwelling where smoking residents already reside:
 - Establish a date on which all new residents must not smoke inside
 - Decide how much time current resident smokers will have before their lease will include the smoke-free requirement, i.e., grandfathering


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Transitioning to Smoke-Free: Adopt New Lease Language

- To implement a smoke-free policy in a multi-unit dwelling:
 - Add no smoking provisions to the leases for apartment complexes or to the "house rules" in public Housing Authority buildings


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Enforcement of Smoke-Free Policies

- Private and public multi-unit owners uniformly report that enforcement is not an issue
- Residents consistently follow the rule
- Violators of the smoke-free rule are most likely to be violators of other rules
- Eviction possible; rarely, if ever, occurs


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You Have Resources Online

MISSmokeFreeApartment web site:
www.mismokefreeapartment.org

Smoke-Free Environments Law Project site:
www.tcsg.org/sfelp/home.htm

SFELP Apartments site:
www.tcsg.org/sfelp/apartment.htm

SFELP Condominium site:
www.tcsg.org/sfelp/condos.htm


MI Smoke-Free Apartment

Smoke-free Apartment Decal



Welcome to Our SmokeFree Building

All Apartments are Smoke-Free!





Parkside Commons
Apartment Homes

Parkside Plan
Apartment Features
Amenities
100% Smoke Free

100% smoke-free environment

The demand for smoke-free environments is rising, and Parkside is listening.

Parkside Commons will be a **100% smoke-free environment**, making it one of Massachusetts' premier smoke-free rental communities, inside and out. Smoking is banned in all common areas, on the grounds, and in the apartments themselves. Why 100%? Cigarette smoking is hazardous to your health and it's the number one preventable cause of death. Second-hand smoke can be just as deadly. Cigarette smoke and its very noticeable odor travels farther than most of us realize, permeating rooms and getting into walls, ceilings, carpeting, drapes and clothing. At Parkside, you have a right to fresh and pure air.

Parkside welcomes residents who care about themselves. Our non-smoking policy is simply another way to support our commitment to creating a **clean, healthy, active community for all.**

Chelsea's Read Blog

