

Is Tobacco Smoke a Problem in Your Apartment Building?



A Guidebook for Property
Owners and Managers

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



Second-Hand Smoke

- ▶ Second-hand smoke is the smoke from the burning end of a cigarette, pipe or cigar. It also includes the smoke exhaled by the smoker.
- ▶ Second-hand smoke is the third leading cause of preventable death in Canada.¹
- ▶ Second-hand smoke contains the same 4000 chemicals that are inhaled by a smoker. About 50 of these chemicals are associated with, or are known to cause cancer.²
- ▶ A non-smoker in a room with people smoking is inhaling the same chemicals as the smoker.³
- ▶ With an increasing amount of time and level of exposure to second-hand smoke, there is a resulting increase in the risk to a person's health.
- ▶ Many people have health conditions such as asthma, emphysema, angina, high blood pressure, and diabetes that are worsened by even brief exposure to second-hand smoke.
- ▶ Second-hand smoke has been labelled as a 'Class A' cancer-causing substance in the United States. Class A is considered the most dangerous type of cancer agent and there is no known safe level of exposure.⁴

The Health Effects of Second-hand Smoke

The short-term effects of second-hand smoke exposure include irritation of the eyes, nose, throat, and respiratory system. There are also many long-term effects of exposure to second-hand smoke, both for children and adults.

Children

Second-hand smoke is especially harmful to children.

Second-hand smoke causes:

- Impairment of fetal growth, including low birth weight
- Sudden Infant Death Syndrome (SIDS)
- Chronic respiratory symptoms, such as wheezing, coughing and breathlessness
- Middle ear infections
- Asthma
- Adverse effects on lung function⁵

Adults

Individuals with the following chronic health conditions are particularly vulnerable to the effects of second-hand smoke: diabetes, high blood pressure, vascular disease, asthma, bronchitis, emphysema.⁶

Second-hand smoke causes:

- Lung cancer
- Heart disease
- Nasal irritation⁵

Second-hand smoke may cause:

- Breast cancer
- Cervical cancer
- Nasal sinus cancer
- Stroke
- Acute respiratory symptoms including cough, wheezing, chest tightness and difficulty breathing
- Exacerbation of cystic fibrosis
- Decreased lung function
- Adult-onset asthma and worsening of asthma
- Chronic Obstructive Pulmonary Disease (COPD)
- Miscarriage^{7,8}

Where Does Tobacco Smoke Come From?

- A neighbour's patio or balcony through open windows or doors
- Electrical outlets, cable or phone jacks, ceiling fixtures
- Cracks and gaps around sinks, plumbing, windows, doors, floors, walls and ceilings
- Through the ventilation system

"Tobacco smoke travels from its point of generation in a building to all other areas of the building. It has been shown to move through light fixtures, through ceiling crawl spaces, and into and out of doorways. Once exposed, building occupants are at risk for irritant, allergic, acute and chronic cardiopulmonary and carcinogenic adverse health effects."

John Howard, M.D., Chief of the California Division of Occupational Safety and Health (CAL OSHA)⁹

Benefits of Smoke-Free Living

Advantages of smoke-free buildings include:

- ▶ Decreased risk of fires
- ▶ Decreased maintenance and cleaning costs
- ▶ Decreased frequency of painting
- ▶ Possible decrease in insurance costs
- ▶ Reduction of turnover rates because of dissatisfied residents
- ▶ Attracting new tenants

In Ontario it is legal to have a smoke-free apartment building. A building owner has the right to restrict or prohibit smoking in the building, just as they are free to prohibit loud noise. It is legal for landlords to choose to have a smoke-free policy included in the rental agreement to ban smoking in all or part of a building, including the individual units and outdoor balconies, as long as these requirements do not conflict with the provincial tenancy law.

What Can You Do About Tobacco Smoke?

How to Make Your Condominium or Apartment Building Smoke-Free

1 Begin with a door-to-door survey.

Survey tenants to determine how many are bothered by second-hand smoke coming into their units and assess interest in a smoke-free policy. Try to find out the extent to which second-hand smoke is a problem.

Sample Tenant Letter and Survey for Owners/Managers

Date:

Dear Resident:

We are pleased that you have chosen to reside at _____ (address of property). We at _____ (management company or apartment complex) have been studying the changes that are occurring in the management of properties. Many owners are deciding to regulate the use of tobacco products within their properties. Second-hand smoke is a health hazard, especially for children, the elderly and persons with chronic illnesses.

In addition, smoking materials have been the leading cause of fire deaths for years. They are also twice as likely to be the cause of fires in apartment buildings compared to one or two-family homes and mobile homes.

To ensure the enjoyment and safety of all persons living here, we are considering designating all of our apartment units as smoke-free. But we would also like to hear from you. Please let us know what you think about the idea of rules about tobacco use in the building(s) and on the grounds by filling out the short survey below.

Sincerely,

(Apartment Manager's name)

Cut here

- I prefer to live in a building where smoking is (please check all that apply)
 - Not allowed in some outdoor areas (play area, building entrances, courtyard)
 - Not allowed on balconies and patios
 - Not allowed in some units
 - Not allowed in all units
- I would be interested in moving to a unit in a smoke-free building.
 - Yes No
- I would be interested in moving to a unit in a smoking-permitted building.
 - Yes No

Name _____ Apt. # _____

Comments _____

What Can You Do About Tobacco Smoke?

2 Decide on a feasible plan.

There are many options available for reducing second-hand smoke in your apartment building or condominium. Here are some options:

- Phase in smoke-free units in all or part of the building. This can be achieved through attrition or over a period of years. When a smoker vacates, rent the vacated unit as a smoke-free unit. Smoke-free policies can also be “grandfathered” in. For example, starting January 1, 2010, apartment building will be smoke-free for all new tenants.
- Designate specific areas as smoke-free. For example, the first six floors could be ‘non-smoking,’ and the top floor ‘smoking.’
- Insert an additional clause into the rental agreement to make the tenant responsible for any damage caused by smoking.
- Make all units smoke-free using the process outlined below.

The process you will use depends on the type of lease involved.

If tenants are signing a **new lease** this is the easiest time for a landlord to create a smoke-free unit. Once the landlord and the tenant sign the new agreement, the smoking restriction becomes a requirement like any other provision in the lease. Such a provision does not prevent a smoker from renting the unit; instead it prohibits smoking by anyone in the unit - tenants or guests.

If a current tenant and landlord both agree to change an **existing lease** to include a no-smoking provision, the landlord can either add an amendment to the existing lease specifying the no-smoking provision or create a new lease that includes the no-smoking provision.

If a landlord wants to include a no-smoking clause in an **existing lease**, the process will depend on the type of agreement:

Month-to-month rental agreement: A landlord may add a smoking prohibition to a month-to-month rental agreement, with agreement from the tenant(s) .

What Can You Do About Tobacco Smoke?

Fixed-term lease: When a lease is a fixed term (for example, 12 months), the landlord cannot change the lease during that time period without the tenant's consent. When a fixed-term lease ends, it may convert to a month-to-month agreement. If so, at the end of the fixed term, the landlord and tenant may create a new lease, which could include the no-smoking clause.

Select a time frame in which to implement the smoke-free policy.

A sample lease addendum is included below. It is important to consult with a licensed attorney to assist you in drafting such an addendum.

Model Addendum to Lease

The following language may be used to implement a smoke-free policy in a multi-unit dwelling. In apartment complexes, the provisions can be added to the lease. This is most easily done gradually as new individuals apply to become tenants. For condominiums, the language can be added to the declaration or rules and implemented immediately or at a future date.

Due to the increased risk of fire, and the known health effects of second-hand tobacco smoke, smoking is prohibited in any area of the property, both private and common,

whether enclosed or outdoors. The policy applies to all owners, tenants, guests and service persons.

Smoking: The term "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other tobacco product in any manner or any form.

Continued...

What Can You Do About Tobacco Smoke?

Tenant acknowledgement:

I hereby acknowledge the above smoking policy as part of the lease or month-to-month agreement. I agree that I will not smoke in the areas of the property listed below. In addition, I will be responsible for enforcing this policy with all of my visitors, guests, and relatives who visit the premises.

Smoke-free areas:

NAME (Please print) SIGNATURE

STREET NAME, CITY, PROVINCE, POSTAL CODE

PHONE NUMBER

ADDITIONAL NAMES:

NAME (Please print) SIGNATURE

3 Notify tenants of the plan.

Send each rental unit a written notice of the new smoke-free policy and post a notice in common areas.

4 Implement the new policy.

Post the new smoke-free policy in common areas. Include the smoke-free requirements in rental and/or lease agreements. Clearly state that tenants are responsible for informing their guests of the smoke-free policy and prohibiting smoking on the premises.

5 Monitor the policy.

Work with tenants to handle complaints when they arise. Give violators warnings.

Buildings Without Smoke-Free Policies

In rental buildings without smoke-free policies, work with tenants to resolve all reasonable complaints about second-hand smoke. Landlords have a responsibility to protect tenants from substantial interference with their “quiet enjoyment” of the premises. Ensure that the Smoke-Free Ontario Act, which prohibits smoking in common areas of the building, is enforced. Post no-smoking signs in common areas of the building.

Minimize drifting smoke by making reasonable repairs or modifications to the premises, such as sealing cracks and maintaining or upgrading ventilation systems.

If all reasonable efforts fail to resolve the problem, consider moving the tenant(s) within the building, with their consent or implement a smoke-free policy for the building.



Relevant Legislation

Provincial residential tenancy legislation details the rights and responsibilities of landlords and tenants of residential premises and provides a means of settling disputes. Most residential tenancy acts stipulate that tenants are entitled to “quiet enjoyment” of their property, which includes the right to be free from unreasonable disturbances by other tenants. While these laws usually do not specify second-hand smoke as grounds for breach of quiet enjoyment, there is emerging case law to support a claim that second-hand smoke unreasonably interferes with “quiet enjoyment.”¹¹

A building owner has the right to restrict or prohibit smoking in the building just as they are free to prohibit loud noise. It is legal for landlords to choose to have a smoke-free policy included in the rental agreement to ban smoking in all or part of a building, including the individual units and outdoor balconies. Landlords have the right to impose additional obligations/restrictions on tenants beyond the standard lease agreement, as long as these requirements do not conflict with the provincial tenancy law.

Condominiums and Home Owners

Condominium owners and home owners who rent self-contained apartments in their homes have the legal right to designate specific apartment units or entire buildings as non-smoking and to rent only to tenants who agree to abide by the rules.

Provincial legislation governing condominiums sets out the processes that condominium corporations must follow in establishing and enforcing bylaws and rules governing the conduct of owners and visitors in their private units and common areas. Nothing in these laws prevents condominium corporations from prohibiting smoking in private units and/or common areas, provided the required process is followed and requisite number of votes is obtained.

Websites for Relevant Legislation

Residential Tenancies Act, 2006 www.e-laws.gov.on.ca

Although the Residential Tenancies Act (2006) does not specifically address smoking, a landlord may have grounds to seek eviction of a tenant if the smoke damages the property or bothers other tenants. See Section 30, Section 22, Section 64(1) and Section 235.

For complaints contact the **Landlord and Tenant Board** (formerly the Ontario Rental Housing Tribunal) <http://www.orht.gov.on.ca/scripts/index.asp> or phone (416) 645-8080.

Condominium Act, 1988 www.e-laws.gov.on.ca

Smoke-Free Ontario Act & Regulation 06-48 www.e-laws.gov.on.ca

Prohibits smoking in common areas of apartment buildings and condominiums. For complaints contact the **City of Hamilton Tobacco Hotline** at (905) 540-5566.

Resources

- ▶ Smoke-Free Housing Canada
www.smokefreehousing.ca
- ▶ Breathing Space - Community Partners for Smoke-Free Homes
www.toronto.ca/health/breathingspace
- ▶ Health Canada
www.gosmokefree.ca
- ▶ Clean Air Coalition of BC
www.cleanaircoalitionbc.com
- ▶ MI Smoke-Free Apartment
www.mismokefreeapartment.org
- ▶ Non-Smokers' Rights Association
www.nsr-a-dnf.ca
- ▶ Smoke-Free Environments Law Projects
www.tcsg.org/sfelp/apartment.htm
- ▶ The Smokefree Network
www.smokefree.net/smoke-free-apartments-talk



References

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- 9 Howard, John. (October 20, 1994). Testimony before the Labor and Employment Committee, California Assembly.
- 10 Health Canada. (2005). Making your home and car smoke-free: A guide to protecting your family from second-hand smoke. Canada: Health Canada.
- 11 Boomer, J. (June 2005). "Drifting smoke workshop: A clean air coalition project." Fourth National Conference on Tobacco or Health.
- 12 Non-Smokers' Rights Association & Smoking and Health Action Foundation. (November 2006). When neighbours smoke: Exposure to drifting second-hand smoke in multi-unit dwellings backgrounder.

For more information contact:

City of Hamilton
Public Health Services
Tobacco Control Program
Tobacco Hotline (905) 540-5566
<http://www.hamilton.ca/tobacco>



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