Is There Tobacco Smoke in Your Apartment or Condominium?

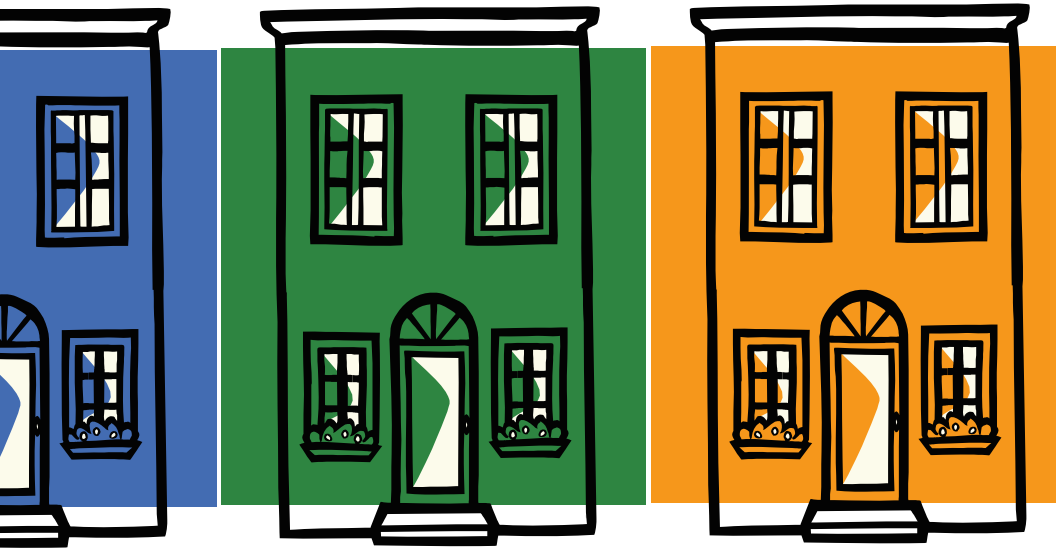


Table of Contents

Second-hand Smoke 2

The Health Effects of Second-hand Smoke 3

Where Does the Tobacco Smoke Come From? 4

What Can You Do? 5

Relevant Legislation 7

Resources and References 8

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 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 your health.
- Many people have health conditions that are worsened by even brief exposure to second-hand smoke, such as asthma, emphysema, angina, high blood pressure, and diabetes.
- Second-hand smoke has been labeled 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 function[5]

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 irritation[5]

Second-hand smoke may cause:

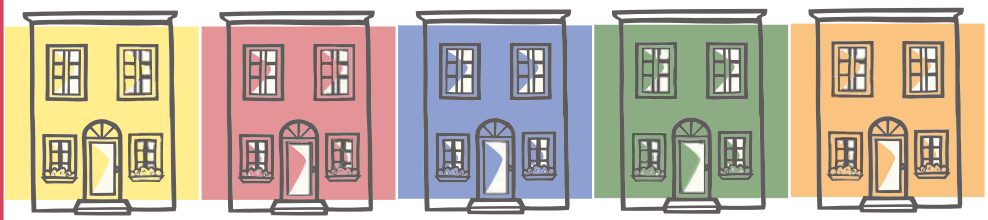
- Breast cancer
- Cervical cancer
- Nasal Sinus Cancer
- Stroke
- Acute respiratory symptoms including cough, wheezing, chest tightness and difficulty breathing
- Exacerbation of cystic fibrosis
- Decreased lung function
- Adult-onset asthma and worsening of asthma
- Chronic Obstructive Pulmonary Disease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

Where Does the 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]



What Can You Do if Tobacco Smoke is In Your Apartment or Condominium?

1 Try to find out where the smoke is coming from.
Determine where the smoke is entering your apartment or condo. Look for cracks and gaps between the walls and floor and around windows and doors as well as spaces around pipes or electrical work.

- Use foam, tape, caulking or insulation to fill, seal and insulate cracks and gaps around pipes and vents, as well as walls and floors.
- Put weather stripping on doors and windows.
- Purchase special seals for electrical outlets and switch plates. They can prevent smoke from traveling room to room.
- Install door bottoms and door sweeps. Door sweeps will prevent smoke from entering your unit from the hallway.
- Install window fans to remove smoke.

Note: these actions may limit the flow of fresh air into your unit and should be taken only if you are experiencing extreme problems with second-hand smoke from your neighbours.[10]

2 Talk to people in the unit that you think the smoke is coming from.
The solution may be as simple as asking them not to smoke right outside your open window. However, some people may not be receptive to someone telling them where they can smoke. If people are smoking in their own units but are leaving their front doors open, this may be a violation of municipal fire codes. In this case, contact your local fire department.

3 Speak with your family doctor.
Ask for a letter from your doctor if you or your children have an existing medical condition that is made worse by second-hand smoke. Send a copy of this letter to you landlord or condo board.

4 Talk to other residents and work together.
Clarify your goals. Do you want the building to be smoke-free? Do you want to break your lease without penalty?
Do you want to move to a different apartment?

Continued...

What Can You Do if Tobacco Smoke is In Your Apartment or Condominium?

5 **Talk to your landlord or condominium board.**

- Ensure that ventilation systems are maintained and working properly.

Ask your landlord or condominium board to check into the ventilation system. If that doesn't solve the problem, contact your municipal government licensing office or property standards office to report a possible violation of property standards bylaws or the Municipal Code.

- Make sure 'No-Smoking' signs are posted in common areas such as hallways, stairways, elevators and laundry rooms.
- Ensure the Smoke-Free Ontario Act that prohibits smoking in common areas of apartments and condominiums is enforced.
- Ask your landlord or condominium board to designate your building as smoke-free and add a clause stating this in lease agreements/declarations.

6 **Draft a letter to your landlord or condominium board.**

Explain the situation and describe all of the steps you have taken to try to solve the problem. Explain the nature of the problem and your preferred solution, and give them a reasonable deadline for a response. Remind your landlord or condominium board that many activities in private dwellings are currently regulated, such as loud noise and barbequing, especially if it negatively impacts other tenants. Landlords and condominium boards have the authority to restrict or ban activities that unreasonably interfere with the "quiet enjoyment" of other residents in the building.

7 **Contact your Landloard and Tenant Board (formerly the Rental-Housing Tribunal if you don't receive a satisfactory response.**

Their role is to resolve disputes between landlords and tenants. This will not apply for those who live in condominiums.

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.
- 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 non-smoking tenants.
- 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

Tenant Protection Act, 1997/Residential Tenancies Act, 2006
www.e-laws.gov.on.ca

Although the **Tenant Protection Act,1997/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.

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, 2006 *www.e-laws.gov.on.ca*

For complaints contact the City of Hamilton Tobacco Hotline at (905) 540-5566.

Resources

- 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.nsra-adnf.ca
- Smoke-Free Environments Law Projects
  www.tcsg.org/sfelp/apartment.htm
- The Smokefree Network
  www.smokefree.net/smoke-free-apartments-talk

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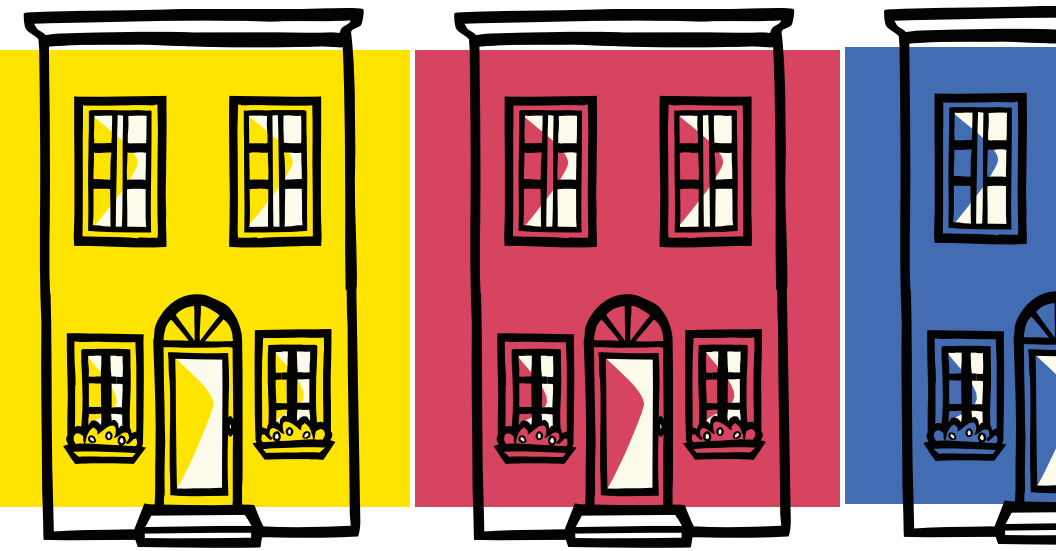
10. Health Canada. (2005). Making your home and car smoke-free: A guide to protecting your family from second-hand smoke. Canada: Health Canada.
11. Boomer, J. (June 2005). "Drifting smoke workshop: a clean air coalition project." Fourth National Conference on Tobacco or Health.
12. Non-Smokers' Rights 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

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