

**FOR IMMEDIATE RELEASE:**

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**Smoke-Free Housing Options in 2010**

For those in Marin planning to move to a new apartment in 2010, please be reminded that more options are available for non-smokers than ever before as local landlords have become increasingly sensitive to those who wish to live tobacco-free. Over the past year, more local apartment complexes have learned about the dangers of drifting tobacco smoke to tenants' health and well-being. Many apartments have adopted or are in the process of adopting a smoke-free policy such as smoke-free lease addendums for all new tenants. Policies such as these not only increase the quality of tenants' lives but also help to improve landlord-tenant relations.

For more information on smoke-free housing options including a list of questions tenants can use when visiting prospective apartments, please visit our website at [www.smokefreemarin.com/Apartments](http://www.smokefreemarin.com/Apartments). Model smoke-free policies are also available for landlords in English, Spanish, Vietnamese and Creole.

**About Bay Area Community Resources:**

Bay Area Community Resources is a not-for-profit in San Rafael that focuses on youth development and substance abuse outreach.

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# SMOKE FREE MARIN COALITION

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## *Smoke-Free Housing Press Kit*

Thank you for visiting the Smoke-Free Marin Coalition's smoke-free housing press kit. This press kit contains frequently asked questions on smoke-free housing issues including information on the dangers of secondhand smoke and secondhand smoke ordinances in Marin. Also included are policy and legal guidelines to help apartment managers create smoke-free buildings as well as suggestions for tenants looking for smoke-free housing.

In 2007, the Marin County Board of Supervisors passed a law prohibiting smoking in public areas such as building entrances, outdoor cafés and common areas of apartment buildings. This law pertains to jurisdictions included in County, Unincorporated areas. Other cities passing similar ordinances include City of San Anselmo and the Town of Ross. In 2008, the City of Novato passed a smoke-free multi-unit housing ordinance that requires 50% of existing apartment units and 75% of new apartment units to be smoke-free.

Surveys show that the smoke-free housing issue receives considerable public support which continues to grow each year. 86% of Marin residents are non-smokers and statewide surveys show that 69% of apartment dwellers favored regulations requiring all apartment buildings to offer non-smoking sections where all the apartments, patios and balconies in that section were non-smoking.

We also continue to receive a number of phone calls from Marin residents about smoke drifting into their apartment that causes physical discomfort and ailments. We take these complaints very seriously since exposure to second-hand smoke not only reduces the quality of life but also endangers it.

More information on this issue, including smoke-free toolkits for landlords and tenants, can be found online at <http://smokefreemarin.com/Apartments.html> or by phone at 415-499-3020.

## **Suggested Questions for Tenants Seeking Smoke-Free Multi-Unit Housing**

### **I. Smoke-free Policy Questions**

1. Do you have a formal non-smoking policy that includes a written lease addendum?
2. Have all current tenants signed the lease addendum or only new tenants?
3. How long has the policy been in place?
4. What does your policy consist of? Is the entire complex smoke-free both indoors and outdoors?
6. What is your process for handling smoking complaints?

### **II. Disclosure Questions**

1. Has a smoker lived in this unit?
2. Where do the smoking tenants live in this building?
3. Do any smokers live above, below or next to my prospective unit?
4. Is there a smoke-free section of the complex?

FAQs:  
Smoke Free Housing Exposure in Multi-Unit Housing in Marin

Smoke-free housing policies make good public health and business sense. Both apartment owners and residents benefit from policies that reduce or eliminate secondhand smoke. Smoke-free buildings are more cost-effective, reduce the risk of fire, and reduce management stress and tenant dissention. Below are some frequently asked questions about smoke-free housing policies:

Q: Why is secondhand smoke (SHS) dangerous?

- Secondhand smoke contains all the 4,000 toxic chemicals found in cigarettes and is actually more dangerous than the smoke inhaled with a cigarette since there is no filter available for secondhand smoke.
- In 2006, the California EPA Air Resources Board classified secondhand smoke as a toxic air contaminant with no known safe level of exposure, even in outdoor settings.

Q: Why is SHS in apartments such a health hazard?

- Too many sources of shared air for smoke to stay contained within one unit.
- Vents are not the only cause of contamination. Aggravating amounts of smoke can easily pass through pipes, floorboards, and even walls.
- Even if the smoker opens the windows or smokes on the balcony, the smoke drifts to the other units through the outside air, preventing the non-smoking tenants from opening their windows without exposure to smoke.
- Non-smoking tenants with or without a pre-existing ailment, such as asthma or a heart condition among others, can become medically ill from the exposure.

Q: How are smoke-free units more cost-effective?

- Smoke-free units require less cleaning, which requires less time and money from management. Restoration firms estimate a \$15,000 cost for smoking units.
- Tar and cigarette particulates will attach to all surfaces within the unit, including walls, carpet, and blinds. These can often not be removed in spite of cleaning efforts.
- Fire insurance premiums can decrease and will reduce risk of financial loss due to fire.

Remember, a smoke-free policy does not mean that you cannot rent to smokers or are only limited to non-smoking tenants. It only means that smokers are not allowed to smoke in units and outdoor common areas. Smokers have become increasingly used to “no-smoking” areas. Complexes are allowed to restrict smoking anywhere on the premise, but others may also create an outdoor designated smoking area at least 20 feet away from operable doors or windows.

Q: How do smoke-free buildings reduce management stress and tenant dissension?

- The Marin County Tobacco Disease Control Program has received hundreds of phone calls from stressed and aggravated tenants and landlords dealing with drifting smoke problems.
- Many responsible, non-smoking tenants have seriously contemplated or ultimately decided to leave their apartment because of the aggravation caused by secondhand smoke.
- Creating non-smoking policies eliminates tension between tenants and with management and reduces otherwise unnecessary and unwanted turnover, creating less stress and saving money for landlords and tenants.


Q: Is it legal to prohibit smoking in private units? Can a manager face a lawsuit from an angry tenant who still wants to smoke in his unit?

- There is no constitutional right to smoke. Banning smoking is not discrimination
- You have the legal right to ban smoking in all or part of your property, including individual rental units.
- “No Smoking” restrictions are the legal equivalent of “No Pets” or “No loud noises”
- The reality is that a landlord will more likely face a lawsuit from a frustrated and medically injured non-smoker than from a nonsmoker. Today’s legal climate tends to favor nonsmokers in these kinds of disputes.
- If someone is injured by tobacco smoke and takes legal action, your liability insurance may not protect you because tobacco smoke is a pollutant that has been categorized by the California Air Resources Board as a toxic with no known safe level of exposure.






For more information, go to: [www.Smokefreemarin.com](http://www.Smokefreemarin.com) or [www.talc.phd.org](http://www.talc.phd.org) or [www.Smokefreeapartments.org](http://www.Smokefreeapartments.org). Marin County’s Tobacco Disease Control Program is another source of free technical assistance: email Bob Curry at [rcurry@co.marin.ca.us](mailto:rcurry@co.marin.ca.us) or 415-499-3020.






## Apartment Residents Want Regulation of Drifting Tobacco Smoke





Renters throughout California want no smoking sections in their apartment complexes according to the results from a new statewide survey commissioned by the American Lung Association of California's Center for Tobacco Policy and Organizing.






The telephone survey of 602 apartment residents throughout California found that 46% of respondents had experienced secondhand smoke drifting into their own apartment.







59% said they believe that secondhand smoke can drift from one apartment to another in an apartment building.






72% said they believe that secondhand smoke can drift into an apartment unit from outside.




69% of respondents favored regulations requiring all apartment buildings to offer non-smoking sections where all the apartments, patios and balconies in that section were non-smoking.




39% of respondents said they would prefer to live in an apartment building where smoking is not allowed anywhere, and 43% said they would prefer to live in an apartment building which has separate non-smoking and smoking areas. (Total: 82%)






Support for non-smoking sections was even higher among the 14% of respondents who live in subsidized, affordable housing.






90% of respondents agreed that tobacco smoke is harmful to people who inhale it.




61% of respondents favored a law requiring landlords to inform new tenants if there is a smoker in the apartment next door to the one they are about to rent.



25% of respondents said that they know of someone living in their apartment building with chronic heart or lung disease such as asthma or emphysema.



Respondents said if there is a law limiting smoking in apartments and a tenant signs a lease agreeing not to smoke in a non-smoking unit, and then repeatedly violates that lease, the tenant definitely should (43%) or probably should (27%) be evicted.




48% of respondents said that the owner or manager lives on the premises.





74% said the owner or manager listens to concerns and is generally responsive.



73% said the owner or manager usually enforces the rules and keeps order.



*Survey was commissioned by American Lung Association's Center for Tobacco Policy and Organizing. It was conducted by Goodwin-Simon Strategic Research and has a 4% margin of error at a 95% confidence level. The survey was funded by Proposition 99.*



*Survey available from Smokefree Apartment House Registry, 818/363-4220.*

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



## How Landlords Can Prohibit Smoking in Rental Housing

January 2006

*Although Californians have extensive protections from exposure to secondhand tobacco smoke where they work, eat, and play, some are still exposed to secondhand smoke where they live. Landlords and property managers can protect tenants from exposure to secondhand smoke by prohibiting smoking in common areas and in individual rental units.*

*This fact sheet describes how a landlord can make common areas nonsmoking, and outlines the steps a landlord must follow to change a lease to make an individual unit smokefree. The information in this fact sheet does not apply to rental housing governed by a local rent control ordinance.<sup>1</sup> In addition, it does not apply to a condominium complex that is seeking to adopt a no-smoking policy.<sup>2</sup> Also note that if rental housing is subsidized by a government agency, such as the U.S. Department of Housing and Urban Development (HUD), additional procedures might be required to adopt a no-smoking policy.*

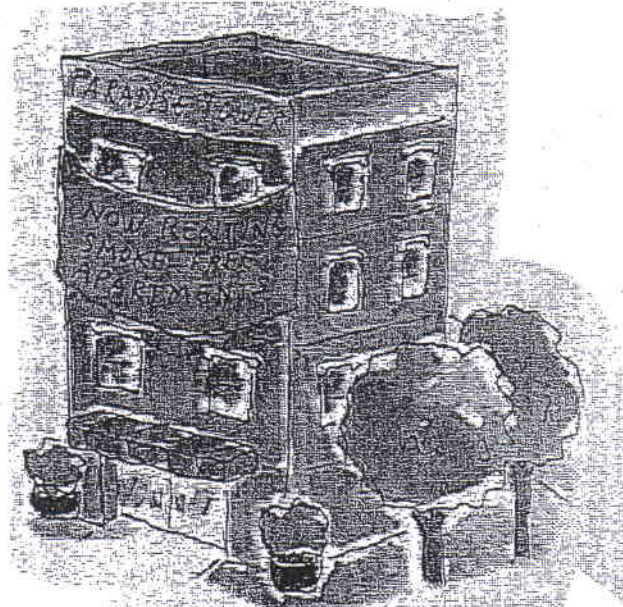


Illustration by Janet Cleland  
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### **Q: Why would a landlord want to prohibit smoking?**

**A:** In addition to the important health benefits of reducing exposure to secondhand smoke, restricting smoking can decrease the risk of accidental fires and may even reduce fire insurance premiums. Landlords also may see a significant reduction in maintenance and turnover costs. Cleaning and refurbishing a smoker's unit can require additional time and effort to repaint and to replace carpets and drapes. By prohibiting smoking in a unit, landlords can minimize or eliminate these expenses altogether.

### **Q: Is it legal for a landlord to prohibit smoking?**

**A:** Yes. A ban on smoking in common areas is similar to other rules tenants typically must follow regarding the use of common areas, such as the hours for using the laundry facility or the requirement that children be accompanied by an adult when using the pool.

It is also legal for a landlord to ban smoking in individual units. Landlords have the legal right to set limits on how a tenant may use rental property—for instance, by restricting guests, noise, and pets. A “no-smoking” term is similar to a “no pets” restriction in the lease—another way for a landlord to protect his or her property.

#### **Important**

A landlord is not unlawfully discriminating against smoking tenants or violating a smoker's fundamental right to privacy when banning smoking in common areas or individual units. Claims to the contrary have no legal basis.<sup>3</sup>

**Q: How would a landlord restrict smoking in the common areas?**

**A:** A landlord may prohibit smoking in common areas, such as lobbies, hallways, parking lots, laundry rooms, and swimming pools, by changing the rules for those areas. Such a change does not require changing an individual tenant's lease. Instead, a landlord should provide reasonable notice to tenants of the new no-smoking policy, usually 30 days prior to it becoming effective; describe what areas are to be non-smoking; and post signs in those areas. The landlord also may designate a specific area where smoking would be allowed. Note that state law may already prohibit smoking in indoor common areas such as lobbies, hallways, laundry rooms, and stairwells, if the facility has employees, such as maintenance workers, property managers, or others who work on site.<sup>4</sup>

**Q: How would a landlord prohibit smoking in an individual unit?**

**A:** A landlord would amend the lease with the tenant to add a no-smoking provision.<sup>5</sup> The process the landlord uses depends on the type of lease involved.

**New lease:** The easiest time for a landlord to establish a no-smoking policy is when a new lease is created, either when a new tenant moves in or when an expired lease is replaced. Once the landlord and the tenant sign the new agreement, the smoking restriction becomes a requirement like any other provision in the lease. Note that such a provision does not prevent a smoker from renting the unit; instead, it prohibits smoking by anyone in the unit—whether tenants or guests.

**Existing lease—with consent of the tenant:** If a current tenant and landlord both agree to change an existing lease to include a no-smoking provision, the landlord should either:

- add an amendment to the existing lease specifying the no-smoking provision,<sup>6</sup> or
- create a new lease that includes the no-smoking provision.

**Existing lease—without the consent of the tenant:** If a landlord wants to include a no-smoking clause in an existing lease but the current tenant does not, the landlord may still change the lease to prohibit smoking in the unit. The process depends on the type of rental agreement:

- **Month-to-month rental agreement:** A landlord may add a smoking prohibition to a month-to-month rental agreement by giving written notice to the tenant of the new condition<sup>7</sup> and by making the no-smoking restriction effective at least 30 days after giving notice to the tenant.<sup>8</sup> A tenant who does not accept this new lease term is, in effect, ending the tenancy by refusing to renew the month-to-month rental agreement.
- **Fixed-term lease:** When a lease is for a fixed term (typically a six- or 12-month period), the landlord cannot change the lease during that time period without the tenant's consent. This type of lease fixes all the conditions in the lease, and the landlord cannot make any changes to the lease during that time. However, when a fixed-term lease ends, it may convert to a month-to-month agreement. If so, the landlord may then add a no-smoking provision to this new month-to-month agreement by following the same steps outlined for the month-to-month rental agreement, above. Otherwise, at the end of the fixed term, the landlord and tenant may need to create a new lease, which can include the no-smoking clause.

**Q: Can a landlord prohibit smoking on the balcony or patio?**

**A:** Yes, a landlord may use the lease to restrict smoking both inside and outside the unit. A no-smoking provision in the rental agreement should clearly state whether smoking is prohibited only inside the unit or on any outdoor space that only the tenant can use, such as the balcony or patio of that unit.

**Q: What effect does a no-smoking lease term have?**

**A:** The smoking prohibition becomes part of the lease. This new term will be like any other condition of the lease: if the tenant or the tenant's guests fail to comply with the provision, the tenant is in breach of the agreement, which could be grounds to end the tenancy.

**Sample Lease Provisions**

The website links below contain sample language for smoking restrictions in both common areas and individual units<sup>1</sup>.

Smokefree Lease Addendum from Smokefree Apartments (three versions):

- [www.smokefreeapartments.org/caa\\_smoking\\_addendum.pdf](http://www.smokefreeapartments.org/caa_smoking_addendum.pdf)
- [www.smokefreeapartments.org/Smokefree%20Lease%20Addendum.pdf](http://www.smokefreeapartments.org/Smokefree%20Lease%20Addendum.pdf)
- [www.smokefreeapartments.org/One-Page%20Lease%20Addendum.pdf](http://www.smokefreeapartments.org/One-Page%20Lease%20Addendum.pdf)

Additional materials for creating smokefree housing are available from TALC's website at <http://talc.phl.org>, including a Sample California Ordinance Regulating Smoking in Multi-Unit Housing.

TALC is a project of the Public Health Institute. This material was made possible by funds received from the California Department of Health Services under contract #04-35336. It was created for a California audience to provide general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised in this fact sheet.

<sup>1</sup> Such ordinances generally prohibit landlords from changing lease agreements without the tenant's consent. Contact your local rent control board for specific information regarding your rent control ordinance.

<sup>2</sup> The scope of smoking restrictions and the process to adopt such a policy for a condominium complex is very different from that in the rental housing context, because of condominiums' ownership structure and covenants, conditions, and restrictions (CC&Rs). Note, however, that this fact sheet applies if a condominium owner is renting the unit to a tenant.

<sup>3</sup> For a more detailed discussion of this topic, see TALC's publication "There Is No Constitutional Right to Smoke" ([http://talc.phlaw.org/pdf\\_files/0051.pdf](http://talc.phlaw.org/pdf_files/0051.pdf)).

<sup>4</sup> Cal. Labor Code section 6404.5.

<sup>5</sup> The terms lease and rental agreement are legally interchangeable and are used in this manner throughout this fact sheet. In practice, a lease provides for a fixed term tenancy (usually six or 12 months), and a rental agreement is used for a month-to-month tenancy.

<sup>6</sup> A lease amendment must refer to the agreement that is changed and must be signed by the same two people who signed the original agreement.

<sup>7</sup> A landlord must follow the notice requirements set forth in California Code of Civil Procedure section 1162, which authorizes a landlord to serve notice of a changed lease term in three ways: the landlord must attempt to give written notice to the tenant personally; if that fails, she may leave a copy with someone of suitable age and discretion at either the tenant's residence or place of business; and if that fails, the landlord may fasten a copy in a conspicuous place on the property, and mail a copy to the tenant.

<sup>8</sup> Cal. Civil Code § 827(a).

<sup>9</sup> TALC does not endorse any of the cited provisions and is providing the information for illustrative purposes only. Landlords should seek the advice of their own legal counsel before adding language to their rental agreements.



## **California Air Resources Board Declares Second Hand Smoke Is a Toxic Air Contaminant\* January 26, 2006**

### **What is a Toxic Air Contaminant (TAC)?**

A Toxic Air Contaminant (TAC) is an air pollutant which may cause or contribute to an increase in deaths or serious illness, or which may pose a present or potential hazard to human health. **The Air Resources Board unanimously found that tobacco smoke harms not only the smoker, but innocent bystanders as well. Secondhand Smoke joins benzene, arsenic, and diesel exhaust on the TAC list.** The unanimous decision by the Cal EPA's Air Resources Board to declare Secondhand Smoke (SHS) to be a Toxic Air Contaminant was based on a rigorous four year, scientific study that included public comment and independent peer review.

### **What does tobacco smoke add to California's air each year?**

Each year tobacco smoke adds the following to California's air:

- 40 tons of nicotine
- 365 tons of soot and ash
- 1,900 tons of carbon monoxide

### **What are the health effects of exposure to Secondhand Smoke?**

Each year in California, secondhand tobacco smoke is linked to:

- 400 additional lung cancer deaths a year in nonsmokers
- 3,600 deadly heart attacks and
- 31,000 asthma attacks in children.
- **State scientists also concluded for the first time that Secondhand Smoke can increase the risk of breast cancer in pre-menopausal women (women under the age of 50) by 68%.**

### **How many Californians are exposed?**

Despite strict indoor workplace laws and scattered ordinances related to outdoor smoking, 56% of adults (over age 18), 64% of adolescents (12-17 years) and 38% of children (0-11 years) are currently being exposed to Secondhand Smoke.

### **What are the next steps for the Air Resources Board (ARB)?**

The ARB must undertake a "risk management" analysis to determine options to reduce exposure to and management of secondhand smoke. This is expected to result in recommendations to the state legislature for new laws and enactment of regulations.

## **Can the state, local communities and businesses act immediately to protect themselves and citizens?**

Yes. In fact, the city of Calabasas recently enacted a comprehensive ordinance making the city smoke-free except on private property. Many other opportunities exist for action such as:

- State legislation banning smoking in cars with children.
- Designation of secondhand smoke as a public or private nuisance by local or state government
- Smoking bans in outdoor dining areas, parks, beaches
- Smoking bans in multi-family housing common indoor and outdoor areas
- Smoking bans in apartment units and condominiums.

The possibilities are endless.

## **Where are most Californians exposed to Secondhand Smoke?**

### **APARTMENTS and CARS**

The rental housing industry is increasingly interested in appealing to the 85% of Californians who do not smoke by adopting voluntary smoke-free policies throughout their rental properties.

Developers, owners and managers of multi-family housing are moving quickly to protect their tenants, their property and their bottom line by offering smoke-free units and buildings. They have learned that there is no constitutional right to smoke and that “no smoking” policies are as legal as “no pets” or “no loud noise” policies.

Renters are quickly becoming aware and alarmed enough to seek out and ask for smoke-free premises. More and more nonsmokers are no longer willing to be forced to breathe a toxic air contaminant because a neighbor is smoking on a balcony or because common walls, hallways and ventilation systems do not allow them to choose clean air.

**The California Air Resources Board has revealed that exposure to secondhand smoke is extremely unhealthy. Now tenants and landlords both are learning that it is also unnecessary.**

**\*Source: All statistics and data in this fact sheet originate in the Executive Summary Report of the California Air Resources Board, CalEPA- as approved by the Scientific Review Panel on June 24, 2005.**

**CCAP- California's Clean Air Project, a statewide project of ETR Associates**

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