



## **The Case for Smoke-Free Apartments**

### Movement of cigarette smoke in apartment buildings

Anyone who's taken high school physics may remember that gases expand to fill a space. In addition to small particles, cigarette smoke contains a number of gases. An apartment is not like a sealed box. Between each apartment unit and the adjacent unit are many spaces around pipes and electrical conduits, and between walls and floors or ceiling. As the gases in cigarette smoke expand they expand into these spaces and into units where tenants do not smoke. The path smoke takes through a building is unpredictable. Generally it will move into units above the one in which it was generated. However, research conducted in Minnesota apartment buildings shows that it may move into adjacent units on the same floor or even into units below.

### Unwanted smoke: a common problem

It is not surprising, therefore, that a survey conducted by a market research firm found that almost half of rental households in Minnesota multifamily buildings say that tobacco smoke odors get into their apartment from somewhere else at times. Thirty-seven percent of those experiencing others' smoke, say it bothers them "a lot" or "so much I'm thinking of moving." Some of these tenants find the smell of tobacco smoke in their closets and clothing, in their bathrooms, throughout their apartment unit annoying. They are concerned about the health effects of secondhand smoke, especially those with health problems or children with asthma.

### Market advantages

Because the housing market is much slower than it was a few years ago, landlords are looking for incentives to entice renters to their property. Adopting a smoke-free policy is a way to attract tenants, a way to make a property stand out. Over half of renters would prefer a smoke-free building, all other things being equal. Many of them are willing to pay higher rents or live farther from work or a bus line to enjoy this amenity. Owners with smoke-free policies are overwhelmingly happy with them. Nearly all reported that it had had no effect on, or a decrease in, turnover, vacancy rate, and the amount of staff time required to manage the building. It had had no effect on the amount of rent they could charge. Almost all reported that they are very likely to continue to provide smoke-free housing. Moreover they had designated a large variety of buildings as smoke-free, subsidized and nonsubsidized; buildings of various ages and conditions; and buildings for seniors, for nonseniors without children, and for families with children.

### Fire damage and death

Another reason for owners to be concerned about smoking in their buildings is that cigarette-related fires are the leading cause of fire deaths in both Minnesota and the United States. Cigarettes are designed to burn even when no one is drawing on them. This means that they will not go out when they are resting in an ashtray. It also means that they will not go out if someone falls asleep or passes out while smoking, allowing the cigarette to fall into upholstery or mattresses. There it may smolder for several hours before causing the materials around it to burst into flames.

### Reduced legal liability.

Tenants harmed by mold have sued for personal injury and property damage. Such suits are typically based on negligence, warranty of habitability, or breach of contract. Although there is little case law involving movement of smoke in apartment buildings, the potential exists for residents harmed by tobacco smoke to sue owners or initiate claims under the Americans with Disability Act. Secondhand smoke is a known human carcinogen. Even short-term exposure to it damages blood vessels in ways that may precipitate heart

attacks. The 2006 U.S. Surgeon General's Report on Secondhand Smoke indicated that there is no risk-free level of exposure to secondhand smoke. The Centers for Disease Control and Prevention recently advised physicians to warn patients with heart disease to avoid exposure to secondhand smoke. The typical mix of tenants in senior housing will include a large number of tenants with cardiovascular problems. The typical mix of tenants in housing for families will include children with asthma. Exposure to secondhand smoke triggers asthma attacks.

## Adopting a No-Smoking Policy in Apartment Buildings: A Guide for Owners and Managers

Most owners of apartment buildings acknowledge that secondhand smoke is a common source of objectionable air. Some owners of apartment buildings are questioning whether they should continue to allow smoking in their units. They're tired of the smell. They are tired of dealing with the fire danger and maintenance costs associated with smoking in their rental units. And they're convinced that the eighty percent of Minnesotans that do not smoke constitute a market for smoke-free units. If you're one of these owners, this tip sheet is designed to help you.

### How to proceed

How you will proceed to implement a smoke-free policy will depend on your situation, whether you are constructing a new building or complex, remodeling an older one, or just converting the status of units in an older building.

### Planning for new construction

If you are building a new apartment complex, you have a relatively easy road ahead of you. By providing smoke-free buildings from the get go, you will avoid problems like cleaning walls and windows streaked with tar and replacing carpeting and counter tops with cigarette burns. As you design the complex, you also have the opportunity to place an outdoor smoking space at an appropriate site if you choose to do so.

### Renovating or purchasing an older building

If you are renovating an apartment building, you are in a particularly good position to make renovations and repairs and reopen it as a smoke-free building. Likewise, you are probably in a good position to make the building smoke free if you purchase it. A change in owners usually signals to tenants that other kinds of changes may be in the offing. The kinds of changes necessary to accommodate truly smoke-free and smoking-permitted units in an older building are probably cost prohibitive. This means that it may make more sense to designate the whole building smoke-free. It may also make enforcement easier. Businesses with smoke-free workplace policies find compliance better and enforcement easier than those with policies that allow smoking in some areas but not in others.

### Moving ahead without major changes

If you simply want to initiate a smoke-free policy and are not making any other major changes, consider the following steps.

**Survey your tenants.** Find out how many smoke in their apartments. Not all households with smokers allow smoking. You may already have this information if you manage or own only a few units. A multi-building complex presents a bigger challenge. You may have to conduct a survey, which will serve two purposes: gathering information and alerting tenants that change may be in the air.

**Set a time frame for the change.** Since most leases are for about a year, you can institute a no-smoking policy about twelve months out. Well ahead of your target date, notify tenants that you want to make the

building smoke-free by a certain date and that if they wish to remain in the building they will have to abide by the new policy. That target date is probably going to be at least one year from the date the most recent lease expires.

Provide tenants with your reasons for making the change so they know that you are not being capricious. These typically include a combination of health, safety and business concerns:

- Protecting your tenants from secondhand smoke,
- Reducing the danger of fires,
- Reducing maintenance, cleaning, and redecorating costs,
- Saving on insurance, and
- Capitalizing on consumer demand for smoke-free units.

Let them know that the building or other area will not be truly smoke-free for a while. Some owners decide that they will grandfather in any existing tenants. If you pursue this route, it may take several years before you can declare a building smoke-free.

**Determine a budget for incentives.** You probably want to let your current tenants know that you would be glad to have them remain in the building as long as they agree not to smoke. Make the no-smoking policy apply to any new tenants. You can also offer incentives to tenants who want to smoke in their apartments that encourage them to move to other buildings that you own, incentives similar to those many owners are offering to new tenants. If you find that you have only two smoking tenants in Building A, you may want to offer them half a month's free rent or pay for their moving expenses if they will move to Building B so you can declare Building A smoke-free.

**Introduce new leases.** Prudence dictates that you include some language in your leases that makes tenants aware of the policy and of their obligations not to smoke and to prevent guests from smoking in their units. If you allow smoking on a specific part of the property, specify where smoking is allowed in the lease. A model smoke-free lease addendum can be found on the Live Smoke Free program's web site: [www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org)

**Post signs.** A few days before the building becomes smoke-free, send out an announcement to tenants. Then post signs at the entryways, something along these lines:

*Welcome to our smoke-free building.  
To protect the health and safety of residents, smoking or  
carrying lighted smoking materials is prohibited in  
common areas and individual units. This policy applies to  
all tenants and their guests.*

**Advertise your policy.** There is a substantial market for smoke-free buildings. Over half of Minnesota tenants prefer a smoke-free building, all other things being equal. Some tenants are willing to pay more to avoid smoke, and others are willing to make sacrifices like walking farther to a bus. If your advertisements state something like "no-smoking building," they will stand out from similar apartments. They will also screen out possible tenants who are not interested in a place where they cannot smoke.

**List your building on Live Smoke Free's web site.** LSF provides a web-based directory of smoke-free apartment buildings at [www.mnsmokefreehousing.org](http://www.mnsmokefreehousing.org). LSF encourages you to list the building whether or not you have a vacancy. Your name on the directory will show that you are an owner that cares about your building and your tenants.

### Enforcing the policy

In worksites and other public areas, smoking policies have been largely self-enforcing. No heavy policing is necessary. There is not enough experience with smoke-free rental housing to know if this will also hold true in this area, but a small survey of owners with smoke-free policies found that the overwhelming majority of them reported that staff time spent on managing the building did not increase after they put a smoke-free policy in place. In any case, you can be sure that someday someone will test the rules. If you do not enforce the no-smoking rules, you will not have smoke-free units and you will have unhappy tenants. You may even face a lawsuit for breach of contract. Use roughly the same policy you use for other violations of rules such as throwing loud parties or parking in prohibited areas. You may decide to issue one or two warnings before you evict someone for breaking the lease. You will have no legal ground for an eviction if you do not have the no-smoking rules spelled out in the lease. Once tenants know you are serious about your new policy, most tenants will follow it.

### Providing an outdoor smoking area

Since you don't allow smoking in the units, you may want to provide an outdoor smoking area or structure. You are under no obligation to provide an outdoor smoking area although this may help keep your tenants from using adjacent properties for smoking. A disadvantage of providing one is that it may be difficult to keep it clean. This prospect is reduced if you provide sturdy ash containers, heavy enough not to be stolen. You could follow the example of employers who provide picnic tables, a gazebo, or a special structure designed specifically for smoking that resembles a bus shelter.

On small lots with no room for a shelter, place the smoking area as far away from the building as possible so that drifting smoke will not be a problem. Particularly in the summer the smoke can waft through an open window or be drawn inside by air-conditioning units. If a tenant smokes right outside a door, you can practically guarantee that smoke will be drawn into the building. Your efforts to prevent this problem can benefit from a sign on the door that says, "No smoking within 20 feet of the door." Note, however, that you cannot regulate smoking on a public sidewalk. That requires a city ordinance.

### Enjoying the benefits

Establishing a smoke-free policy could entail some effort. But it should also provide many benefits. You will no longer be subject to tenants' complaints about their neighbors' smoking. You will have the satisfaction of knowing that you are protecting the health of your tenants, particularly children and those with allergies or heart or lung ailments. You will not have to face the cost of redecorating units whose windows or walls are streaked with cigarette tar. And your whole building will smell fresher and cleaner and be more appealing to current renters, to prospective tenants, and to people like you who work there.

## Model Smoke-Free Lease Addendum

Attorney Douglas J. Carney, Hanbery, Neumeyer & Carney, P.A., prepared this Model Lease Addendum. He received ongoing advice, consultation, and recommendations from a legal advisory committee that included attorneys who regularly advise property owners and managers, who serve as tenant attorneys and advocates, or who advise public housing agencies. Representatives from Center for Energy and Environment and Association for Nonsmokers-Minnesota were also on the committee. The modification about where smoking is allowed (Section 3) was included by Initiative for Smoke-Free Apartments.