



Public Health Law Center

*Improving health through the power of law*



**Secondhand Smoke and Condominiums**

American Public Health Conference  
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**Presenter Disclosures**

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**Warren Ortland**

(1) The following personal financial relationships with commercial interests relevant to this presentation existed during the past 12 months:

“No relationships to disclose”

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**Secondhand Smoke and Condominiums:  
Research and Legal Context**

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- **Research Project Objectives**
  - ▣ Assess secondhand smoke issue and perspectives of owner-occupants and property managers
  - ▣ Make recommendations for solutions
  - ▣ Develop tools for education and implementation
- **Research Project Activities**
  - ▣ Survey of owner-occupants
  - ▣ Interviews with property managers
  - ▣ Legal research

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## ASHRAE Statement

American Society of Heating, Refrigeration and Air-Conditioning Engineers

### 2008 Position Statement:

- At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.

*ASHRAE Position Document on  
Environmental Tobacco Smoke  
Approved by ASHRAE Board of Directors  
June 25, 2008*

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## Surgeon General

### ▣ The Surgeon General's Call to Action to Promote Healthy Homes – June 2009

#### How Indoor Air Quality Affects Health

An estimated 38,112 lung cancer and heart disease deaths annually are attributed to exposure to secondhand smoke (Centers for Disease Control and Prevention 2005b). Secondhand smoke also contributes to respiratory diseases and other health problems. In 2000, more than 126 million U.S. residents ages 3 years and older were exposed to secondhand smoke: for most, the home was the primary site of exposure (U.S. Department of Health and Human Services 2006). The risk for exposure extends beyond the immediate family. Smokers living in multifamily residences (such as apartment and condominium complexes) can affect not only family members, but other residents as well.

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## Secondhand Smoke in Condominiums

### Owner-occupant survey

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## Survey Methodology

- Population
  - 76,106 SF-detached (townhouses, twin homes...)
  - 43,152 2-50+ (apartment-style)
- Data collection Jan 6 – Mar 6, 2009
- Respondent n = 495

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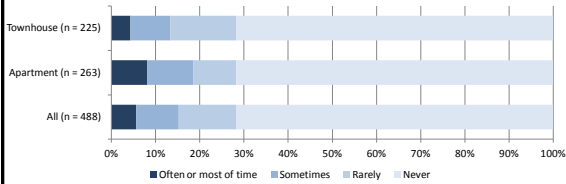
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## Secondhand Smoke in Units

In past six months, how often has tobacco smoke come into your unit?




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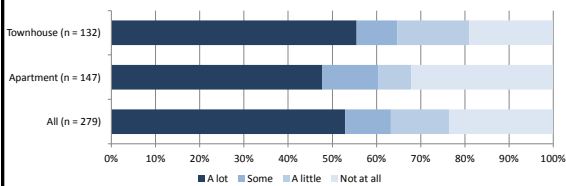
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## Resident Reaction to Secondhand Smoke

How much does it bother you when tobacco smoke from somewhere else in or around the building comes into your unit?




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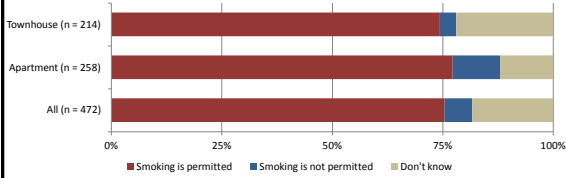
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### Existing Smoke-Free Policies

What rules does your association currently have about smoking in... residents' units?




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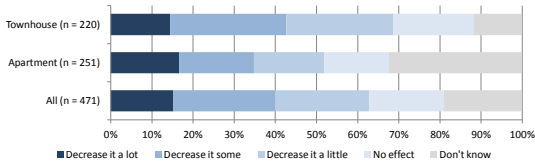
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### Effect of Secondhand Smoke on Resale Value

Effect on resale value of your unit if potential buyers knew that tobacco smoke came into it 1 day per week?




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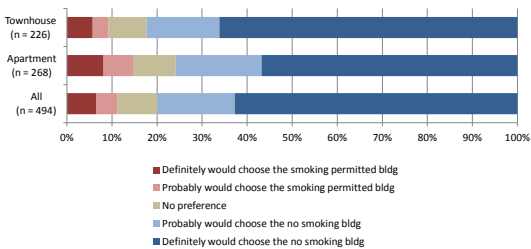
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### Purchasing preference

Suppose you were buying a new unit and had a choice between two buildings that were identical except for their smoking policies. ...which building would you choose?




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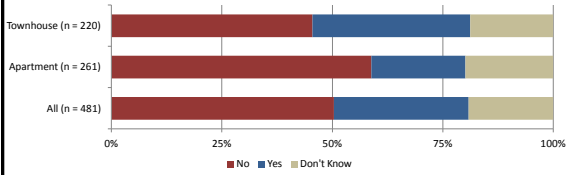
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## Effect of Secondhand Smoke on Purchasing

If you were considering buying a particular unit, would you still buy it if you found out that tobacco smoke came in 1 day per week?



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## Secondhand Smoke in Condominiums

Decision-maker interviews

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## Interview Methodology

- Sampling frame of CIC management firms (N = 38) compiled from:
  - Community Associations Institute
  - CIC Midwest
  - Minnesota Multi Housing Association
  - Manta.com
- 17 Respondents (49%)
- Respondents personally manage or supervise the management of 21% of the CIC units in Minnesota (27,009 out of 128,291).

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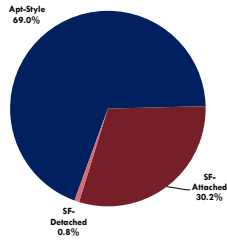
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## SHS incursion

- Total 126 smoke incursion problems since in current position
- Apt-style buildings 20% of units, 69% of problems



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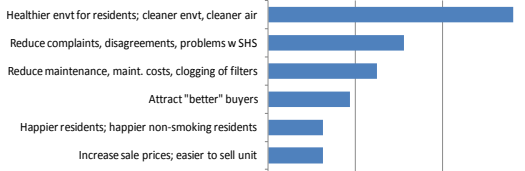
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## Perceived Benefits of Smoke-Free Policies



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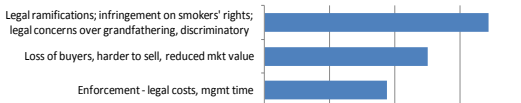
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## Concerns of Adopting a Smoke-Free Policy



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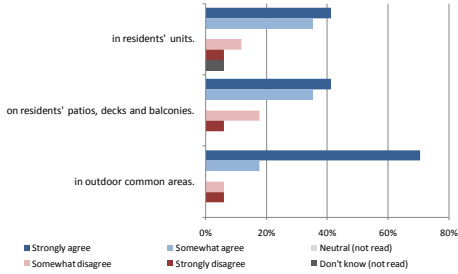
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## Views on associations' rights

Associations should have a right to adopt policies prohibiting smoking...




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## Secondhand Smoke in Multi-Unit Buildings

### Legal Considerations




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## State & Local Laws

- **State Clean Indoor Air Acts:**
  - Condominium complexes common areas
  - Prohibits smoking in indoor public places and places of employment: sales offices and maintenance areas
- **Utah**
  - Secondhand smoke is a nuisance
- **City / Counties (California)**
  - Prohibits smoking in individual units

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### Adoption of Smoke Free Policies

Can we do it? **Yes**

- Declaration / Bylaws – permit any material restrictions on use or occupancy of a unit
- Rules and regulations – regulate the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common areas or other units.

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### Discrimination



• Is it discriminatory to adopt and implement a smoke-free policy? **No**

- Not a protected activity or right.
- Not a protected category
- Not a disability

**Recommendation:** implement policy based on activity (smoking) and not individual's status.

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### Adoption of Smoke Free Policies

What factors should be considered?

- Extent of the policy – will it cover common areas, individual units, specific outdoor areas (pools, recreation areas) or entire property?
- Likelihood that the association will modify the policy in the future
- Approach towards existing smoking owners
- Expectation that the policy will be challenged by some owners

**Recommendation:** Provide education to all parties and conduct survey to assess attitudes towards policy

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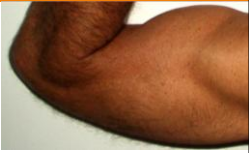
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### Adoption of Smoke-Free Policies

What if we have support for a strong policy?

Adopt the policy by way of a change to the **declaration**



**Positives**

- More likely to withstand a legal challenge
- Courts are deferential to association decisions to amend declaration

**Negatives**

- More costly
- Harder to get passed; requires super-majority of association members

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### Adoption of Smoke Free Policies

What if we want an gradual, incremental adoption?



Adopt the policy by way of a change to the **rules and regulations**

**Positives**

- Only requires majority vote of the association board; less costly
- Easier to adapt over time as needed

**Negatives**

- Weaker if legally challenged
- Can be easily changed if board membership changes

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### Adoption of Smoke Free Policies

Is enforcement an issue?

- Should be enforced as are other use restrictions – pets, excessive noise
- Follow documented procedures
- Relatively new issue
- "Grandfathering" could pose enforcement issues




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## Alternatives to Smoke Free Policies

What are the risks of permitting smoking?

- Costs for alternative measures
- Individual actions for nuisance; owner vs. owner
- Action to require the board to enforce the "nuisance" clause in the declaration
- Disability accommodation request from non-smoker




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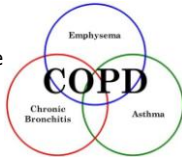
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## Accommodations for Nonsmokers

- Federal or state disability statutes
- Disability determined on a case-by-case basis
- Accommodations also determined on a case-by-case basis
  - Modifications permitted to unit
  - Providing outdoor shelter; check on definition of "common areas"
  - Adoption of a smoke-free policy




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## Accommodations for Smokers

**Would an accommodation be granted to a mobility limited individual or other disabled individual allowing him or her to smoke inside?**

Probably not

- "Nexus" between disability and accommodation
- "Nothing...requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals."



*Fair Housing Act, 42 U.S.C. 3604(f)(9).*

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## Public Policy Options



- Common areas of condominiums
- Language in condominium statutes that references smoking as an example of an activity that can be controlled by the association
- Language in nuisance statutes
- Disclosure of smoking policies for condominium complexes as part of sales process

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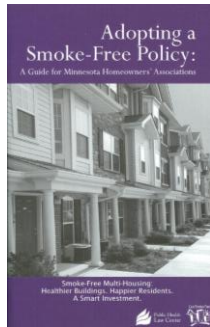
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## Resources Available to Associations

- Owner-occupant survey results fact sheet
- Property manager interviews fact sheet
- Legal issues fact sheet
- Handbook for homeowners' associations
- Model language for smoke-free policy




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## Contact

- Public Health Law Center  
<http://publichealthlawcenter.org>
- Live Smoke Free  
<http://www.mnsmokefreeshousing.org>

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