

Going Smoke-Free

A Guide for Tenants

The Massachusetts Smoke-Free Housing Project
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makesmokinghistory.org



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information are available at
www.mass.gov/dph/mtcp.



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Executive Summary

Did you know that the secondhand tobacco smoke drifting into your apartment is harmful to your health? As a Class A carcinogen, secondhand smoke is in the same category as asbestos, benzene and other cancer-causing agents. Protect yourself, and your family, by reducing or eliminating secondhand smoke exposure in your home.

Start by learning the facts. While a lot of people have heard that secondhand smoke is harmful, few people actually know just how harmful it is. Did you realize:

- Secondhand smoke is the third leading preventable cause of the death in the United States?
- Children who are exposed to secondhand smoke are more likely to develop bronchitis, pneumonia, asthma or even sudden infant death syndrome (SIDS)?
- Secondhand smoke exposure has an immediate adverse effect on the cardiovascular system in adults?
- Secondhand smoke can cause heart disease and lung cancer in adults?
- Once present in an apartment, secondhand smoke can linger in the air for hours?

Once you know the facts, look for solutions. The most effective way to eliminate secondhand smoke exposure in a multi-unit building is to convince your landlord to establish a smoke-free policy. Just like prohibiting pets, landlords can prohibit smoking at their properties, even in individual units. It is both legal and easy to do, and will probably save the landlord money. More and more landlords in Massachusetts are making their properties completely smoke-free. Booklets for landlords on how to go smoke-free are available at www.makesmokinghistory.org.

If people are smoking in common areas of the building, such as hallways, laundry rooms or stairways, you can contact the Massachusetts Tobacco Control Program to see if those areas of your building should be smoke-free under the Massachusetts Smoke-Free Workplace Law. The Smoke-Free Workplace Law requires that any enclosed area where people work has to be smoke-free. If your building employs cleaning crews, superintendents or other staff, those common areas where they work should be smoke-free. For more information or to file a complaint call 1-800-992-7525 or visit www.mass.gov/dph/mtcp or www.makesmokinghistory.org.

While a smoke-free policy is your best protection, some landlords may not be willing to go smoke-free. In those cases, try to take steps to protect yourself and your family. Try speaking with smokers in your building and explain that secondhand smoke is drifting into your apartment and that you are trying to find a good solution, or contact your landlord to get them to plug holes or cracks that allow smoke to drift into your apartment. More on how to talk to neighbors and your landlord are available later in this guide.

Know your rights under the law. You have the legal right to a safe and livable apartment. If significant amounts of secondhand smoke are filling your apartment, the landlord may be required by the courts to take steps to reduce or eliminate exposure. You also may have legal recourse against the neighbor who is smoking under a private cause of action. Because of the time and expense involved, litigation should be your last resort.



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Health Facts

Smoking in apartment buildings is a health concern because the secondhand smoke is not contained inside the smokers' apartments. Instead, it drifts into common areas and other apartments. It seeps under doors, through kitchen and bathroom ventilation ducts, and through electrical wall sockets and light fixtures. After seeping into neighboring apartments, secondhand smoke can stay in the air for hours, exposing non-smoking tenants.ⁱ Cigarettes are also the leading cause of residential fires, causing more than \$400 million dollars of damage annually.ⁱⁱ

Secondhand smoke includes the side-stream smoke from lit tobacco products and exhaled smoke. It can best be described as a “toxic soup” with more than 4,000 chemical compounds, no less than 60 of which are known or probable human carcinogens.ⁱⁱⁱ The United States Environmental Protection Agency classifies secondhand smoke as a Class A carcinogen, which puts it in the same category as asbestos, formaldehyde, benzene, arsenic, and other highly toxic substances.^{iv} Here are just some of the health effects:

- Secondhand smoke is the third leading cause of preventable death in the United States. It causes approximately 53,000 deaths each year.
- Children exposed to secondhand smoke are more likely to develop bronchitis, pneumonia, asthma, and ear infections.^v
- Secondhand smoke has been linked to Sudden Infant Death Syndrome.^{vi}
- Nonsmokers who are exposed to secondhand smoke at home increase their risk of developing heart disease by 25 - 30 percent.^{vii}
- Nonsmokers who are exposed to secondhand smoke at home increase their risk of developing lung cancer by 20 - 30 percent.^{viii}
- Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system and increase the risk of a heart attack.^{ix}
- Approximately 900 people in the United States die each year from fires caused by smoldering cigarettes.



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Short-Term Solutions

While the best way to eliminate secondhand smoke exposure in a multi-unit building is to go smoke-free, this is not a solution that all landlords will want to try. In those cases, try to work with the smoking tenant and landlord to reduce exposure. The tenant who smokes probably does not know secondhand smoke is drifting into your apartment or may not think that you are bothered by it. Make them aware of the issue and ask for his help. Try the following steps:

- If a neighbor is smoking inside their apartment, ask them to consider smoking outside.
- If the smoke is coming in through a window from smokers outside, either ask the smokers to move to another location or talk to your landlord about establishing a designated smoking area away from windows or doors.
- If a neighbor is unwilling to smoke outside, speak with them and your landlord about making sure that they keep the door closed and possibly installing a door sweep, which seals the space between the floor and the bottom of the door.
- Also, talk to your landlord about plugging up cracks and holes in the walls, ceilings and floors where smoke is seeping into your apartment. It is most effective if the landlord does this in your unit *and* the smoker's unit.

Remember to get your landlord's permission before making any change to the apartment. The landlord may be willing to pay for the improvements and, in some cases, should pay.

If the smoker is not willing to cooperate, or if no other short-term solutions seem to work, ask your landlord to relocate you to another apartment or building. Some landlords have designated smoke-free buildings. Remember to check the new apartment for secondhand smoke several different times during the day and week before moving in.

It is important to understand that these recommendations above may not eliminate secondhand smoke from drifting into your apartment. The best solution is to live in a smoke-free building.



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Legal Rights of Tenants

The Massachusetts Smoke-Free Workplace Law

The Smoke-Free Workplace Law requires that any enclosed area where people work has to be smoke-free. If your building employs cleaning crews, superintendents or other staff, those common areas where they work should be smoke-free and it's your landlord or property manager's job to make sure that they are. For more information or to file a complaint call 1-800-992-7525 or visit www.mass.gov/dph/mtcp or www.makesmokinghistory.org. Outdoor common areas are not included under the law.

A landlord or property manager who allows smoking to occur in areas where it is prohibited by state law can be subject to fines of up to \$300. Each day that smoking is allowed can be a separate violation, so fine totals can increase quickly.

The Sanitary Code

Your local health department or board of health is an important resource. Health inspectors work to ensure that apartment buildings are in compliance with ventilation and other code requirements. Correcting code violations often helps address drifting secondhand smoke. Your health inspector may have experience with this issue and can talk with your landlord to recommend changes that will help.

Lawsuits

Litigation should be a last resort, but sometimes it is necessary. Tenants may bring legal action directly against landlords or the tenant whose smoke is drifting into their apartment. The following are some of the legal claims:

- Negligence
- Breach of the Covenant of Quiet Enjoyment
- Nuisance
- Violation of the Warranty of Habitability

The following are three cases in Massachusetts that dealt with the issue of secondhand smoke:

Harwood Capital Corp. v. Carey, No. 05-SP00187, *Boston Housing Court* (2006). The Boston Housing Court found that secondhand smoke that had drifted out of a rented condominium unit and into neighboring units constituted a **nuisance**. The precedent established by this case supports claims by tenants that drifting secondhand smoke is a nuisance, for which landlords are liable.

50-58 Gainsborough St. Realty Trust v. Haile, No. 98-02279, *Boston Housing Court* (1998). A judge in the Boston Housing Court awarded tenants **rent abatement** because of secondhand smoke seeping into their apartment. The judge found that “the evidence does demonstrate to the Court the tenants’ right to **quiet enjoyment** was interfered with because of the second-hand smoke that was emanating from the nightclub below.”



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Donnelley v. Cohasset Housing Authority, 2003 WL 21246199, Superior Court (2003). A third area of potential liability arises from the Federal Fair Housing Act of 1988 and the Massachusetts state law equivalent. Fair housing laws prohibit discrimination in housing, including discrimination against tenants who are disabled. If a tenant with a disability proves that exposure to secondhand smoke substantially impairs his ability to reside in the apartment, then the landlord must make “reasonable accommodations” for the tenant.

In *Donnelley v. Cohasset Housing Authority*, the tenant claimed that his exposure to secondhand smoke was a violation of fair housing laws. The court found that secondhand smoke could potentially constitute a violation, but did not in this case, because the tenant’s discomfort and other mild reactions did not qualify as a substantial impairment. One disability that could potentially qualify is asthma, which is one of the most common respiratory illnesses in Massachusetts.x Secondhand smoke is known trigger for asthma attacks.xi

If you think that secondhand smoke is contributing to your illness, speak with your doctor, who may be able to provide you with documentation that you can use when speaking with your landlord, or if you decide to pursue a legal action.



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Working With Neighbors and Landlords To Go Smoke-Free

The most effective way to eliminate secondhand smoke in a multi-unit building is for your landlord to make the building completely smoke-free. More and more landlords are making their properties smoke-free.

Just like prohibiting pets, landlords can prohibit smoking. It is entirely legal, and implementing the rule is simple. When current tenants renew their leases, the landlord simply has them sign a lease addendum that prohibits smoking. New tenants sign the addendum when signing their lease.

So, how do you convince your landlord to make the change? The key is to communicate persuasively and make the issue relevant to the landlord. Landlords are particularly interested in keeping their costs low and reducing conflict among tenants. Here are some things you can do:

Document the problem. Identify the source of the secondhand smoke, how it enters your apartment and when it is worst. Keep a written record with dates and times of exposure. Simply mentioning to your landlord that you smell secondhand smoke makes it seem like a mere annoyance, rather than a serious problem.

Get testimonials. Have others confirm the presence of secondhand smoke in your apartment or their own. The consensus of neighboring tenants, friends, maintenance personnel and others can be very convincing.

Build consensus among the other tenants and get their support. Ask friends in the building whether they are experiencing the same problem. Have them document the problem just like you did. Talk to them about the benefits of a smoke-free building. Send letters to other tenants asking them to get involved.

Recommend going smoke-free as a solution. Make sure your landlord knows that drifting secondhand smoke is a serious problem the building, and then recommend a smoke-free rule as a solution. Other tenants can help highlight the problem by mailing letters or sending emails about their exposure to secondhand smoke in the building. The more letters and emails received by the landlord, the more important the issue becomes. Also, have as many tenants as possible sign a petition in support of a smoke-free rule and share the petition with the landlord.

Tell your landlord about the many benefits of going smoke-free. When landlords make their properties smoke-free, they can:

- Attract more tenants. Massachusetts has one of the lowest smoking rates in the country, meaning there is a high demand for smoke-free housing. Many smokers do not smoke inside their homes and are interested in smoke-free housing.
- Increase interest in their properties. A recent survey in Massachusetts revealed that the majority of prospective tenants are immediately less interested in an apartment when they smell secondhand smoke.
- Save money by reducing the need for repairs. Apartments where smoking was allowed will require more time and money to re-rent.



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- Eliminate the leading cause of residential fires. Nationwide, property damage from cigarette-caused fires exceeds \$400 million annually.
- Keep tenants happy. Tenants may choose to move out rather than expose themselves to secondhand smoke.

Provide your landlord with resources on going smoke-free. Booklets for landlords on how to make their properties smoke-free are available at www.makesmokinghistory.org.

Respond to your landlord's concerns. Keep the following facts in mind if your landlord raises concerns about making a change:

- **Smoke-free policies are not discriminatory.** They are entirely legal. A substantial number of apartment buildings in Massachusetts already are already smoke-free. Smokers are welcome in these properties. They just need to smoke outside.
- **Smoke-free policies are easy to enforce.** No-smoking rules are largely self-enforcing. They attract tenants who support smoke-free policies. Tips for enforcing no-smoking policies are available at www.makesmokinghistory.org.
- **Smoke-free policies should not increase liability.** With a properly drafted no-smoking rule, landlords are given the flexibility and time they need for enforcement. The real threat of liability comes from ignoring the problem and allowing secondhand smoke exposure to continue.
- **Implementing a smoke-free rule is easy and inexpensive.** When current tenants renew their leases, the landlord simply has them sign a lease addendum that prohibits smoking. New tenants sign when signing their lease. A copy of the no-smoking lease addendum is available at www.makesmokinghistory.org.



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ⁱ CA Env'tl. Prot. Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant (2005).

ⁱⁱ John R. Hall, Jr., National Fire Protection Association, *The Smoking-Material Fire Problem* 10 (2006).

ⁱⁱⁱ CA Env'tl. Prot. Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant (2005).

^{iv} *See Flue-Cured Tobacco Coop. Stabilization Corp. v. U.S. Env'tl. Prot. Agency*, 313 F.3d 852 (2002).

^v J. DiFranza et al., *Prenatal and Postnatal Environmental Tobacco Smoke Exposure and Children's Health*, *Pediatrics* 113 (4 Supp.) 1007-15 (April 2004).

^{vi} H. S. Klonoff-Cohen et al., *The Effects of Passive Smoking and Tobacco Exposure Through Breast Milk on Sudden Infant Death Syndrome*, 273(10) *JAMA* 818 (March 1995)

^{vii} U.S. Dep't of Health and Human Servs., *The Health Consequences of Involuntary Smoking: A Report of the U.S. Surgeon General* (2006) (hereinafter *Surgeon General Report*).

^{viii} *Id.*

^{ix} *Id.*

^x *Asthma & Allergies*, Asthma and Allergy Foundation of America, *republished at* <www.aafa.org>, (visited on Nov. 1, 2002).

^{xi} *See id.*