



**Smoke-Free
Opportunities in
Community Associations:**


**CHANGE
is in the
AIR**



Smoking: The world has changed

In 1965, 1/2 of adult men and 1/3 of women in the US smoked and they did it:

- At work
- On airplanes
- During college classes
- In hotels and theatres
- In restaurants, bars and taverns
- In their homes and
- In their beds



Present Day

- Most workplaces are smokefree
- Homes with no-smoking rule:
 - 91% in Oregon
 - 94% in Washington
- People expect smoke-free air where they work and where they live


Secondhand Smoke (SHS)

There is no safe level of exposure

“The scientific evidence is now indisputable: secondhand smoke is not a mere annoyance. It is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults.” U.S. Surgeon General, 2006

Secondhand Smoke Indoors

- Seeps into apartments where no one smokes through shared walls, ventilation systems and ductwork.
- Is absorbed into furniture, carpets, curtains, clothing, etc that people and pets come into contact with.



SHS cannot be controlled

“At present the only means of effectively eliminating the health risks associated with indoor exposure is to ban smoking activity.”

American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE)

“Treatments” can make it worse

ASHRAE goes on to say:

- Using air cleaning technologies or ventilating buildings does not eliminate SHS exposure.
- Heating, ventilation and air conditioning systems can actually distribute SHS throughout a building.



OR and WA Smokefree Laws

Almost all workplaces and public places are **SMOKEFREE**

- This includes public and common areas and anywhere an employee must pass through in the course of their duties.
- No-smoking within 10 feet (OR) and 25 feet (WA) of any entrance, window or intake unit.



Prohibiting smoking is legal...

- Smokefree policies are not discriminatory under state and federal fair housing laws. Smoking is not a disability, nor a reasonable accommodation for a disability.
- Addiction to nicotine does not fit within the definition of “handicap” under fair housing laws of Oregon



The screenshot shows the website smokefreehousinginfo.com with the title "Oregon Smokefree Housing Project". It features a sidebar with navigation links: HOME, Affordable & Public Housing, Condos, Facts & Figures, Landlord Tools, Medical Marijuana, Rental Industry NEWS, Selling Properties, SmokeFree/FireSafe Materials, Smoking Policy Disclosure Law, Tribal Housing, Vacation Rentals, Links, and About Us. The main content area is titled "Condo Associations & No-Smoking Policies in Oregon/SW Washington" and lists various properties with their respective no-smoking policies, such as Avenue Lofts, Crown Plaza Lofts, Eastview Edge Condominiums, Elizabeth Lofts, Killingsworth Station, Overlook Heights Condominiums, Waverly Heights Condos, and Harrison West HOA.

Resources Available

Go to www.smokefreehousinginfo.com:

- Legal fact sheet
- Steps to move forward
- Sample resident letter and survey
- Legal templates – OR and WA versions

THE LEGAL MEANS

- Oregon Smoke-Free Workplace Law, ORS 433.835
- Washington State Smoking in Public Places Law, RCW 70.160.030
- Different ways to adopt a smoking restriction
- Tough questions

Adopting smoking restrictions

Different Methods:

- Amendment to Declaration
- Amendment to Bylaws
- Board rule or resolution

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Adopting smoking restrictions - OR:

- Planned Community Act: Contents of Declaration: "a statement of any restriction on the use, maintenance, or occupancy of Lots or Units. . . ." (ORS 94.580(2)(o)).
- Oregon Condominium Act: Contents of Bylaws: "Any restriction on use or occupancy of units. . . ." (ORS 100.415(1)(r)).
- Typically, Bylaws allow Board to adopt rules & regulations governing use of the property (check to see if authority is limited to regulating use of common area).

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Adopting smoking restrictions - WA:

- Courts reluctant to ban smoking on nuisance, trespass or noxious odor grounds
- Washington Condominium Act
 - Common area restrictions: 67% vote to amend Declaration (RCW 64.34.264(1))
 - In-unit restrictions: 90% vote plus consent of each affected unit to amend Declaration (RCW 64.34.264(4))

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Factors to consider when deciding whether and how to restrict smoking

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The Scope of Prohibition:

- Parts of common areas (only general common elements in a condominium)
- All common areas (general and limited use common elements)
- All common areas and inside units

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Characteristics & Location - Attached:

- High-rise building, common areas are only hallways and elevators
- Stacked units with common areas including balconies and decks, with windows that open
- Attached units with front yards, back yards, and decks

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Characteristics & Location - Detached

- Single-family homes with common area of a rec building and pool
- Single-family homes with substantial common area (e.g., Mountain Park)
- Single-family homes with substantial common areas in fire-prone area (e.g., Sunriver, Black Butte)

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Enforcing standard nuisance clause

"No noxious or offensive activities shall be carried on in any unit, nor shall anything be done or placed upon any unit which interferes with or jeopardizes the enjoyment of other units or the common elements, or which is a source of annoyance to residents.

Unit occupants shall exercise extreme care not to make noises which may disturb other unit occupants, including the use of musical instruments, radio, televisions and amplifiers.

No unlawful use shall be made of the condominium, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed."

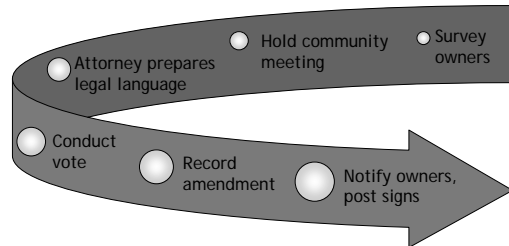
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Enforcing standard nuisance clause (continued)

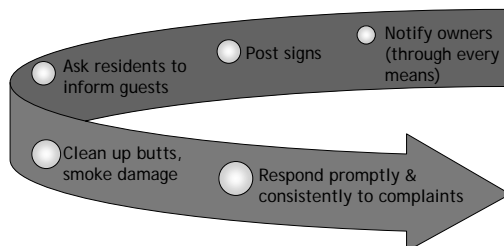
- **Right of HOA to enforce**
- **Duty of HOA to enforce**
- **Right of Owner to enforce**

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Implementation



Enforcement



What about grandfathering?

- **Can pose enforcement issues:**
 - Difficult to keep track
 - Neighbors are still exposed to SHS
 - Messaging about policy is not clear – is it smokefree or not?