



# **A Guide to No-Smoking Policies for COMMUNITY ASSOCIATION Board Members, Managers, Attorneys, and Condominium Developers**

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## **This toolkit contains:**

- Financial Benefits
- Legal Questions
- Steps to Adopt a No-Smoking Rule
- Sample Resident Letter and Survey Questions
- Sample Legal Language - Oregon and Washington Versions:
  - \* Resolution to Prohibit Smoking in Common Areas
  - \* Amendment to Bylaws for Condo Associations
  - \* Amendment to Declaration of CCRs for HOAs
- Slides from the CAI May 2011 lunch program

**Find these resources and more at [www.smokefreehousinginfo.com/condos](http://www.smokefreehousinginfo.com/condos)**

**In Colorado go to Condos and HOA section at [mysmokefreehousing.org](http://mysmokefreehousing.org)**

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# NO SMOKING RULES FOR COMMUNITY ASSOCIATIONS

## FINANCIAL BENEFITS

### 1. Increased Demand

As fewer people smoke and as the public becomes more aware of the adverse health effects of secondhand smoke, demand for smokefree housing increases. 91% of Oregon adults say no one is allowed to smoke anywhere inside their home (even 69% of smokers say this!)<sup>1</sup> 94% of Washington adults do not allow smoking anywhere in their home; more than three-fourths (76%!) of Washington adults who smoke do not allow smoking in their home.<sup>2</sup>

### 2. Smells Don't Sell

Odors can offend and turn away ready buyers. Real estate brokers have reported that properties that smell of smoke take longer to sell and often sell at a lower price.

### 3. Save Money

Dealing with damages from cigarettes and picking up butts cost the homeowners association and ultimately the owners, money. Mitigation strategies such as filler shields, gaskets under electrical plates, duct audits, etc., can be pricey.

### 4. Fire Hazards

Between 2005 and 2009, smoking caused \$20 million in property loss in Oregon alone. Cigarettes are the top cause of residential fire deaths in Oregon and Washington and the leading cause of outside home fires, many of which become structure fires.<sup>3, 4</sup>

### 5. Possible Insurance Discounts

Some insurance companies are offering discounts. Shop around and talk to your broker. An insurance company may discount general liability insurance premiums if a no-smoking rule is established. Why? No-smoking rules reduce the risk of fire-related property damage, injury, and death.

### 6. Avoid Legal Risk

Nuisance claims and reasonable accommodation requests can be avoided or met by implementing a no-smoking rule. Two primary legal challenges may arise by continuing to allow smoking: a resident could sue either the association or the smoking owner claiming a nuisance. If the resident has a health condition that is affected by exposure to secondhand smoke, he or she could seek relief using one of the disability statutes. If the courts find the condition is a disability, then the resident is entitled to a reasonable accommodation, which could include imposition of a no-smoking rule.

Find this and other tools at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...)

This information provided by the Oregon Smokefree Housing Project, funded by the Oregon Health Authority, and Clark County Public Health.

1. <http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/tobfacts.pdf>

2. [http://www.doh.wa.gov/tobacco/data\\_evaluation/Data/data\\_summaries/TobFacts-Contr.pdf](http://www.doh.wa.gov/tobacco/data_evaluation/Data/data_summaries/TobFacts-Contr.pdf)

3. [http://www.oregon.gov/OSP/SFM/docs/Data\\_Services/Reports/2005-2009\\_Oregon\\_Cigarette\\_Fires\\_in\\_Single-And\\_Multi-Family\\_Housing.pdf](http://www.oregon.gov/OSP/SFM/docs/Data_Services/Reports/2005-2009_Oregon_Cigarette_Fires_in_Single-And_Multi-Family_Housing.pdf)

4. <http://www.wsp.wa.gov/fire/firemars.htm>



# NO SMOKING RULES FOR COMMUNITY ASSOCIATIONS

## LEGAL QUESTIONS

### Overview

Residents of multi-unit dwellings are becoming increasingly aware of the secondhand smoke that drifts into their individual units. The dangers of secondhand smoke are conclusive<sup>1</sup>. This fact sheet addresses some of the legal-related questions that may arise when community associations consider adopting no-smoking rules.

See [mysmokefreehousing.org](http://mysmokefreehousing.org) for Colorado laws.

### How do Oregon and Washington state laws address smoking in multi-unit buildings?

Under Oregon and Washington state laws, smoking is prohibited in most public places and workplaces. Public place means any enclosed area open to the public. Workplace means every enclosed area under the control of a public or private employer where employees frequent during the course of their regular duties. This could be lobbies, hallways, community rooms, etc. In addition, smoking is prohibited near ALL business entrances, exits, operable windows and air intake vents (within 10 feet in Oregon and 25 feet in Washington.)

### Are there any legal barriers to adopting a no smoking rule for community associations?

Federal and state laws allow private property owners and associations to adopt no-smoking rules for all parts of their property, including individual residential units.

### Is prohibiting smoking discriminatory in any way?

No. Smoking is not a protected right or activity. Also, an individual's status as a smoker is not a protected category of persons. Legal protections are generally limited to categories of persons that are considered to be innate (inherited) and immutable (unchangeable) and courts have found that being a smoker does not meet those criteria. Attempts by smokers to be considered disabled due to an addiction to nicotine have not been successful, so smokers do not receive protection under state or federal disability statutes.

### What risks does an association face by continuing to allow smoking?

If an association allows smoking, two primary legal challenges may arise. First, a resident could sue either the association or the offending resident on nuisance grounds. Most association declarations contain a generic nuisance clause stating that an owner (or resident) cannot engage in an activity that affects the use and enjoyment of another owner's property. A resident bothered by secondhand smoke could bring an action against the association to enforce this provision of the declaration. This same resident could also pursue a nuisance action against the offending owner.

Find this and other tools at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...)

Second, if an individual has a serious health condition that is affected by exposure to secondhand smoke, he or she may be able to get some relief by using one of the disability statutes. If the courts find that the condition is a disability, then the resident is entitled to a reasonable accommodation, which could include imposition of a no-smoking rule.

**Consult your attorney about how to adopt a no-smoking rule.** There are a number of ways this can be done:

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

A change to the declaration is more difficult and costly to pass, but it will be given deference by the courts and be stronger against legal challenges. A new rule and regulation is easier to implement and change, but is also more susceptible to challenges. When choosing which method to use, consider:

- Whether the adopted restriction will be enforceable in court
- The scope of the prohibition
- Physical characteristics and location of community

**Note:** Currently, there is no Oregon or Washington law (statutory or case law) regarding the ability of a community association to prohibit smoking inside a condominium unit; it has not yet been tested in court. There was, however, a case in Colorado<sup>2</sup> where the court upheld a no-smoking amendment, finding it “reasonable, made in good faith and not arbitrary or capricious.”

### **Is it difficult to enforce a no-smoking rule?**

A no-smoking rule should be enforced as the association would enforce any other rule. In both Oregon and Washington, most adults do not smoke. Conducting a survey of your association residents may help you foresee potential problems with enforcement. From the experience of rental properties and condominiums that have already adopted no-smoking rules, they tend to be self-enforcing and do not require a substantial or unique amount of effort to enforce.

### **Can the policy be enforced with current residents who smoke?**

Most likely, yes. As long as the homeowners’ association follows community association state law and any requirements in their governing documents for amending the declaration or changing the rules and regulations, the courts should support the association in enforcing the rule. In the Colorado case the court upheld the amendment and forced the resident to comply.

1. [www.surgeongeneral.gov/library/secondhandsmoke/report/executivesummary.pdf](http://www.surgeongeneral.gov/library/secondhandsmoke/report/executivesummary.pdf) <http://www.hoalegislature.com/archives/05258030.pdf>  
2. <http://www.hoalegislature.com/archives/05258030.pdf>



# NO SMOKING RULES FOR COMMUNITY ASSOCIATIONS

## STEPS TO ADOPT A NO-SMOKING RULE

### Step 1: Constructing your no-smoking rule

**Choose the vehicle for rule change:** Familiarize yourself with, and talk to your attorney about, the different methods of adopting a no-smoking rule for your community association. These include:

- Amendment to Declaration
- Amendment to Bylaws
- Board resolution

See the Model Lease 2015 at [mysmokefreehousing.org](http://mysmokefreehousing.org). It includes marijuana and electronic smoking devices.

**Define smoking:** “Carrying, burning, or otherwise handling or controlling any lit or smoldering product containing tobacco, including but not limited to cigarettes, cigars or pipes.”

**Note: New model policies include marijuana and electronic smoking devices.**

**Where will rule the rule apply?** Think about where you want to prohibit smoking on the property:

- Indoor common areas (lobby, hallways, community rooms, etc.)
- Outdoor general common areas (trails, playground, parking lot, etc.)
- Outdoor exclusive use common areas (balconies, porches, patios, etc.)
- Outdoors within a certain distance from the buildings (such as 25 feet)
- Inside units
- Everywhere on the property, inside and outside

Given that smoke drifts everywhere, consider the effect that a no-smoking rule in one area may have on other areas. Where smoking occurs, even outside, can make a difference to residents who either have to pass through the smoke or who live near a common smoking area. For example, if you prohibit smoking in individual units, more people begin to smoke on their balconies and patios. If you prohibit smoking on patios, they may start smoking outside building entrances and in other outdoor locations.

Potential solutions include extending the rule to include a certain distance from entrances, exits, operable windows and air intake vents or designating an outdoor smoking area located where smoke is unlikely to affect other residents.

**When will the rule go into effect?** Allow time to gather owner input and to educate residents. A rule going into effect in the warmer months may increase compliance because it gives residents a chance to get used to smoking outside.

**Use the general nuisance clause:** The community association’s general rule against nuisances in the declaration or CC&Rs should be reaffirmed.

Find this and other tools at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...)

**How will the rule be enforced?** The no-smoking rule should state how it will be enforced, what the fine will be for infractions, and that board members have an obligation to ensure the rule is followed. Reference your enforcement provisions for how violations of other community association rules such as no pets, no loud music or improper garbage disposal are addressed. All rules must be needed, fair, uniformly enforceable, and penalties must relate to the severity of the violation.

## **Step 2: Getting resident input**

Consider doing a resident survey to assess and demonstrate support for the rule change. See *Sample Resident Letter* and *Sample Survey Questions* at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...). A survey gives owners an opportunity to voice their opinions, and it acts as a preliminary “vote”. Results from this will demonstrate support and may uncover areas that need special attention before moving forward. It will make residents feel included in the process and may decrease opposition.

## **Step 3: Educating owners**

Since a vote of a super-majority of unit owners will likely be needed to enact the rule change, it is very important to take time to educate owners about the many benefits of a no-smoking rule. Share results of the resident survey to demonstrate community support. This could be done through newsletter articles, notices on your website, flyers in newspaper tubes or door slots, signs in a lobby, etc.

Consider designating a special task force to plan educational outreach and help with the process of determining what the actual rule will include.

## **Step 4: Voting on the proposed rule**

Take advantage of multiple communication channels to promote voting on this issue. This could include letters to owners, newsletter articles, web notices and even signs throughout the community. Since it may be difficult to obtain the required number of votes in a fixed time period (due to owner absence, etc.), you might leave the voting open until a quorum is reached. Consider knocking on doors and collecting proxies.

## **Step 5: Implementing the no-smoking rule**

**For common areas:** Make sure the building and grounds comply with state law and that no-smoking signs are posted. Under Oregon and Washington state law, smoking is prohibited in most public places and workplaces. Public place means any enclosed area open to the public. Workplace means every enclosed area under the control of a public or private employer where employees frequent during the course of their regular duties (lobbies, hallways, community or laundry rooms, etc). In addition, smoking is prohibited near ALL entrances, exits, operable windows and air intake vents (within 10 feet in Oregon and 25 feet in Washington).

Since community association boards generally have the authority to establish rules for common areas, you will be able to do this right away. Check the declaration or CC&Rs. All it may take is a vote of the majority of board members at a meeting where a quorum is present. Once a common area no-smoking rule is enacted, the board must give unit owners notice of the rule change before implementing. The notice should state where smoking will be prohibited and when the rule becomes effective.

If, as in many buildings, smoking is not permitted in the enclosed common areas of your building, your next step is to implement a rule change for those common areas that are not enclosed such as fire escapes, decks, patios, exterior landings, front steps and the surrounding grounds. Because secondhand smoke often drifts from these locations back inside the building through doors and windows, it may become necessary to prohibit smoking in these areas. If a smoking area is designated, it should be far from any entrance or other area where the smoke might drift back into the building.

It is advisable to record a bylaw amendment for common area rules because it automatically provides notice to all unit owners of the rule change.

**For the entire property:** A no-smoking rule that restricts smoking in individual units probably requires an amendment of the community association's bylaws found in the declaration or CC&Rs. Enacting the rule will require a vote of unit owners; likely, a super-majority (75% to 95%) will be needed. Consult your own community association documents for specifics. Although you may enjoy the support of all owners, it is possible you will meet with some resistance. That is why it is critical to conduct a resident survey to gain support for the rule and educate owners about benefits.

### **Step 6: Enforcing the no-smoking rule**

No-smoking rules are largely self-enforcing. Once the rule is established, you are likely to attract new owners who support no-smoking rules. Here are some tips:

**Inform owners:** Start by mailing each resident a copy of the rule change or bylaw amendment as soon as the amendment has passed.

**Post no-smoking signs:** Put them at the entrance, hallways and other conspicuous areas. If you find someone smoking in an area where it is prohibited, post a no-smoking sign there too.

**Remove ashtrays and clean up cigarette butts:** These items give the impression it is a smoking area.

**Repair cigarette damage in common areas:** If these areas have cigarette burns and smell like smoke, building residents may be inclined to ignore the no-smoking rule. Replace or patch carpet, floors or other surfaces that have cigarette burns, paint smoke-stained walls and ceilings, and take other steps to reduce the odor of stale tobacco smoke.

**Respond promptly to resident complaints of smoking:** Ask those who complain to document when and from where the smoke likely originated. Follow-up with enforcement in a timely fashion.

**Be consistent:** Taking the same steps in the same time period for every rule violation sends a clear message to everyone that smoking is not allowed. Likewise, treat violations of the no-smoking rule in the same way you respond to other rule violations such as loud noise or inappropriate garbage disposal.

**Alert owners:** Make owners aware they could be held financially responsible for violations on the premises and that the rule applies to everyone, including guests and tenants.

# Sample Resident Letter about No-Smoking Rule

Date

Dear Residents,

We are pleased you have chosen to reside at [name of building/property]. The [name of management company of building/property] have been studying changes that are occurring in condominiums, town homes and cooperatives throughout the country and finding that many are deciding to regulate smoking within their properties.

We are considering adopting a no-smoking policy for [our building and individual units; outside within a certain distance; entire property] for a number of reasons:

1. **To provide a safe and healthy place to live:** Secondhand smoke is a serious health hazard. Studies have shown that tobacco smoke can travel from the end of lit cigarettes to all other areas of a building. It can travel through the plumbing, electrical system, through cabinets and closets, ceiling fans, fireplaces, ventilation systems, under doors and through holes in the wall. When residents smoke outside on patios, balconies, and in courtyards, the smoke can enter through windows and doors, even when they are closed.
2. **To reduce fire risks:** Cigarettes are the top cause of residential fire-deaths in Oregon and Washington and the leading cause of outside home fires, many of which become structure fires<sup>1, 2</sup>.
3. **To keep property values high:** 91% of Oregonians prefer housing where smoking is not allowed (even 69% of smokers don't smoke in their own homes<sup>3</sup>.) 94% of Washingtonians say that no one is allowed to smoke inside their home (76% of smokers in Washington say this)<sup>4</sup>. Today, homes that smell like smoke are at a distinct disadvantage in the market.

We would like to hear from you about these proposed changes! Please fill out the short survey on the following page and return it to [name of office, etc.]

Sincerely,

[Manager's/Board member's name]

Provided by the Oregon Smokefree Housing Project, funded by the Oregon Health Authority,  
and Clark County Public Health

Find this and other tools at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...)

<sup>1</sup> [http://www.oregon.gov/OSP/SFM/docs/Data\\_Services/Reports/2005-2009\\_Oregon\\_Cigarette\\_Fires\\_in\\_Single-And\\_Multi-Family\\_Housing.pdf](http://www.oregon.gov/OSP/SFM/docs/Data_Services/Reports/2005-2009_Oregon_Cigarette_Fires_in_Single-And_Multi-Family_Housing.pdf)

<sup>2</sup> <http://www.wsp.wa.gov/fire/firemars.htm>

<sup>3</sup> <http://public.health.oregon.gov/PreventionWellness/TobaccoPrevention/Documents/tobfacts.pdf>

<sup>4</sup> [http://www.doh.wa.gov/tobacco/data\\_evaluation/Data/data\\_summaries/TobFacts-Contr.pdf](http://www.doh.wa.gov/tobacco/data_evaluation/Data/data_summaries/TobFacts-Contr.pdf)



## Sample Resident Survey Questions

1. Does anyone in your household smoke, every day, some days or not at all?

No one smokes in our household

Yes, I smoke —————>  some days  every day

Yes, someone else smokes —————>  some days  every day

2. Have you smelled tobacco smoke in your home that comes from another condo or from outside?

Yes —————>

No

2a. If yes, does smelling tobacco smoke in your home bother you?

1  Yes

2  No

3. Would you prefer to live in a community association where smoking is prohibited in the following areas:

Check all that apply.

- Indoor common areas (lobby, hallways, community rooms, etc)
- Outdoor general common areas (trails, playground, parking lot, etc)
- Outdoor exclusive use common areas (balconies, porches, patios, etc)
- Outdoors within a certain distance from the buildings (such as 25 feet)
- Inside units
- Everywhere on the property, inside and outside

4. Do you feel that implementing a no-smoking rule would:

- Lower maintenance costs for outdoor common areas (litter, etc)
- Reduce maintenance costs for indoor common areas (smoke damage and cigarette burns)
- Decrease the risk of homes destroyed by cigarette-caused fires
- Avoid the risk of lawsuit to the HOA
- Keep property values high

Comments:

Please return your completed survey in the enclosed envelope by [date].

Provided by the Oregon Smokefree Housing Project, funded by the Oregon Health Authority, and Clark County Public Health

Find this and other tools at [www.caioregon.org](http://www.caioregon.org) (member services/resource center/helpful tools...)

**RESOLUTION TO PROHIBIT SMOKING IN COMMON AREAS**

This Resolution was adopted by the Board of Directors of \_\_\_\_\_ Owners Association at its regularly scheduled meeting held on \_\_\_\_\_, 20\_\_.

From time to time, the Association’s Board of Directors has received complaints from residents who have encountered second-hand tobacco smoke while using the common areas within the Association. Tobacco smoke, including second-hand tobacco smoke is a known carcinogen. In addition, the Board of Directors believes that the large majority of residents in the community find the smell of tobacco smoke objectionable.

Section \_\_\_ of the Association’s \_\_\_\_\_ [Declaration or Bylaws] authorize the Board of Directors to adopt reasonable rules and regulations regulating the use of the Association’s common areas.

**IT IS HEREBY RESOLVED**, that the Board of Directors hereby adopts the following rule, which shall become a part of the Association’s Rules and Regulations, enforceable in like manner with all other Rules and Regulations:

**Section \_\_\_. Smoking Prohibited in Certain Areas.** Smoking is prohibited on all common areas of the \_\_\_\_\_ community, whether indoors or outdoors. Without limiting the generality of the foregoing, this prohibition applies to \_\_\_\_\_ [Here, list your association’s common areas, such as recreation buildings / swimming pool / walking paths / bike paths / gardens / landscaped common areas / hallways / elevators / the general common element patio / deck / parking garage / plaza / roof, etc.] Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner’s unit, and for all guests and invitees of such owner. Violations of this rule may result in a fine pursuant to the Association’s fine schedule as adopted and amended from time to time by the Board of Directors.

**IN WITNESS WHEREOF**, the undersigned hereby certifies that the foregoing Resolution was adopted on the date first written above.

\_\_\_\_\_ OWNERS ASSOCIATION

By: \_\_\_\_\_  
Chairperson

By: \_\_\_\_\_  
Secretary

**RESOLUTION OF THE BOARD OF DIRECTORS OF \_\_\_\_\_ OWNERS  
ASSOCIATION TO PROHIBIT SMOKING IN COMMON AREAS**

WHEREAS, a regular meeting of the Board of Directors of the \_\_\_\_\_ Owners Association (the "Association") was held on \_\_\_\_\_; and

WHEREAS, proper notice of this meeting was given; and

WHEREAS, all members of the Board of Directors were present at the meeting; and

WHEREAS, from time to time, the Association's Board of Directors has received complaints from residents who have encountered second-hand tobacco smoke while using the common areas within the Association. Tobacco smoke, including second-hand tobacco smoke is a known carcinogen. In addition, the Board of Directors believes that the large majority of residents in the community find the smell of tobacco smoke objectionable; and

WHEREAS, Section \_\_\_ of the Association's \_\_\_\_\_ [Declaration or Bylaws] authorizes the Board of Directors to adopt reasonable rules and regulations regulating the use of the Association's common areas; and

NOW THEREFORE, IT IS HEREBY RESOLVED that the Board of Directors adopts the following rule, which shall become a part of the Association's Rules and Regulations, enforceable in like manner with all other Rules and Regulations:

**Section \_\_\_\_.** **Smoking Prohibited in Certain Areas.** Smoking is prohibited on all common areas of the \_\_\_\_\_ community, whether indoors or outdoors. Without limiting the generality of the foregoing, this prohibition applies to \_\_\_\_\_ [Here, list your association's common areas, such as recreation buildings / swimming pool / walking paths / bike paths / gardens / landscaped common areas / hallways / elevators / the general common element patio / deck / parking garage / plaza / roof, etc.] Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner's unit, and for all guests and invitees of such owner. Violations of this rule may result in a fine pursuant to the Association's fine schedule as adopted and amended from time to time by the Board of Directors.

## Resolution - Washington State Version

This Resolution is adopted and effective as of \_\_\_\_\_, 2012.

### **The Board of Directors:**

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President

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Secretary

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Treasurer

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Director

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Director

**After Recording Return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AMENDMENT TO BYLAWS  
OF \_\_\_\_\_ CONDOMINIUM OWNERS ASSOCIATION  
TO RESTRICT SMOKING**

The Bylaws of \_\_\_\_\_ Condominium Owners Association were recorded as an exhibit to the Condominium Declaration for \_\_\_\_\_ Condominiums on \_\_\_\_\_, 19\_\_, in the records of \_\_\_\_\_ County, Oregon, as Document No. \_\_\_\_\_ (the "Bylaws"). The Oregon Condominium Act, at ORS 100.415(1)(q) and (r) provide that the Association's Bylaws shall set forth any restrictions on the enjoyment of the units and common elements, and any restrictions on use or occupancy of units.

From time to time, residents within the Condominium have complained to the Board of Directors that second-hand smoke has infiltrated their individual units, sometimes originating from people smoking tobacco in common areas, whether indoors or out, and sometimes apparently originating from people smoking tobacco within adjacent units. Efforts to prevent the migration of second-hand smoke have not succeeded, including sealing openings in walls, applying weather-strips to doors, and asking residents who smoke to use smokeless ashtrays or ionizing machines. Second-hand smoke continues to migrate into units within the Condominium. In accordance with the procedures set forth in the Association's governing documents and under applicable law, the owners have adopted the following amendment to the

Bylaws:

The following new Section \_\_ is hereby added to Article \_\_\_ of the Bylaws:

**Section \_\_. Smoking Prohibited.** Smoking is prohibited on or within all common element areas of the Condominium, including both general and limited common element areas, and within all units. Without limiting the generality of the foregoing, this prohibition applies to all general and limited common element areas of the Condominium, whether indoors or outdoors, including, without limitation, patios, balconies, garages, private streets, lobbies, hallways, walkways, landscaped areas, and within all Condominium units. Smoking is defined to include carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner's unit, and for all guests and invitees

**Bylaw Amendment - Oregon Version**

of such owner. Violations of this rule may result in a fine pursuant to the Association's fine schedule as adopted and amended from time to time by the Board of Directors.

**IN WITNESS WHEREOF**, the Chairman and Secretary of \_\_\_\_\_ Condominiums Owners Association hereby certify that this Amendment has been properly adopted pursuant to the Bylaws effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
OWNERS ASSOCIATION CONDOMINIUM

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Secretary

STATE OF OREGON            )  
  ) ss. \_\_\_\_\_, 2011  
County of \_\_\_\_\_)

Personally appeared before me the above-named \_\_\_\_\_ and who, being duly sworn, did say that \_\_\_\_ is the Chairman of \_\_\_\_\_, Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon

STATE OF OREGON            )  
  ) ss. \_\_\_\_\_, 2011  
County of \_\_\_\_\_)

Personally appeared before me the above-named \_\_\_\_\_ and who, being duly sworn, did say that \_\_\_\_ is the Secretary of \_\_\_\_\_, Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon

## Bylaw Amendment - Washington State Version

### AMENDMENT TO BYLAWS OF \_\_\_\_\_ OWNERS ASSOCIATION TO RESTRICT SMOKING IN THE COMMON AREAS

This Amendment to the Bylaws of \_\_\_\_\_ Owners Association is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by the \_\_\_\_\_ Owners Association, a Washington nonprofit corporation (the "Association").

#### RECITALS

A. The original Bylaws of \_\_\_\_\_ Owners Association have an effective date of \_\_\_\_\_.

B. From time to time, residents within the Condominium have complained to the Board of Directors that second-hand smoke has infiltrated their individual units, originating from people smoking tobacco in common areas, whether indoors or out. Efforts to prevent the migration of second-hand smoke have not succeeded, including sealing openings in walls, applying weather-strips to doors, and asking residents who smoke to use smokeless ashtrays or ionizing machines. Second-hand smoke continues to migrate into units within the Condominium.

C. The Association, by vote of the Board of Directors, pursuant to Article \_\_\_\_ of the Bylaws, approved a motion to add a new Section \_\_\_\_ to Article \_\_\_\_ of the Bylaws to prohibit smoking in the Common Areas.

D. This Amendment is being executed to formalize the amendment to Section \_\_\_\_ of Article \_\_\_\_ of the Bylaws.

#### AMENDMENT

NOW THEREFORE, the Bylaws are hereby amended and the following new Section \_\_\_\_ is added to Article \_\_\_\_ of the Bylaws:

**Section \_\_\_\_.** **Smoking Prohibited.** Smoking is prohibited on or within all common element areas of the Condominium, including both general and limited common element areas. Without limiting the generality of the foregoing, this prohibition applies to all general and limited common element areas of the Condominium, whether indoors or outdoors, including, without limitation, patios, balconies, garages, private streets, lobbies, hallways, walkways, and landscaped areas. Smoking is defined to include carrying, burning or otherwise handling or

## Bylaw Amendment - Washington State Version

controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner's unit, and for all guests and invitees of such owner. Violations of this rule may result in a fine pursuant to the Association's fine schedule as adopted and amended from time to time by the Board of Directors.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the date first set forth above.

\_\_\_\_\_  
OWNERS ASSOCIATION  
A Washington nonprofit corporation

By \_\_\_\_\_  
Its President



After Recording Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF \_\_\_\_\_ HOMEOWNERS ASSOCIATION  
TO RESTRICT SMOKING**

The Declaration of Covenants, Conditions, and Restrictions of \_\_\_\_\_ Homeowners Association were recorded on \_\_\_\_\_, 19\_\_, in the records of \_\_\_\_\_ County, Oregon, as Document No. \_\_\_\_\_ (the "Declaration"). The Oregon Planned Community Act, at ORS 94.580(o) requires the Declaration to set forth "a statement of any restriction on the use, maintenance or occupancy of lots or units."

From time to time, residents within the community have complained to the Board of Directors that second-hand smoke has infiltrated their individual units, sometimes originating from people smoking tobacco in common areas, and sometimes apparently originating from people smoking tobacco within adjacent units or lots. Efforts to prevent the migration of second-hand smoke, including sealing various openings in walls, applying weather-stripping to doors, and asking residents who smoke to use smokeless ashtrays or ionizing machines have not succeeded. Second-hand smoke continues to migrate into the units or onto the lots of nonsmoking residents within the community. In accordance with the procedures set forth in the Association's governing documents and under applicable law, the owners have adopted the following amendment to the Declaration.

The following new Section \_\_ is hereby added to Article \_\_\_ of the Declaration:

**Section \_\_. Smoking Prohibited.** Smoking is prohibited on or within all common areas of the project, and within all units. Without limiting the generality of the foregoing, this prohibition applies to all common areas of the project, whether indoors or outdoors, including, without limitation, patios, balconies, garages, private streets, lobbies, hallways, walkways, landscaped areas, and within all living units within the project. Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner's unit, and for all guests and invitees of such owner. Violations of this rule may result in a fine pursuant to the Association's fine schedule as adopted and amended from time to time by the Board of Directors.

Amendment to Declaration - Oregon Version

IN WITNESS WHEREOF, the Chairman and Secretary of \_\_\_\_\_ Homeowners Association hereby certify that this Amendment was properly adopted pursuant to the Declaration on or about \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ASSOCIATION

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Secretary

STATE OF OREGON            )  
  ) ss. \_\_\_\_\_, 2011  
County of \_\_\_\_\_)

Personally appeared before me the above-named \_\_\_\_\_ and who, being duly sworn, did say that \_\_\_ is the Chairman of \_\_\_\_\_, Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon

STATE OF OREGON            )  
  ) ss. \_\_\_\_\_, 2011  
County of \_\_\_\_\_)

Personally appeared before me the above-named \_\_\_\_\_ and who, being duly sworn, did say that \_\_\_ is the Secretary of \_\_\_\_\_, Homeowners Association, and that said instrument was signed in behalf of said Association by authority of its Board of Directors, and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon

**After Recording Return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF \_\_\_\_\_ ASSOCIATION**

WHEREAS, \_\_\_\_\_ LLC, a Washington limited liability company (“Declarant”), executed a certain Condominium Declaration for \_\_\_\_\_ Condominium (“the Declaration”) dated \_\_\_\_\_, and recorded under Recording No. \_\_\_\_\_ in the records of \_\_\_\_\_ County, State of Washington, and as amended by the \_\_\_\_\_ Amendment thereto recorded under \_\_\_\_\_ County Recording No. \_\_\_\_\_; and

WHEREAS, RCW 64.34.216(1)(n) provides that the Declaration must contain any restriction on the use of the units;

WHEREAS, RCW 64.34.264(4) provides that no amendment may change “the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides;”

WHEREAS, pursuant to Section \_\_\_\_ of the Declaration and RCW 64.34.264(4), the owners of each unit particularly affected by this Amendment and the owners of units to which at least ninety percent (90%) of the votes in the \_\_\_\_\_ Owners Association are allocated have affirmatively voted in favor of amending the Declaration as hereinafter set forth;

NOW, THEREFORE, the President of \_\_\_\_\_ Owners Association certifies the Declaration to have been amended in the following particulars:

The following new Section \_\_\_\_ is hereby added to Article \_\_\_\_ of the Declaration:

**Section \_\_. Smoking Prohibited.** Smoking is prohibited on or within all common areas of the project, and within all units. Without limiting the generality of the foregoing, this prohibition applies to all common areas of the project, whether indoors or outdoors, including, without limitation, patios, balconies, garages, private streets, lobbies, hallways, walkways, landscaped areas, and within all living units within the project. Smoking is defined as including carrying, burning or otherwise handling or controlling any lighted or smoldering

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These sample forms are provided as a courtesy by Rafel Law Group PLLC.  
All material is for general education purposes, and does not constitute legal or management advice.  
These and other tools found at [www.smokefreehousinginfo.com/pages/condos](http://www.smokefreehousinginfo.com/pages/condos) are part of a collaboration between CAI Oregon, Oregon Smokefree Housing Project, and Clark County Public Health, WA.

Washington State Version

product containing tobacco, including, but not limited to, cigarettes, cigars or pipes. Each owner is responsible for the compliance with this rule by the owner and all residents within the owner’s unit, and for all guests and invitees of such owner. Violations of this rule may result in a fine pursuant to the Association’s fine schedule as adopted and amended from time to time by the Board of Directors.

The undersigned President (or other officer designated to record and certify amendments to the Declaration) of \_\_\_\_\_ Owners Association hereby certifies that this Amendment has been approved by the owners of each unit particularly affected by this Amendment and the owners of units to which at least ninety percent (90%) of the votes in the Association are allocated.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_ OWNERS ASSOCIATION,  
A Washington nonprofit corporation

By: \_\_\_\_\_  
Its President

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and that said person acknowledged that (he/she) signed this instrument and on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of \_\_\_\_\_ Owners Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2012.


\_\_\_\_\_  
Notary Signature  
\_\_\_\_\_  
Print or type name  
Notary Public in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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## SMOKING and Your Community




**Presenters:**  
**P. Stephen Russell III, P.C.** - Landye Bennett Blumstein LLP  
**Theresa Cross, MS, RD** - Clark County Public Health  
**Diane Laughter, MPH** - Oregon Smokefree Housing Project  
**Nancy LaVoie, CMCA, AMS** - Community Manager, CMI, Inc

### Smoking: The world has changed

In 1965, 1/2 of U.S. adult men and 1/3 of women smoked and they did it:

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



**Present Day:**

- Most workplaces are smokefree
- 91% of homes in Oregon and 94% in Washington have a no-smoking rule
- People expect smoke-free air where they work AND where they live

### What we know about SECONDHAND SMOKE

**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

### Children living in buildings where smoking is allowed...

**Have higher blood levels of nicotine markers:**

- SHS can seep into apartments where no one smokes through shared walls, ventilation systems and ductwork.
- SHS is absorbed into furniture, carpets, curtains, clothing, toys, etc that children come into contact with and put in their mouths.

### SECONDHAND SMOKE 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:

- Separating smokers from non-smokers, 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

## Oregon & Washington Smokefree Laws

Almost every workplace and public place is **SMOKEFREE** in Oregon and Washington.

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

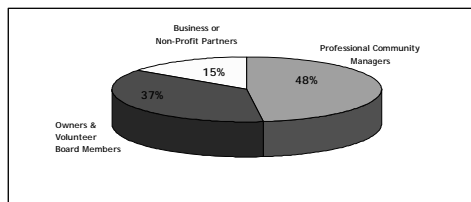
## Prohibiting smoking is legal...

Smokers are not a protected class.

Nonsmokers, however, may be eligible for protection from SHS under Fair Housing laws of Oregon



## CAI-OR Member Survey on Smoking



CAI-Oregon member survey conducted Fall 2010 – 85 respondents

## CAI Oregon Members

What they said:

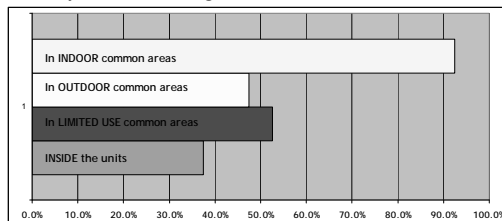
- 97% said that secondhand smoke was a health hazard
- 74% said that no-smoking policies are “desirable for community associations”

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CAI Member Survey conducted Fall 2010 – 85 respondents

## CAI OR Members - Current Policies

42% said that some HOA's they manage, live in or have as clients currently have no-smoking rules. Rules include:



CAI-Oregon member survey conducted Fall 2010 – 85 respondents

## CAI-OR Members' Reasons to Implement a No-Smoking Policy

- Owner complaints about drifting SHS – 83%
- Collective fire hazards – 64%
- Property devaluation – 59%
- Liability risks – 47%
- Outdoor maintenance costs – 41%
- Building maintenance – 31%

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CAI member survey conducted Fall 2010 – 85 respondents

## One Portland Success Story: Steps the Association Took

- Polled owners
- Held town hall meeting
- Had attorney prepare proposed declaration amendment
- Conducted vote by secret ballot
- Sent approved amendment to county and real estate commissioner for approval
- Notified owners of smoking prohibition

## The Legal Means

- **Existing Oregon Law: Smoke-Free Work Place, ORS 433.835**
- **Different ways to adopt a smoking restriction**
- **Tough questions**

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## Different methods to adopt smoking restrictions:

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

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## Different methods of adopting smoking restrictions:

- 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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## Factors to consider when deciding whether and how to restrict smoking

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## Consider 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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## Consider Physical Characteristics and Location of Community:

- 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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## Physical Characteristics and Location of Community (cont)

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

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## Difficult Questions – Enforcing a 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 a standard nuisance clause (continued)

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

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## Contents of Toolkit

- Financial benefits
- Legal questions
- Steps to adopt a no-smoking rule
- Sample resident letter
- Sample resident survey questions
- No-smoking resolution for common areas
- No-smoking amendment to bylaws for condo associations
- No-smoking amendment to HOA declaration
- Slides from today's presentation

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Find these tools at  
[www.smokefreehousinginfo.com/pages/Condos.html](http://www.smokefreehousinginfo.com/pages/Condos.html)