

To all Oakland Residential Property Owners and Managers:

Effective Dec. 4, 2007, Oakland landlords must **disclose to potential renters** – prior to signing lease agreements – the following:

1. Whether the unit they are offering is designated smoking or non-smoking
2. Which units in the building are designated smoking and which are designated non-smoking
3. The building's Policy on drifting smoke complaints

Common Indoor and Outdoor Areas Smoke-Free Requirement: All common indoor and outdoor areas of apartments and condominiums should be smoke-free.

Protections for Condominium Buyers: Sellers are required to disclose to prospective buyers whether smoking is permitted in the unit for sale and the smoking policy for the residents of the condominium.

As of Jan. 1, 2006, secondhand tobacco smoke has been designated to be a “Toxic Air Contaminant” by the California Environmental Protection Agency - Air Resources Board

The US Surgeon General’s 2006 report on secondhand tobacco smoke states very clearly that there is “no safe level of exposure,” and that it can “cause lung and other cancers as well as fatal heart attacks in otherwise healthy adults.”

The report also identifies children, older adults, and persons with chronic disease as being even most vulnerable to the health hazards of secondhand smoke.

The full text of the Oakland ordinance is posted on City’s website:

Go to: http://library.municode.com/HTML/16308/level2/T8_C8.30.html For quit smoking and secondhand smoke info, contact the American Lung Association, 1-800-LUNG-USA, www.lungusa.org

Oakland Municipal Code

Selected provisions pertaining to multi-housing From Chapter 3.8, "Smoking Pollution Control"

8.30.010 Definitions.

"Multi-housing complex" means any housing complex with two or more separate units.

"Multi-housing common area" means any common area of a multi-housing complex accessible to and usable by more than one residence, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor dining areas, play areas, swimming pools, and parking lots.

8.30.050 Prohibition of Smoking in enclosed places.

B. Disclosure of Smoking Policy in New and Existing Multi-Housing:

1. All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented and, which units are designated smoking units and the smoking policy for the complex.
2. All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.05)

8.30.055 Prohibition of smoking in unenclosed places.

Smoking shall be prohibited in the following unenclosed places:

- A. Service areas;
- B. Dining areas;
- C. Recreational areas, except in parking areas used for parking vehicles of persons accessing the recreational area;
- D. Multi-housing common areas, except that the landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in subsection 1 below.
 1. A designated smoking area:
 - a. Must be located at least twenty-five (25) feet from any indoor area where smoking is prohibited;
 - b. Must not include and must be at least twenty-five (25) feet from outdoor areas primarily used by children, including, but not limited to, areas improved or designated for play or swimming;
 - c. Must be no more than twenty-five percent (25%) of the total outdoor area of the premises of the multi-housing complex;

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- d. Must have a clearly marked perimeter;
- e. Must be identified by conspicuous signs; and
- f. Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law. (Ord. 12837 § 4 (part), 2007)

8.30.060 Smoking policy requirements.

A. Smoking shall not be permitted in places of employment and employers shall post “No Smoking” or “Smoke Free” signs in accordance with Section 8.30.090. Employers should promote smoking cessation programs for smoking employees and contact local health organizations for assistance and materials in this effort.

B. Smoking outside of any enclosed place where smoking is prohibited shall occur at a minimum distance of twenty-five (25) feet from any building entrance, exit, window and air intake vent of the building, except that bars are exempted from the outside smoking requirements of this section, provided the smoke does not enter adjacent areas in which smoking is prohibited by law or by the owner, lessee, or licensee of the adjacent property.

C. This provision shall not apply to exempted governmental and educational agencies with facilities located in the city. (Ord. 12837 § 4 (part), 2007; Ord. 12708 § 1 (part), 2005: prior code § 4-10.06)

8.30.070 Power to adopt more restrictive smoking policies.

Notwithstanding any other provisions of this chapter, any owner, operator, manager or employer or other person who controls any establishment or place of employment or multi-housing complex regulated by this chapter, may adopt policies relating to smoking which are more restrictive than those provided herein. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.07)

8.30.110 Violations and penalties.

A. It is unlawful for any persons to smoke in any area where smoking is prohibited by the provisions of this chapter.

B. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year;
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year. (Prior code § 4-10.11)

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Oakland's Landlord Disclosure of Smoking Units/House Rules: *How to Be in Compliance*

1. Survey each unit to determine whether any residents smoke and which ones do not.
2. Designate which units are non-smoking and which are smoking. To ensure that the non-smoking units remain non-smoking, we recommend that you add a smoke-free lease addendum to their master lease if the tenant is willing.
3. Another opportunity to convert units to non-smoking is whenever a unit is vacated.
4. Identify smoking and non-smoking units on a floor plan of each floor identifying each unit as either smoking or non-smoking. (Colored dots like red for smoking and green for non-smoking.)
5. Review your house or community rules. We recommend that you add a and b which are covered by the new Oakland law(OMC 8.30):
 - a. Smoking is not allowed in all common indoor areas, including hallways, lobbies, stairways, laundry room, elevators, etc.
 - b. Smoking is not allowed in all common outdoor areas, including 25 feet from any indoor or outdoor area where smoking is prohibited, walkways, children's play areas, recreational areas, etc.
 - c. Smoking in the units -- that are not designated non-smoking -- will be allowed as long as the smoke does not constitute a nuisance to other residents. The landlord or his agent will determine whether the smoke incursions are both "substantial" and "unreasonable," and thereby interfering with the comfortable enjoyment of life or property.
6. If all of the units in the building are currently non-smoking, you may want to change the house/community rules to require that the entire building is non-smoking. However, attaching a new smoke-free lease addendum may provide a more secure legal standing should it be challenged. (Attached is a sample smoke-free lease addendum.)
7. All prospective tenants must be provided a copy of the **Smoking/Nonsmoking Unit Designation Map** of your building as well as a copy of the **house rules** that pertain to smoking.

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Sample House Rules for No Smoking Provisions

HOUSE RULES --- No Smoking ADDENDUM

As per the City of Oakland's Municipal Code (OMC 8.30 Smoking Pollution Control) for apartments and condominiums:

- a. Smoking is not allowed in all common indoor areas, including hallways, lobbies, stairways, laundry room, elevators, etc.
- b. Smoking is not allowed in all common outdoor areas, including 25 feet from any indoor or outdoor area where smoking is prohibited, walkways, children's play areas, recreational areas, etc.

If smoking is allowed in your unit, please keep exterior doors and windows closed when smoking to minimize the smoke from migrating into the common areas and neighboring units.

Complaints about tobacco smoke migrating/seeping into common areas and/or other tenants' units should be made to the manager/owner promptly. Complaints should be as specific as possible and include the date, approximate time, location, source, and how it is entering the unit.

Management will respond to drifting smoke complaints within 10 working days.

For more information,
visit the **Bay Area Smoke-Free Housing** website at
www.casmokefreehousing.org or call us at (510) 638-5864.

**Bay Area Smoke-Free Housing is a program of the
American Lung Association in California**

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