



MI Smoke-Free Apartment

Making Multi-Unit Housing Smoke-Free in Michigan

MDCH Webinar February 24, 2011



MI Smoke-Free Apartment

Presenter

Jim Bergman, J.D.
Smoke-Free Environments Law Project
The Center for Social Gerontology, Inc.
Ann Arbor, Michigan
734 665-1126
jbergman@tcsg.org
www.mismokefreeapartment.org
www.tcsg.org/sfelp/home.htm



MI Smoke-Free Apartment

What we'll cover:

- Growth in smoke-free multi-unit housing
- Smoke-free: it's legal, profitable, good for health, enforceable, & HUD encourages it
- How to deal with the Michigan Medical Marijuana law in multi-unit housing
- Case studies of successful efforts to go smoke-free
- Resources for tenants and owners



Smoke-free apartments in 2000?

- **Virtually no smoke-free apartments could be found in Michigan or anywhere in the U.S. in market-rate or affordable housing**
- **Most apartment owners & many HUD officials thought it was illegal to have a smoke-free policy**
- **Many newspapers thought it was illegal to allow ads saying “no smoking” or “SF”**
- **Most tenants didn’t realize they had some rights to smoke-free housing**



2011: Market-rate housing

- **Well over 100,000 units of market-rate housing are smoke-free all across Michigan**
- **Includes large, multi-state companies, moderate sized companies, small companies and single-family home rentals.**



2011: Other affordable housing

- **Close to 100,000 units of affordable housing are smoke-free all across Michigan**
- **Includes apartment buildings owned by for-profit and non-profit entities, as well as local governments and tribes.**



MI Smoke-Free Apartment

2011: Smoke-Free Michigan Housing Commissions

February 24, 2011: 55 housing commissions have smoke-free policies ranging from small to the largest, & including 4 tribal PHAs.

June 30, 2005: No smoke-free MI PHAs.

Almost 40% of Michigan PHAs are now smoke-free.

About 9,000 units are smoke-free covering 20,000 residents.



MI Smoke-Free Apartment

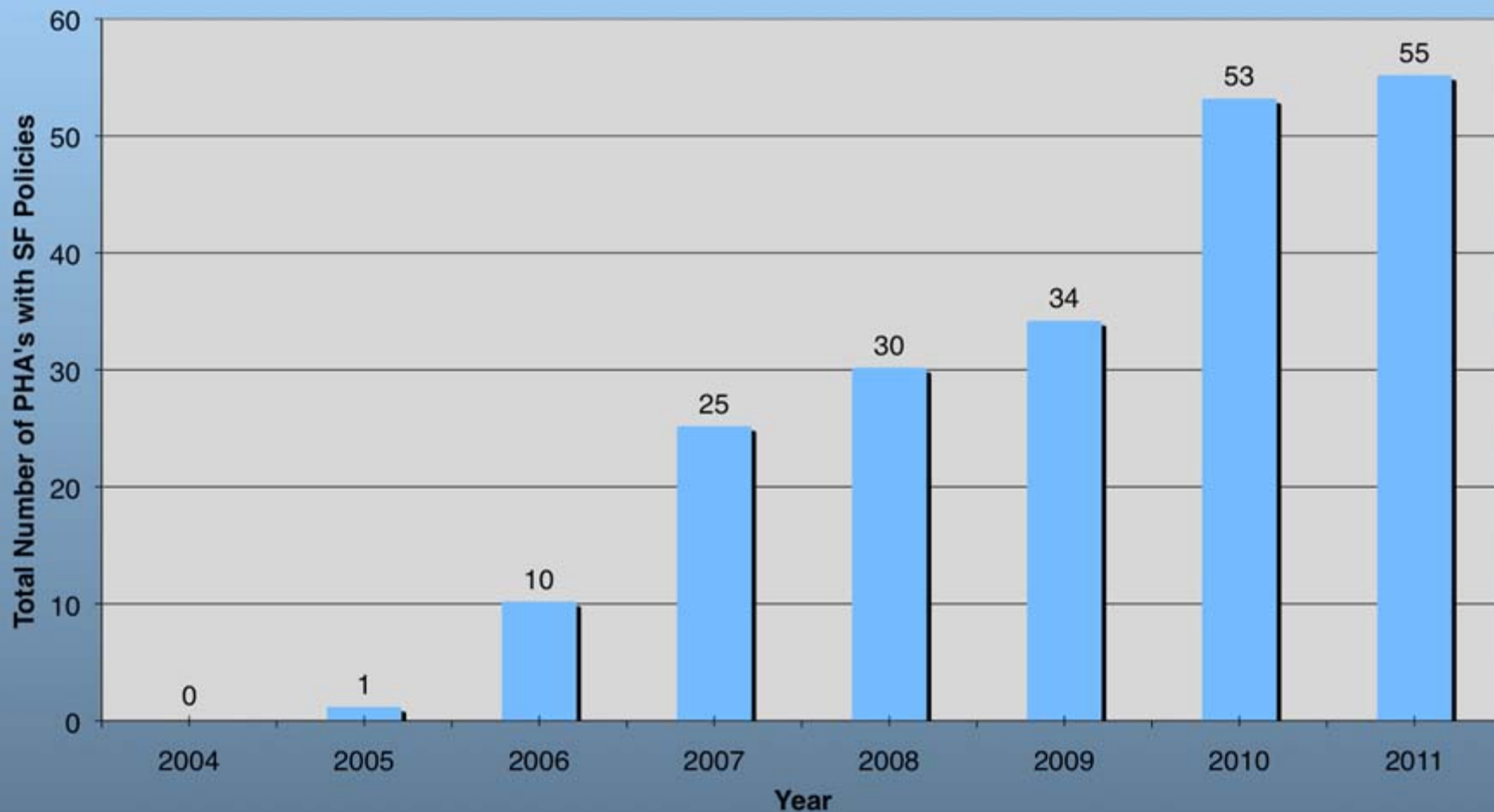
2011: Smoke-Free Housing Authorities

February 24, 2011: over 230 housing authorities in 27 states.

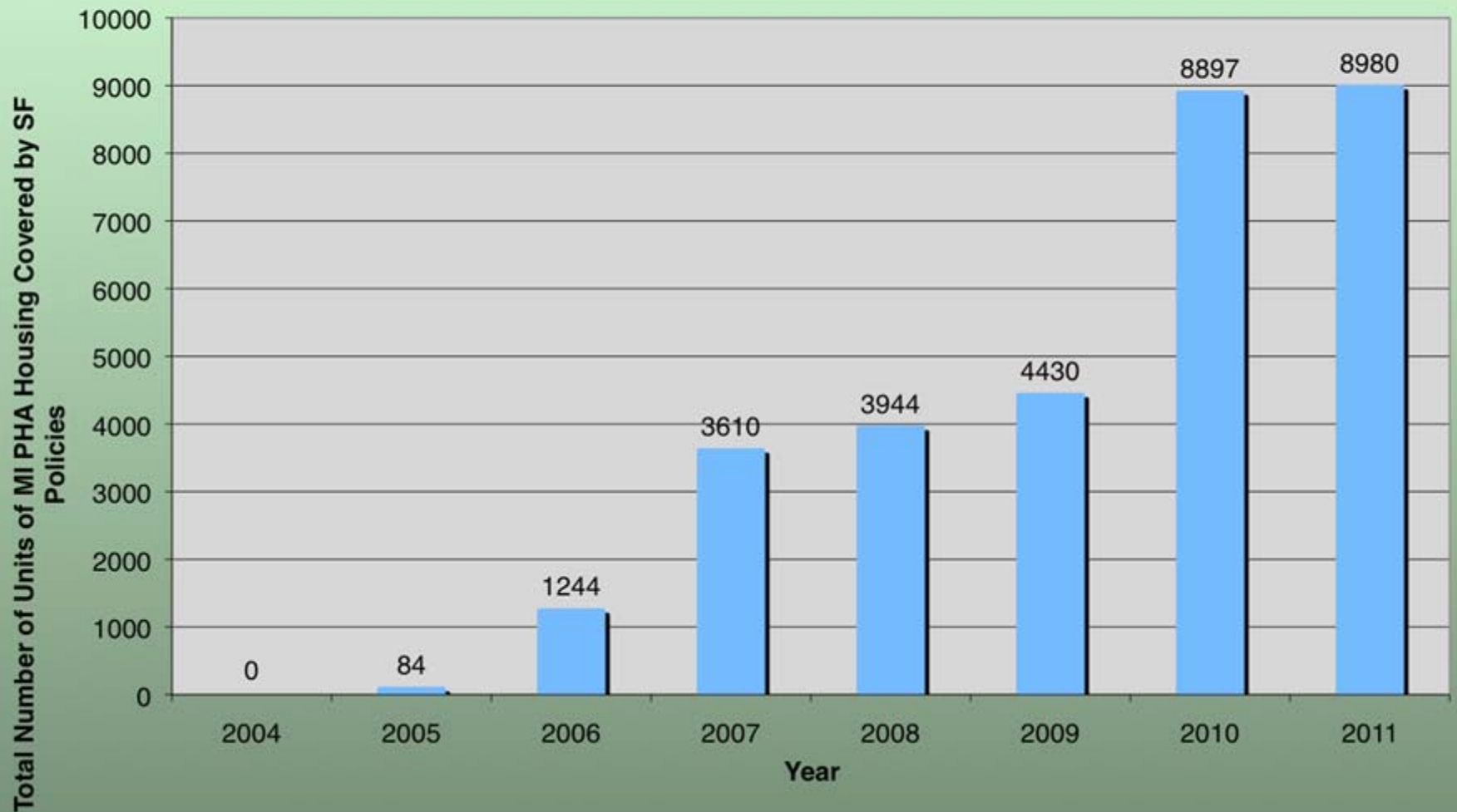
Dec. 31, 2004: about 18 housing authorities in 10 states had smoke-free policies for some or all their buildings.

An increase of almost 1,300% in 72 months. Over 2.9 new housing authorities per month.

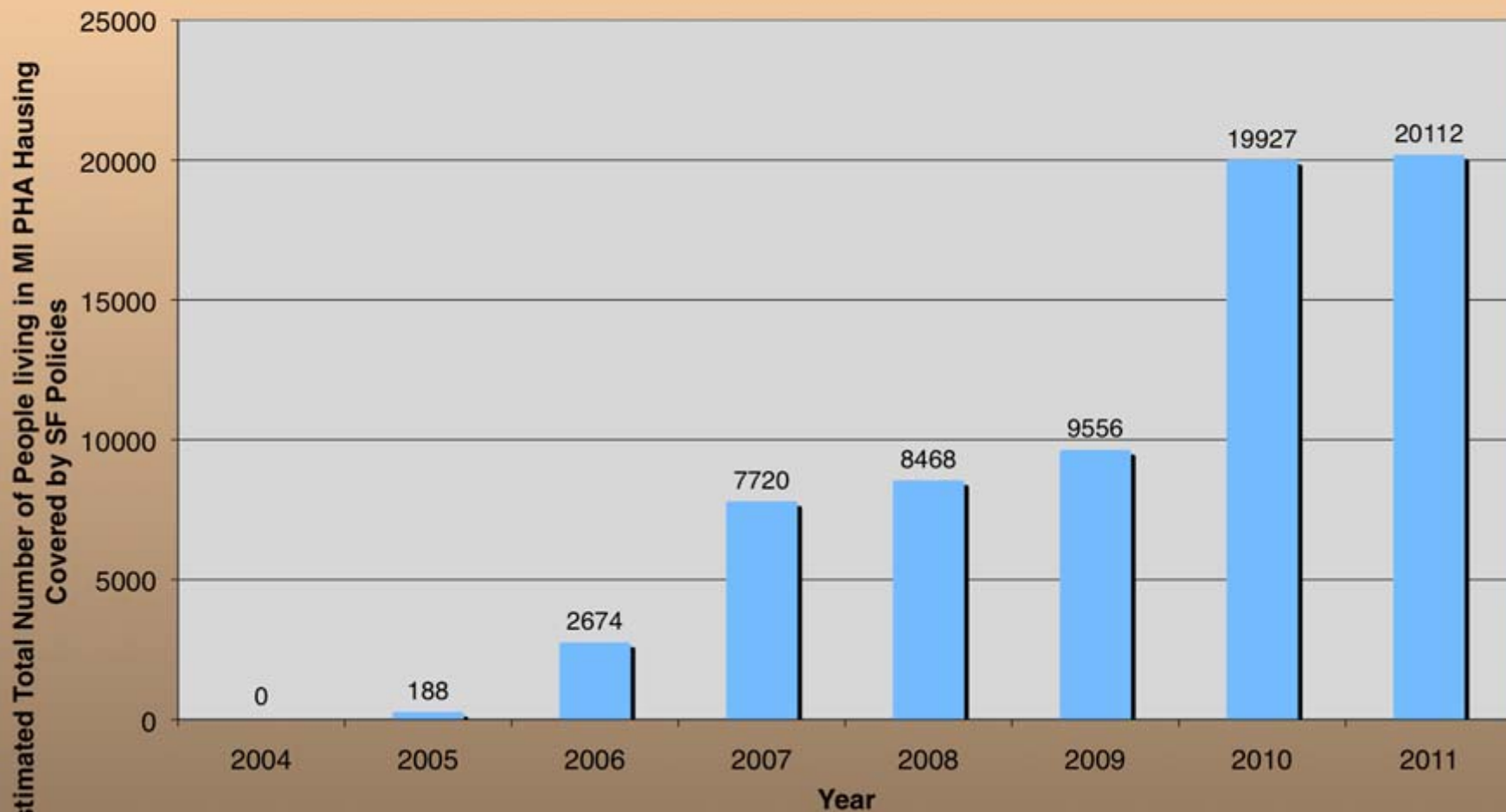
Michigan Housing Commissions & Tribal Housing Authorities with Smoke-Free Policies



Number of Units of Public Housing in Michigan Covered by Smoke-Free Policies by Year



Number of People Covered by Smoke-Free Policies in Public Housing in Michigan by Year





Are you or a loved one ready to make the move to convenient, low-maintenance housing? Comfortable apartments, duplexes, and quadraplexes are perfect for seniors, near elderly and those dealing with disabilities. **Our facilities offer a number of favorable features and amenities, including:**

- * 24 hour emergency maintenance
- * Secure units with extra safety precautions
- * Conveniently located near grocery stores, medical offices, & area churches
- * Spacious Parking
- * Carpeted Units with Curtain Rods provided
- * Kitchen stove and refrigerator provided
- * Barrier Free Units
- * Laundry Facilities or Laundry Hook-up
- * Emergency Call System in Each Unit
- * Hard-wired smoke detectors provided
- * Cable T.V. at a Reduced Rate
- * Lovely Community Room with Kitchen Facilities
- * Patio & Container Gardening space
- * **Smoke-free buildings for senior & disabled housing**



Grand Rapids Housing Commission: All GRHC apartments are smoke free!

Campau Commons

821 South Division Ave.

Grand Rapids, Michigan

92 units

Serving families, senior citizens
and the disabled



ADAMS PARK

APARTMENTS

1440 Fuller Ave. SE

Grand Rapids, Michigan

188 units

Serving ages 62 and older, and disabled
adults





Why smoke-free housing?

- Secondhand smoke cannot be controlled
- Health risks of secondhand smoke
- It's legal & HUD strongly encourages it
- Cost savings are significant
- Fire risk and damage reduced
- Tenants want smoke-free apartments



What's the problem?

Secondhand smoke spreads throughout multi-unit dwellings:

Air quality studies in apartment buildings show that anywhere from 5% to 60% of air in apartment units comes from other units in the building.



Secondhand smoke problem

Secondhand smoke cannot be controlled by ventilation or air cleaning:

On June 30, 2005, the American Society of Heating, Refrigerating & Air-Conditioning Engineers (ASHRAE) issued their latest position document on secondhand smoke. It states: “At present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.” www.ashrae.org





MI Smoke-Free Apartment

Secondhand smoke problem

- It is a **Toxic Air Contaminant**, putting secondhand smoke in the same category as the most toxic automotive and industrial air pollutants.

California Air Resources Board Report, issued January 26, 2006 by the California Environmental Protection Agency.



MI Smoke-Free Apartment

Secondhand smoke problem

- There is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful.
- The only way to fully protect yourself and your loved ones from the dangers of secondhand smoke is through 100% smoke-free environments.

Surgeon General's Report on Second-hand Smoke, issued June 27, 2006



Smoke-Free Policies are Legal

- Smoke-free policies are legal in market-rate housing, in HUD-subsidized and other affordable housing, and in HUD public housing. *That is: in all housing.*
- Michigan Attorney General Opinion affirmed right of apartment owners to have smoke-free policies.
- **Neither federal nor state law prohibits an owner from making their apartment building totally smoke-free.**



Smoke-Free Policies are Legal

- As the HUD letters have stated:
*“The right to smoke or not to smoke is **not a right that is protected under the Civil Rights Act of 1964** because smokers are not a protected class under federal law.”*
- No legal challenges to smoke-free policies



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Healthy Homes and Lead Hazard Control**

SPECIAL ATTENTION OF:

Regional Directors; State and Area
Coordinators; Public Housing Hub
Directors; Program Center Coordinators;
Troubled Agency Recovery Center Directors;
Special Applications Center Director;
Public Housing Agencies;
Resident Management Corporations;
Healthy Homes Representatives

NOTICE: PIH-2009-21 (HA)

Issued: July 17, 2009

Expires: July 31, 2010

Cross Reference:
24 CFR 903.7(b)(3)
24 CFR 903.7(c)(1)

Subject: Non-Smoking Policies in Public Housing

1. **Purpose.** This notice strongly encourages Public Housing Authorities (PHAs) to implement non-smoking policies in some or all of their public housing units. According to the American Lung Association, cigarette smoking is the number one cause of preventable disease in the United States. The elderly and young populations, as well as people with chronic illnesses, are especially vulnerable to the adverse effects of smoking. This concern was recently addressed by the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31, signed by the President on June 22, 2009. Because Environmental Tobacco Smoke (ETS) can migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects in neighboring families, the Department is encouraging PHAs to adopt non-smoking policies. By reducing the public health risks associated with tobacco use, this notice will enhance the effectiveness of the Department's efforts to provide increased public health protection for residents of public housing. Smoking is also an important source of fires and fire-related deaths and injuries. Currently, there is no Departmental guidance on smoking in public housing.

2. **Applicability.** This notice applies to Public Housing.

3. **Background.** Secondhand smoke, which is also known as environmental tobacco smoke (ETS), is the smoke that comes from the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers. ETS is involuntarily inhaled by nonsmokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. The 2006 Surgeon General's report on secondhand smoke identifies hundreds of chemicals in it that are known to be toxic. The report (*The Health Consequences of Involuntary Exposure to Secondhand Smoke*) is located at www.cdc.gov/tobacco/data_statistics/sgr/index.htm. Secondhand smoke causes almost 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease.

Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke according to the U.S. Environmental Protection Agency (EPA)
www.epa.gov/smokefree/healtheffects.html.



Costs of allowing smoking

Smoking damages residential property:

- Causes cigarette burn damage and stench to carpets, counters, etc.
- Leaves smoke residue on walls and curtains
- Poses fire hazard



MI Smoke-Free Apartment

Costs of allowing smoking

Smoking residue increases cost of rehabilitating apartment when smoker moves out.

Owners estimate it costs \$500 to \$8,000 more to rehab an apartment in which a smoker lived rather than a non-smoker.



Cigarette-caused Fires

Nationally:

- Smoking was the cause of just 9% of apartment fires, but
- Smoking was the cause of 40% of deaths from apartment fires, and
- Smoking was the cause of 16% of injuries from apartment fires

NFIRS, 2002



Tenants want smoke-free apts

- Sault Tribe survey of housing authority residents in December, 2008 found 70% of respondents preferred to live in smoke-free housing. The % of residents who smoke or live with a smoker was 44%, so clearly even some smokers preferred smoke-free housing.
- Healthy Androscoggin in Auburn, Maine surveyed 850 tenants; 76% would choose to live in a smoke-free apartment complex
- Twin Cities (MN): random sample survey -- 55% of renters said they had moved or would move from an apartment because of secondhand smoke seepage

For opinion surveys: www.tcsg.org/sfelp/public.htm

Sault Tribe is first Michigan tribe to establish smoke-free tribal housing





Smoke-free Households Are the Norm and Increasing

In 2005, 82% of Michigan adults said no one had smoked in their home in last 7 days -- 2005 Michigan Adult Tobacco Survey

In 2003, 72% of U.S. households were SF

In 1998, 60% of U.S. households were SF

In 1992, 43% of U.S. households were SF

-- Morbidity & Mortality Weekly Report May 25, 2007



MI Smoke-Free Apartment

The market for smoke-free housing is huge

About 80% of MI adults don't smoke

Over 90% of persons 65+ don't smoke

Many smokers don't want smoke in home

***Most apartment buildings allow smoking --
the marketplace is way behind demand***



Economics: Market is there

The market for smoke-free housing is huge, regardless of income level

Almost 70% of people in MI households with incomes under \$20,000 don't smoke

About 75% of people in MI households with incomes between \$20,000 & \$75,000 don't smoke

Over 87% of people in MI households with incomes over \$75,000 don't smoke -- 2005 Michigan BRFS Estimates



Marketplace is changing

Multi-unit housing associations & their publications are focusing on the benefits of smoke-free policies:

NAA and NMHC policy memos, Feb., 2008

UNITS magazine, Dec., 2007

Assisted Housing Management Insider, March, 2007

MultiFamily Executive, Nov., 2006

www.naahq.org

UNITS



NATIONAL APARTMENT
ASSOCIATION
AMERICAN LEADING ADVOCATE
FOR QUALITY AFFORDABLE HOUSING

December 2007

Clearing the Air

Industry Discusses Trend
Toward Smoke-Free Housing

Also

- Top 10 Markets for 2008
- Student Housing Grows Up
- Annual Report Inside



Marketplace is changing

- Online apartment listing companies are adding “smoke-free” as an amenity item on their listings, e.g., RentLinx
- “Smoke-free” is becoming more common as an amenity item in marketing by apartment owners/managers



Tenants' Rights

Your Resources

- Smoke Free Apartment Listing
- Useful Links
- Quick Fixes

Did You Know

Contact Us



Your Resources
Smoke-free
Apartment Living

Find a Smoke-Free Apartment

Use the form below to search for smoke-free rental housing in Michigan.

Location:

(city, zip code or exact address)

Min Bedrooms:

Max Rent:

Keywords:

Amenities:

☒

Smoke Free

☐

Dogs Allowed

☐

Cats Allowed

Search

List a Smoke-Free Apartment

Property managers, [list your smoke-free rental housing](#) on our website for free. Our apartment listing is powered by [RentLinx](#), the [Rental Housing Multi-List](#).

- [Instructions to list your smoke-free property](#)

Smoke-Free Apartment Listing

The following is a listing of Michigan rental properties whose owners have stated that they are entirely smoke-free dwellings. This listing is updated regularly, with new smoke-free rental units added almost weekly.



The Courtyards

1780 Broadway St.
Ann Arbor, MI

Your Home Away From Home

The Courtyards Student Apartments provides the ultimate student experience to the University of Michigan community. Meet new friends or hang out with old ones at our movie nights, social events, and community gatherings. Get focused and organized with our career planning , time management, and study skills workshops. Relieve stress in our on-site fitness center, exercise classes, and wellness activities.

Allen & O'Hara communities are designed to enhance the total student experience.

- * Fully equipped fitness centers, sports facilities and recreational areas enable residents to maintain their health and fitness.

- * State-of-the-art computer labs, quiet study areas and study skill workshops are available to enhance your college experience.

- * Spacious, comfortable student lounges and clubhouses provide convenient places for residents to gather and socialize.

- * **Smoke-Free**





Medallion Management, Inc.

We Are a Family of Companies Serving the Needs of Families

Medallion Management

834 King Highway, Suite 100

Kalamazoo, MI 49001

Phone: (269) 381-0350

Fax: (269) 381-3609



Smoke-Free Properties:

Galesburg Village Apartments

Grandview Apartments

Augusta Green Apartments



Treecity Properties, LLC

Treecity Properties

1024 Lincoln Ave.

Ann Arbor, Michigan 48104

Phone: (734)994-8733

**All properties smoke-free
inside and outside.**





Smoke-Free Properties:

Pheasant Run Apartments

West Bridge Apartments

Bayberry Farms

The Cottages at Bayberry Farms

University Meadows

Riverwalk Meadows

Summerview

Trumbull Crossing

KMG Prestige

Main Office

102 South Main Street

Mount Pleasant, Michigan 48858

989 772-3261





Over 130 smoke-free properties



915 Oakland
Ann Arbor, MI



929 Church
Ann Arbor, MI



441 S. First Street
Ann Arbor, MI

Tourville Apartments

910 Lincoln Avenue
Marquette, MI 49855

Phone: (906) 288-9284

**All properties are
smoke-free.**

Tourville North



*Luxurious And Affordable Living
In A Convenient, Safe and Healthy Community!*

Flo-Mar Apartments

Flo-Mar Apartments

121 Perrin - Office

Ypsilanti, MI 48197

Phone: (734) 483-2240

**All 30+ properties
smoke-free.**



The Village of Bethany Manor
Senior Living Community
Presbyterian Villages of Michigan





First Centrum

21400 Ridgetop Circle, Suite 250

Sterling, VA, 20166

Phone: (703) 406-3471

Contact: Rob Couch, President

All buildings smoke-free.

**Over 50 smoke-free
buildings in 7 states; about
20 in Michigan.**



HERITAGE SENIOR COMMUNITIES

Your home for today ...
... and for tomorrow.

Heritage Senior Communities

Heritage Property Management

950 Taylor Avenue

Grand Haven, MI 49417

Phone: 616-846-4700

Fax: 616-842-8939

Email:

info@heritageseniorcommunities.com

Smoke-Free Properties:

Village at Appledorn, Holland

Village at Park Terrace,

Muskegon





Serving Southeast Michigan since 1982



Surovell Realtors

1884 West Stadium Blvd.
Ann Arbor, Michigan
48103
Phone: 734.665.9800

**Many smoke-free
properties.**





Transitioning to Smoke-Free

- To implement a smoke-free policy in a multi-unit dwelling where smoking residents already reside:
 - Establish a date on which all new residents must not smoke inside
 - Decide how much time current resident smokers will have before their lease will include the smoke-free requirement, i.e., grandfathering



Adopt New Lease Language

- To implement a smoke-free policy in a multiunit dwelling:
 - Add smoke-free provisions to the leases for apartment complexes or to the “house rules” in HUD-assisted properties



Enforcement of Smoke-Free Policies

- Private and public multi-unit owners uniformly report that enforcement is not an issue
- Residents consistently follow the rule
- Violators of the smoke-free rule are most likely to be violators of other rules
- Eviction possible; rarely, if ever, occurs



MISmoke-Free Apartment

You Have Resources Online

MISmokeFreeApartment web site:

www.mismokefreeapartment.org

Smoke-Free Environments Law Project site:

www.tcsg.org/sfelp/home.htm

SFELP Apartments site:

www.tcsg.org/sfelp/apartment.htm

SFELP Condominium site:

www.tcsg.org/sfelp/condos.htm

Your have resources online:

Tobacco Control Legal Consortium site

<http://tclconline.org>

Infiltration of Secondhand Smoke Into Apts & Condos

<http://tclconline.org/documents/infiltration.pdf>

There Is No Constitutional Right to Smoke

<http://tclconline.org/documents/constitutional-right.pdf>

The Americans with Disabilities Act: Effective Legal
Protection Against Secondhand Smoke Exposure

<http://tclconline.org/documents/Douglas.pdf>



MI Smoke-Free Apartment

Smoke-free Apartment Decal



Welcome to Our SmokeFree Building

All Apartments are Smoke-Free!



Parkside Commons Apartment Homes

Parkside Plan

Apartment Features

Amenities

100% Smoke Free

100% smoke-free environment

The demand for smoke-free environments is rising, and Parkside is listening.

Parkside Commons will be a **100% smoke-free environment**, making it one of Massachusetts' premier smoke-free rental communities, inside and out. Smoking is banned in all common areas, on the grounds, and in the apartments themselves. Why 100%? Cigarette smoking is hazardous to your health and it's the number one preventable cause of death. Second-hand smoke can be just as deadly. Cigarette smoke and its very noticeable odor travels farther than most of us realize, permeating rooms and getting into walls, ceilings, carpeting, drapes and clothing. At Parkside, you have a right to fresh and pure air.

Parkside welcomes residents who care about themselves. Our non-smoking policy is simply another way to support our commitment to creating **a clean, healthy, active community for all.**

Chelsea's
Read Blog





MI Smoke-Free Apartment



**Restricting the Use of Medical
Marijuana in Multi-Unit
Residences**

MDCH Webinar February 24, 2011



What we'll cover:

- The rights of multi-unit housing owners to restrict the use of medical marijuana on their properties
- How restrictions are being implemented
- Court decisions in medical marijuana cases



What's the problem?

Secondhand smoke spreads throughout multi-unit dwellings.

Smoke-free policies eliminate this problem.

Smoking of medical marijuana brings the problem back.

Residents and owners object.



What about medical marijuana in market-rate multi-unit housing?

Smoke-free policies may include a prohibition on smoking of medical marijuana.

Federal law still considers marijuana a prohibited controlled substance.

Federal law trumps state law.



What about medical marijuana in market-rate multi-unit housing?

Federal Controlled Substances Act

21 U.S.C. §801 *et seq.*

- Classifies marijuana as a “Schedule 1” drug.
- Prohibits the manufacture, distribution, dispensation, and possession of marijuana.

Supremacy Clause of U.S. Constitution

Article VI, Paragraph 2

- Federal law supersedes state law where there is a direct conflict of laws.



What about a reasonable accommodation to use medical marijuana?

Federal Fair Housing Act

42 U.S.C. §3601 *et seq.*

- Defines a person as disabled if s/he has a physical or mental impairment that substantially limits one or more major activities of daily living.
- Permits a disabled person to file a Fair Housing complaint seeking a “reasonable accommodation” to permit them to have an equal opportunity to use and enjoy a dwelling unit or common space.

However: The Fair Housing Act states that a disability/handicap “does not include current, illegal use of or addiction to a controlled substance” as defined in the Controlled Substances Act.



What about a reasonable accommodation to use medical marijuana?

Further:

- Even if the requested “reasonable accommodation” to use marijuana for medicinal purposes were granted, such accommodation need not, and should not, result in the exposure of other residents to secondhand marijuana smoke, since such an outcome should render the accommodation unreasonable .
- If a “reasonable accommodation” is deemed warranted, one should argue that an accommodation can only be reasonable if it avoids other residents exposure to secondhand smoke. One such option could be identifying and utilizing other non-smoking methods of using marijuana.

Final point: This has risk management and legal implications for multi-unit property owners and advice of legal counsel is well advised.



What about medical marijuana in “affordable” multi-unit housing?

Public and other subsidized housing owners have the same rights as market rate owners to adopt smoke-free policies.

HOWEVER, in any HUD-subsidized housing, federal law and HUD policies are clear: the possession or use of marijuana is prohibited.



What about medical marijuana in “affordable” multi-unit housing?

Quality Housing & Work Responsibility Act of 1998 (Public Housing Reform Act) and HUD Regulations prohibit the possession and use of marijuana for any purposes.

See September 24, 1999 HUD General Counsel memorandum titled “Medical use of marijuana in public housing”. <http://www.mismokefreeapartment.org/HUD-MM1999.pdf>



MI Smoke-Free Apartment

What have been the experiences thus far in multi-unit housing?

- HUD & USDA have informed public housing authorities and other HUD & USDA-subsidized apartment owners that they can evict tenants who use or possess marijuana, including those who are certified by MDCH to use it.
- A number of housing commissions and HUD & USDA-subsidized apartment owners have informed residents of the above notice.
- A number of persons have been evicted from public and affordable housing for using medical marijuana.



MI Smoke-Free Apartment

What have been the experiences thus far in multi-unit housing?

- **A number of market-rate apartment owners have indicated that they will be or have already amended their leases to explicitly prohibit the use or smoking of marijuana in their buildings, including those certified by MDCH to use marijuana for medicinal reasons.**



Case law

- **The U.S. Supreme Court has upheld Congress's authority under the commerce clause to enact the Controlled Substances Act and prohibit the intrastate use of marijuana, even when a state's medical marijuana law allows its use, i.e., federal law trumps state law.**

Gonzales v. Raich, 545 U.S. 1, 50 (2005) (Analyzing California law)

- **Washington state Appeals Court upheld a housing authority eviction of a tenant who was using marijuana for medicinal reasons. The Court determined that requiring a housing authority to violate federal law was not reasonable.**

Assenberg v. Anacortes Housing Authority, Wash: Court of Appeals, 1st Div. 2007



Case law

- **Oregon Supreme Court ruled that an employer did not have to accommodate a workers' medical marijuana use because federal law's prohibition on all use of marijuana trumped state law allowing its use for medical reasons. Employee's firing was upheld.**
- **A federal District Court in the Eastern District of Washington determined that the Americans with Disabilities Act did not protect individuals who are currently engaged in the use of illegal drugs, regardless of whether Washington state law allowed such use.**

Emerald Steel Fabricators, Inc. v. Bureau of Labor & Industries, April 14, 2010

Barber v. Gonzales, 2005 U.S. Dist. LEXIS 37411 (2005)



Case law

- **Michigan District Court upheld eviction of tenant in HUD-subsidized housing who was state-certified to use marijuana for medicinal purposes. Eviction was based on the violation of the lease provision that forbids the use or possession of illegal drugs, as required by federal laws.**

Jackson County District Court decision signed in December, 2010.



MISmoke-Free Apartment

You Have Resources Online

MISmokeFreeApartment web site:

www.mismokefreeapartment.org

Smoke-Free Environments Law Project site:

www.tcsg.org/sfelp/home.htm

SFELP Apartments site:

www.tcsg.org/sfelp/apartment.htm

Medical marijuana info & analysis

www.mismokefreeapartment.org/l3rights.html

