

# Freedom to Breathe in Rental Apartment Buildings

How the Freedom to Breathe Provisions apply to Multi-Unit Rental Housing

## Background

The Freedom to Breathe (FTB) provisions were signed into law by Governor Tim Pawlenty on May 16, 2007, to protect employees and the public from the health hazards of secondhand smoke. The FTB provisions expanded the previous Minnesota Clean Indoor Air Act (MCIAA); the new provisions became effective on October 1, 2007.

The FTB provisions describe where smoking is prohibited, outline the responsibilities of employers and facility managers and list exemptions within the new MCIAA provisions that affect their workplaces and facilities. This fact sheet explains how the new provisions of the law affect rental apartment buildings.

**Note:** Rental apartment buildings are defined as buildings with 3 or more rented living units. Condominium and co-operative housing buildings are not regulated by the MCIAA.

## No smoking in common areas

Smoking is prohibited in **indoor** common areas of rental apartment buildings. Common areas are building spaces that are or can be used by any of the tenants. Indoor common areas include rental offices, entrances, hallways, laundry rooms, party rooms, exercise rooms, public restrooms, and indoor swimming pool areas.

The FTB provisions do not regulate smoking within individual rented dwelling units.

## Outdoor smoking

The FTB provisions do not prohibit outdoor smoking, regardless of distance from building openings such as doors, windows and ventilation intakes.

## Definition of "indoor area"

"Indoor Area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more

than 50 percent of the combined surface area of the vertical planes [wall space] constituting the perimeter of the area, whether temporary or permanent. A [standard] window screen is not considered a wall.

## Responsibilities of proprietors

Employers, managers and other persons in charge continue to play an important role in controlling smoking in their apartment building. In general, they are required to:

- Make reasonable efforts to prevent indoor smoking
- Post "No Smoking" signs
- Ask persons who smoke in prohibited areas to refrain from smoking and to leave if they refuse to do so
- Use lawful methods consistent with handling disorderly persons or trespassers for any person who refuses to comply after being asked to leave the premises
- Refrain from providing ashtrays and other smoking equipment

## Going smoke-free

The MCIAA restricts smoking in common areas of rental apartment buildings; however, the proprietor or property manager has the option of establishing and enforcing a more restrictive policy for the property, including individual units. If a more restrictive policy is adopted it should be stated in the lease agreement.

## Compliance and enforcement

As part of the Minnesota Department of Health's (MDH) compliance strategy, emphasis will be placed on educating the public and business owners on the new provisions. MDH has compliance authority over the MCIAA and may delegate compliance activities to local units of government.

In addition to the compliance authority provided to MDH and local units of government, local law enforcement has the authority to issue petty



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misdemeanor citations to proprietors or individuals who knowingly fail to comply with the MCIAA.

### Local government ordinances

Local governments retain the authority to adopt and enforce more stringent measures to protect individuals from secondhand smoke.

### Retaliation prohibited

An employer, manager or other person in charge cannot fire, refuse to hire, penalize, discriminate or retaliate against an employee, applicant, or customer who exercises any right to a smoke-free environment provided under the MCIAA.

### For more information

Contact the Minnesota Department of Health to receive a copy of the MCIAA, or to receive additional educational materials please visit the MDH website at:

[www.health.state.mn.us/freedomtobreathe](http://www.health.state.mn.us/freedomtobreathe)

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