

# Boston's City-Wide Approach to Smoke-Free Housing: Communicating and Leveraging Legal Policy



**National Healthy Homes Conference  
June 2011**

Christopher Banthin, Esq.  
Public Health Advocacy Institute  
Northeastern University School of Law

## Health Concerns:

---

- There is no known safe level of exposure to SHS.

*EPA*

- Acute and chronic adverse health outcomes.

*U.S. Surgeon General*

- Health disparity by inaction.

*Tobacco-Smoke Exposure in Children Who Live in Multiunit Housing, PEDIATRICS, Dec. 2010*

- No smoking policies reduce use and encourage utilization of cessation services.

*Mass Dep't of Public Health*

## Market Demand:

---

- **81%** of prospective residents are immediately less interested in a property if they smell smoke.
- **69%** of prospective residents are more interested in a property advertised as being in a smoke-free building.
- **39-42%** of prospective tenants are willing to pay more to live in a smoke free building.
- Levels of interest are largely consistent over gender, age, education level, income level, and housing type.

# The Property Owner's Story:

---

**99%** of all landlords who had a smoke-free rule believed it was a "good decision," and **90%** it was easy to implement

- **16%** of the landlords reported that a smoke-free rule decreased their vacancy rates and a **19%** decrease in turnover rates. The balance reported largely no effect.
- **39%** of landlords reported that a smoke-free rule decreased disputes among tenants. The balance report largely no effect.

## Is it legal? Yes:

---

- Just like prohibiting pets, landlords and condominium associations can prohibit smoking. Prohibit smoking, not smokers.
- **19.4%** of landlords without smoke-free rules believed that such a rule was illegal and **35.8%** were unsure if it was legal.
- There is **no** constitutional right to smoke. *American Lithuanian Naturalization Club, Athol, Mass., Inc., v. Board of Health of Athol, 446 Mass 310 (2006)*.
- Smoke-free policies are not discriminatory under state and federal fair housing laws. Smoking is not a disability, nor a reasonable accommodation for a disability.

## Reasonable Accommodation Request:

---

- Addiction to nicotine, while powerful, does not fit within the definition of “handicap” under fair housing laws.
- Clinical guidelines for healthcare providers instruct provider to promote cessation, not smoking.
- Waiving the no-smoking rule is a “fundamental alteration” that is unreasonable. Also, a waiver would cause an “undue administrative burden” on staff.
- A much more likely case for discrimination would come from someone with Asthma who is exposed to SHS from a neighbor. *Donnelly v. Cohasset Housing Authority*, 16 Mass L. Rptr. 318 (2003).

# U.S. Dep't of Housing and Urban Development:

---



## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

---

### Special Attention of:

Multifamily Hub Directors  
Multifamily Program Center Directors  
Rural Housing Services (RHS) Directors  
Supervisory Housing Project Managers  
Housing Project Managers  
Contract Administrators  
Multifamily Owners and Management Agents

NOTICE: H 2010-21

Issued: September 15, 2010

Expires: September 30, 2011

Cross References:

---

**Subject: Optional Smoke-Free Housing Policy Implementation**

### I. Purpose

The purpose of this Notice is to encourage owners and management agents (O/As) participating in one of the Multifamily Housing rental assistance programs listed in Section III of this Notice to implement smoke-free housing policies in some or all of the properties they own or manage. This Notice provides instructions to O/As on the requirements for implementing smoke-free housing policies and only applies to O/As who choose to establish such policies.

# U.S. Dep't of Housing and Urban Development:

---

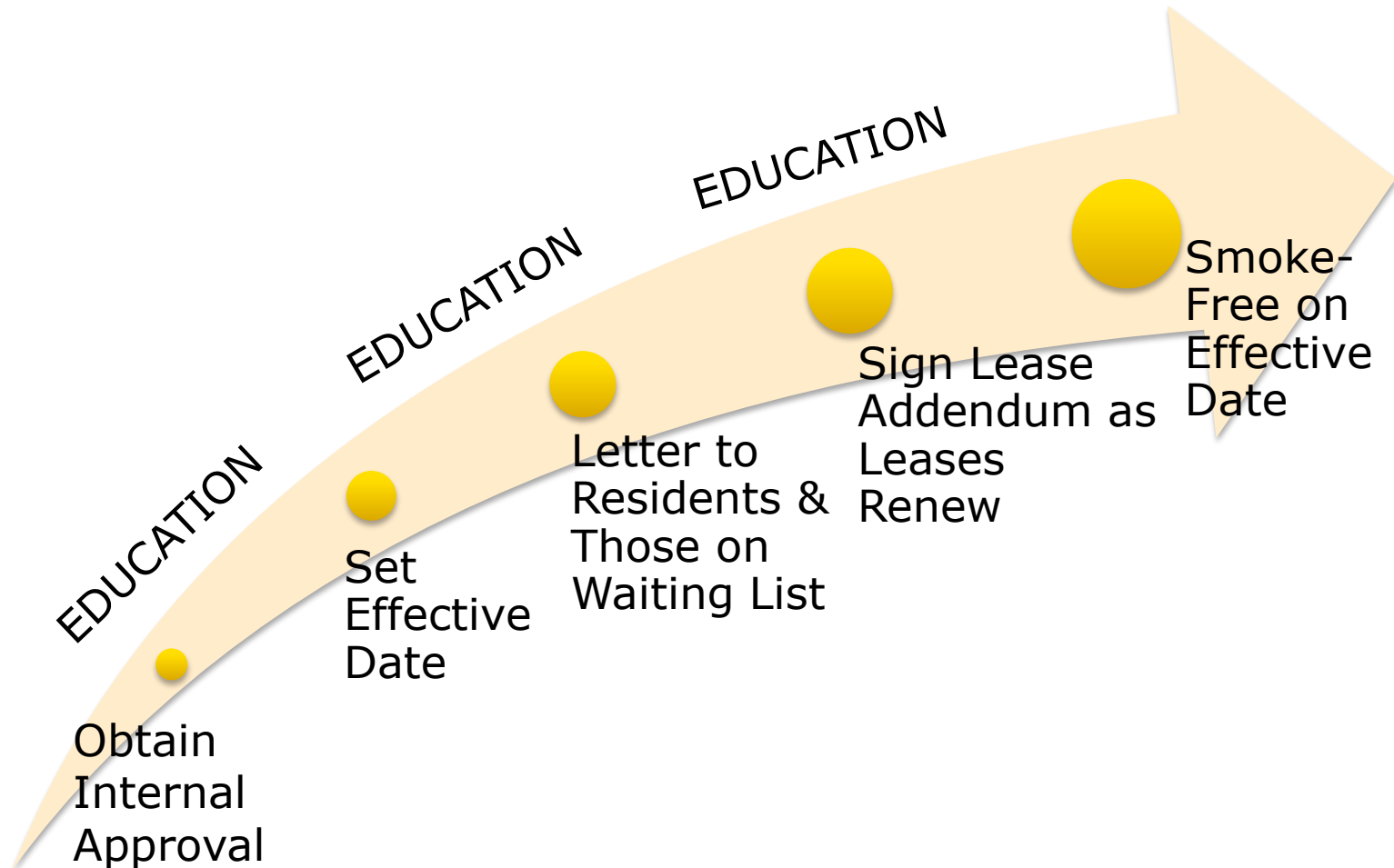
## **III. Applicability**

This Notice applies to:

- A. Project-based Section 8
  - 1. New Construction
  - 2. State Agency Financed
  - 3. Substantial Rehabilitation
  - 4. Section 202/8
  - 5. Rural Housing Services Section 515/8
  - 6. Loan Management Set-Aside (LMSA)
  - 7. Property Disposition Set-Aside (PDSA)
- B. Rent Supplement
- C. Section 202/162 Project Assistance Contract (PAC)
- D. Section 202 Project Rental Assistance Contract (PRAC)
- E. Section 811 PRAC
- F. Section 236
- G. Rental Assistance Payment (RAP)
- H. Section 221(d)(3) Below Market Interest Rate (BMIR)

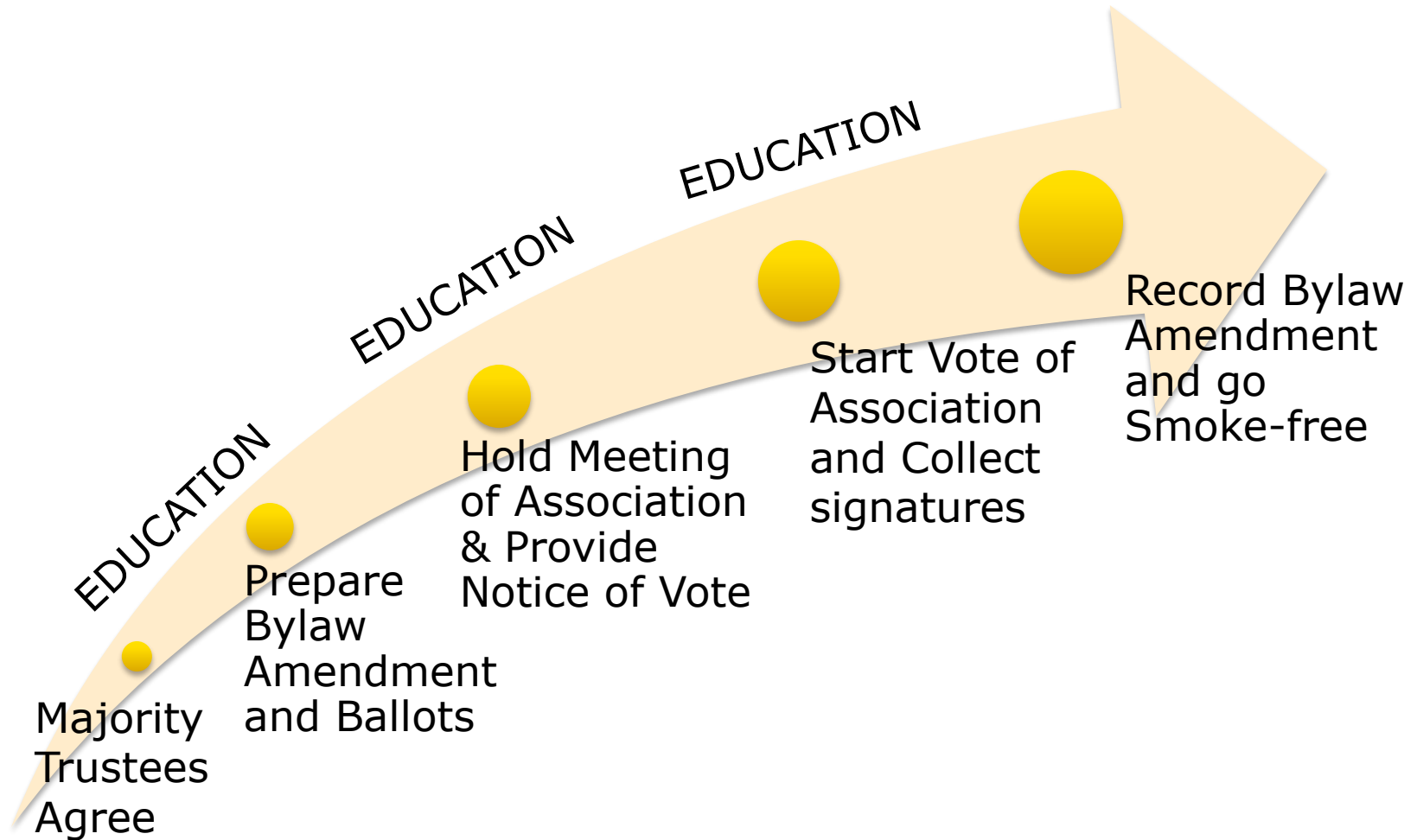
# Technical Assistance and Tools (Rental):

---



# Technical Assistance and Tools (Condo):

---



# Compliance:

---



Create a Smoke Free Environment

## Partners:

---

- Municipal Housing Authorities and other Housing Voucher Distributors (Boston, Metropolitan Boston Housing Partnership, Springfield, Greenfield, Wayland, etc.).
- Owners and Developers of subsidized Housing (Trinity Financial, Allston Brighton CDC, Dorchester EDC, etc.).
- Trade Associations (Mass Real Estate Bar Association, Greater Boston Real Estate Board, Citizens Housing & Planning Association, IREM, CAI, etc.).
- Boston Redevelopment Authority.
- Boston Department of Neighborhood Development.

# Implementing Policy:

---

- Housing Funders to Encourage Smoke-Free Rules (E.g. Low Income Tax Credit, Encourage as part of RFP).
- Development Authority Review and Approval.
- Insurance Discounts.
- Trainings for Landlords.
- Model Documents and Guides
- Information telephone line for all stakeholders.
- Disclosure Requirements May Not Work.

# Boston's City-Wide Approach to Smoke-Free Housing: Communicating and Leveraging Legal Policy



Christopher Banthin, Esq.  
Public Health Advocacy Institute  
Northeastern University School of Law

[chris@phaionline.org](mailto:chris@phaionline.org)  
(617) 373-8502

# Boston Housing Authority

Smoke-Free Housing Update  
HUD Healthy Homes Conference June, 2011



# BHA Smoke-Free Housing

- BHA Background
- Resident Health in BHA Housing
- Impact of Surveys and Early Studies
- Proposed Policy and Timeline
- Issues and Lessons



# BHA Background

- 12,000 units in many building types
- 26,000 residents



- Family and Elderly/Disabled Units

# Resident Profile

- Average household income \$12,000
- 47% English, 38% Spanish as primary language at home
- 38% Hispanic, 26% Black (Non-H), 19% White (Non-H), 16% Asian, 1% other



# Resident Health

- 33% self-rated fair to poor health compared to 10% non-public housing residents
- 2x asthma rates of non-subsidized housing in Boston
- Significantly higher rates of diabetes, obesity, high blood pressure than non-public housing residents
- 19% smoker in household compared to 14% citywide
- Health stats worse for Blacks and Latinos—64% of BHA population

# Shifting the Mindset at BHA

- Healthy Housing Studies
- Increasing Transfer Requests
- Surveys

# Survey Summary

- Over 10,000 surveys sent; 2500 returned
- 85-90% of Smoker and Non-Smoker Households support the policy depending upon site (up from 50% 6 years ago)

# Proposed Policy

- Smoke-Free, not Smoker-Free
- Smoking prohibited by residents and their guests in all units, hallways, common areas and within a small perimeter outside the building
- Lease Enforcement
- Reasonable Accommodation

# Process and Timeline

- Ongoing Staff Trainings
- Ongoing Resident Community Meetings
- Resident Outreach Workers
- New Lease Addendum: Fall, 2011
- Policy Effective: Fall, 2012

# Lessons

- Ask residents what they want
- Find resident champions; engage youth
- Collect data
- Engage health partners and other allies
- Ensure political support

# Ongoing Issues

- Individual rights concerns
- More regulation for poor families
- Other quality of life issues that are more important to residents (drugs, crime, etc.)
- Site Staff Buy-In
- Challenges of enforcement



Health Resources in Action  
*Advancing Public Health and Medical Research*

# Boston's City-Wide Approach to Smoke-Free Housing



**Kathleen McCabe**

Assistant Director

Public Health Policy and Strategy Center  
Health Resources in Action

# Presentation Overview

Goal: Explore the Role of Health Organizations in Promoting the Adoption of Smoke-free Policies

- Supporting Community Development Corporations
- Working with Neighborhood Tobacco Coalitions
- Build Cross-Sector Partnerships

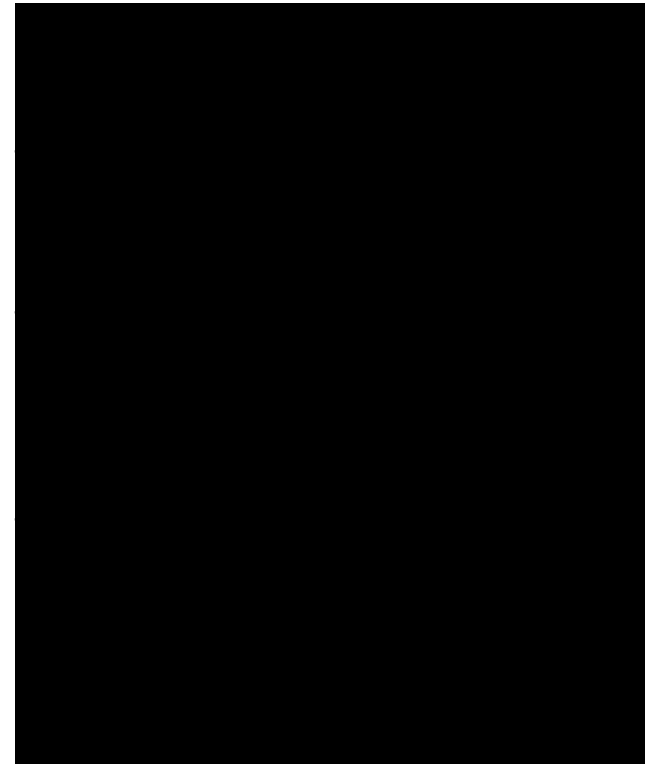
# Community Development Corporations

## Overview

- Five CDC's were funded through CPPW grant (up to \$20,000 mini-grants)
- Number of units transitioning range from 200-500 per CDC
- Over 1,600 units in five Boston neighborhoods
- Legal Technical Assistance
- Process and Resident Engagement Technical Assistance
- Timeline (1-1.5 years)



# Community Development Corporations

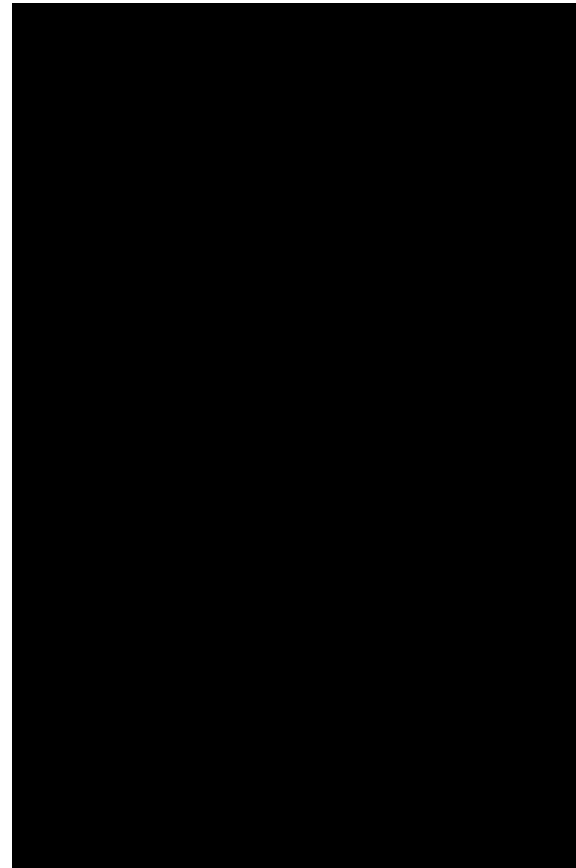


property

ation  
community

Initiatives

# Community Development Corporations



Information

Practices

ation

Partners

Staff

Provide evidence and best practices

# The Health Consequences of Involuntary Exposure to Tobacco Smoke

A Report of the Surgeon General



Cessation and educational materials



Window decal for home: the size is 3" x 6"



**Want to quit smoking?  
MassHealth covers it now!**

Recent tobacco use causes serious health problems for you and your family. Good news! Now a new benefit to help you quit—whether you're a smoker or use cigarettes or any other tobacco product.

**What: Free Smoking Help for Covered?**

You can choose from many stop-smoking medications for a \$1 or \$2 co-pay.

- The nicotine patch, gum, lozenges or a pill (bupropion or varenicline) are covered and you have no out-of-pocket costs. Ask your primary care provider for all the choices.

You can talk to a professional here to help you quit and stay quit.

Ask your primary care provider about the choices:

- Visit a counselor to get help with a cigarette.
- Join a support group.
- Receive stop-smoking help over the telephone.

**What's Do I Go For Help To Get?**

Ask your MassHealth primary care provider for more medications and help you're a stop-smoking counselor or enroll you in Quitline, a telephone stop-smoking program.

To learn more about this new MassHealth benefit, call **MassHealth Customer Service at 1-800-645-2800**



# Community Development Corporations



Drawing courtesy of Studio G Architects



ation resources &  
cessation benefits

ational materials

pecific lease

tation and

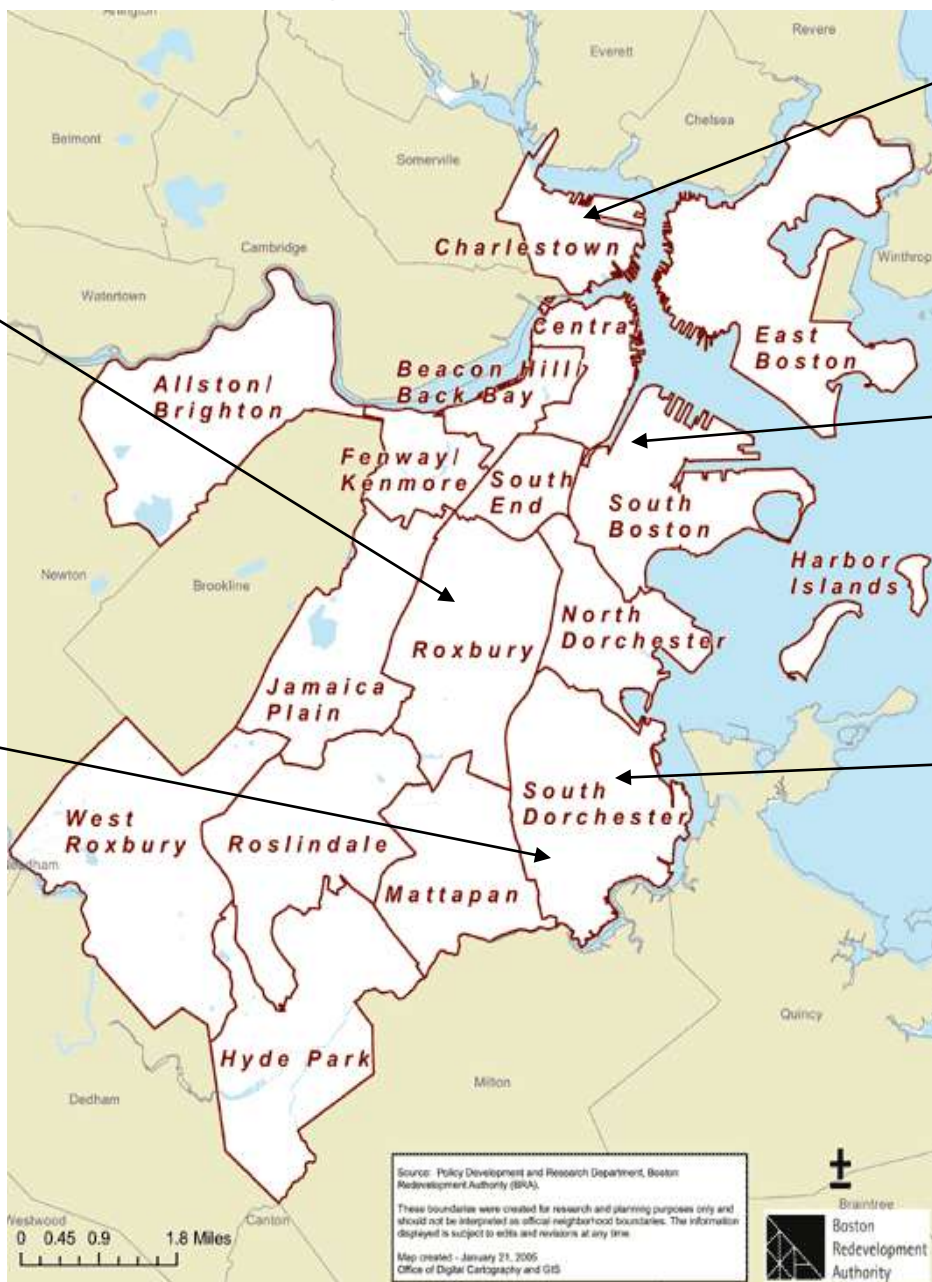
rganizations

esses/ challenges

e process & tell the  
y smoke-free

# Neighborhood Tobacco Coalitions

- East Boston Neighborhood Against Substance Abuse
- **Project RIGHT Inc**
- JP Coalition: Tree of Life & Hyde Square Task Force
- **Franklin Field Franklin Hill Dorchester Healthy Boston**
- Roxbury Community Alliance for Health



- **Charlestown Substance Abuse Coalition**
- Chinatown Coalition / Boston Asian YES
- **South Boston Collaborative Advisory Network**
- Allston Brighton Substance Abuse Task Force
- **Codman Square Neighborhood Council**

Source: Policy Development and Research Department, Boston Redevelopment Authority (BRA).  
 These boundaries were created for research and planning purposes only and should not be interpreted as official neighborhood boundaries. The information displayed is subject to edits and revisions at any time.  
 Map created - January 21, 2005  
 Office of Digital Cartography and GIS



# Building Cross-Sector Partnerships

- Public, private & subsidized housing landlords
- Tenant advocacy organizations & residents
- Health departments and non-profit health organizations
- Government agencies
- Researchers
- Neighborhood coalitions
- Others (Nursing students)

# Contact Information

Kathleen McCabe

Assistant Director, Public Health Policy and Strategy  
Center

Health Resources in Action, Inc.

(617) 279-2240 x.512





# Boston Smoke Free Homes Campaign

National Healthy Homes Conference

6/22/2011

Margaret Reid, Director

Division of Healthy Homes and Community Supports

# Tobacco is still a problem!

	Public Housing and Rental Assistance	Non-Public, Non-Rental Assistance
<b>Current Smoker</b>	<b>24.9%</b>	<b>13.3%</b>
<b>Current Asthma</b>	<b>23.1%</b>	<b>14.8%</b>
<b>High Blood Pressure</b>	<b>32.8%</b>	<b>22.1%</b>
<b>Diabetes</b>	<b>11%</b>	<b>4.4%</b>

DATA SOURCE: Boston Behavioral Risk Factor Survey 2008, Boston Behavioral Risk Factor Surveillance System (BBRFSS), Boston Public Health Commission

DATA ANALYSIS: Boston Public Health Commission Research and Evaluation Office

# Justification for Smoke-Free Housing

- Workplace restrictions have reduced exposure and smoking.
- In the US, the home is becoming the predominant location for exposure to secondhand smoke.
- Current heating, ventilating, and air conditioning systems cannot control exposure and there is no risk-free level of exposure.
- Risk of lung cancer increases by 20 to 30 percent associated with living with a smoker.
- Children exposed to secondhand smoke are at increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma.

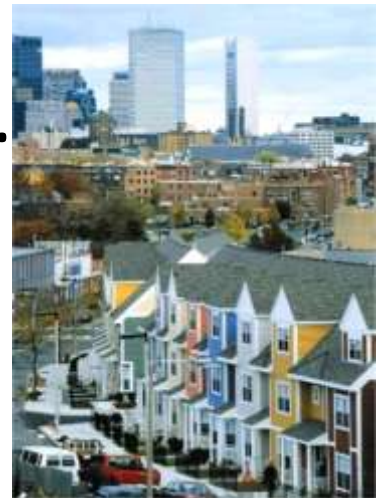
# Boston Smoke Free Housing Goal

- Increase awareness and availability of smoke-free housing
- Work across all market sectors with a focus on affordable, section 8 and public housing
  - 213,442 units in multi-family housing
  - Offer smoking cessation resources for staff and residents



# Boston Smoke Free Housing Activities

- Provide technical assistance and training for developers and landlords to increase smoke-free housing options.
- Work with city of Boston housing departments to provide incentives for SFH
- Launch Boston SFH registry & website.
- Conduct public awareness campaign.



# Boston Smoke-Free Housing Progress

- Department of Neighborhood Development integrating into NOGA's and first time home buyers classes.
- Boston Housing Authority transitioning 12,000 unit portfolio.
- Five community development corporations funded to transition 1,700 units.
- Training for Section 8 landlords and smoke free box on Metro Boston Housing Partnership rental listing site.
- Proposed to planning agency inclusion of stronger IAQ language (requiring disclosure of smoking) and encourage developers to meet LEED IAQ requirements through smoke-free.

## Other Policy Interests

- Negotiate insurance discounts for smoke-free properties
- Highlight inclusion of smoke free housing in LEED certification



# Boston Smoke-Free Homes

Welcome Nelson Pidgeon | List a Property

Landlords & Homeowners

Condo Owners & Associations

Tenants

Realtors

Find a Smoke-Free Home

search site...



## Breathe Easy. You're Home.

Welcome! Secondhand smoke is a dangerous houseguest. Isn't it time you sent it packing? Boston Smoke-Free Homes wants to create a healthier and safer community by eliminating secondhand smoke from condominiums and apartments. This website offers all the tools you'll need to make smoke-free a reality.

[Learn more about us >>](#)

### Smoke-Free Housing

n. 1 Housing where residents are protected from secondhand smoke by a written no smoking policy that prohibits smoking anywhere inside the building as well as outdoor areas where smoking may contaminate indoor air.

[Learn More >>](#)

### Ready to Quit?



It isn't easy to stop smoking. The reality of nicotine addiction is that it is difficult to quit and even more difficult to remain smoke-free. But here's something to think about...

[Read More >>](#)

### Smoke-Free Highlights



A New Cigarette Hazard: Third-Hand Smoke



Learn more about tobacco seepage between apartments in a new study by California's Clean Air Project

Sign the Boston Smoke-Free Homes Resolution

[Read More >>](#)



**Boston Tobacco Prevention & Control Program**  
Boston Public Health Commission  
1022 Massachusetts Ave.  
Boston, MA 02118

**Phone** 617-534-4718  
**Fax** 617-534-2378  
**Email** [tobaccocontrol@bphc.org](mailto:tobaccocontrol@bphc.org)

**Contact Us**  
**References**  
**Resources**  
**FAQs**  
**Stop Smoking**

# DND: Conditions of Funding Award Section

The project must conform to DND Housing Development Policies, except as otherwise indicated in these conditions.

- NOTE: DND is now strongly encouraging all of our applicants for housing development funding to incorporate smoke free policies in their developments. Beyond improving the health and safety of residents, smoke free policies can reduce operating costs through savings on renovations between occupants and eligibility for fire safe insurance discounts. Applicants are encouraged to develop and maintain a written occupancy policy for the proposed affordable housing proposal that prohibits smoking in all units and all common areas of the development. In addition, DND encourages the owner to make educational materials on tobacco cessation programs, including the phone number for the statewide Smokers' Helpline at 1-800-Try-to-Stop, available to all residents of the Project

# Funding Supports

- Communities Putting Prevention to Work, Tobacco Prevention Initiative, CDC
- HUD Healthy Homes Demonstration grant