

## Resolution of the Market House Condominium Association Board of Directors

The Board of Directors, identified hereafter as 'The Board', acknowledges that unit #307 has communicated on numerous occasions that their ability to enjoy their home has been unduly impacted by odor of second hand smoke they have identified as coming from unit # 308. The Board recognizes that the owners of unit #307 have also on numerous occasions attempted to resolve their issues by taking the actions recommended by the Board to remediate the issue by working within their unit and in paying for work done in the neighboring unit.

The Board also acknowledges receipt of one letter from unit #407 complaining of impact caused by the odor of second hand smoke.

The Board further recognizes and acknowledges multiple previous attempts within the building to control the transfer of smoke odors including second hand smoke. Written evidence within the Association's minutes indicate problems with this issue dating back to October of 1995.

The Board recognizes that a distinctly qualified and authoritative medical authority, the Surgeon General of the United States, has identified and communicated that smoking is hazardous to one's health and well being.

The Board further recognizes that this said individual, the Surgeon General of the United States, has also identified and communicated that second hand smoke is also hazardous to one's health and well being. The Board enters into documentation the Surgeon General's report published in July of 2006 as evidence of this fact.

The Board also recognizes that the original construction of the Market House building was never intended to prevent or seal the building and its areas completely from the transfer of odors or substances from one area of the building to another.

The Board recognizes and acknowledges that it is unduly arduous, cost prohibitive and practically impossible for unit owners or the Association to seal all openings and/or gaps in all units to prevent the smell or hazardous effects of smoking from transferring from one unit to another. Thus the Board deems it that it can not 'retrofit' or modify units to prevent the transfer of secondhand smoke from one unit to another.

The Board, after having consulted with its attorney and after having obtained a legal opinion as to what constitutes a nuisance provides the letter as documentation.

The Board acknowledges that Section 6.2(b) of the Association's Declaration reads as follows:

**No activity shall be carried on within any unit which may be an annoyance or nuisance to the other Unit Owners.**

Further, the Board hereby adopts the following definition of a nuisance since the term "nuisance" is not defined in the Association's Declaration. Minnesota Statutes Section 561.07 defines a nuisance as "[a]nything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property."

Given the above statements and factors, the Market House Board of Directors hereby declares that smoking within the Market House Condominium is a nuisance.