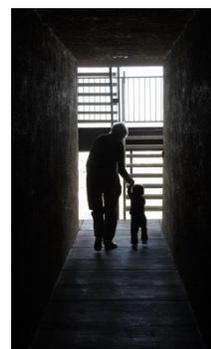


Regulating Smoking in Multi-Unit Housing

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures.¹ For more details about these policy considerations, please contact the Consortium.

Secondhand Smoke in the Home

Exposure to secondhand smoke is not just a discomfort and an annoyance, but a serious health hazard.² For tenants and owners of multi-unit housing, such as apartments and condominiums, tobacco smoke from a neighboring unit that infiltrates their homes can pose a daily problem. As a result, many local governments, housing authorities, and property owners of multi-unit housing are taking proactive steps to prevent or eliminate secondhand smoke from infiltrating living space and to provide housing that is 100 percent smoke-free. This guide provides basic guidelines to communities about policies that address secondhand smoke infiltration in multi-unit housing.³



Policy Benefits

A smoke-free policy for a multi-unit housing development, such as an apartment building or condominium complex, can benefit all parties concerned – tenants and residents, as well as landlords and property owners.

- **Protection from Secondhand Smoke:** Secondhand smoke travels through lighting fixtures, cracks in walls, shared heating/ventilation, around plumbing, and under doors. Medical studies have shown that tobacco smoke in any form exposes users and bystanders to serious health risks, and can cause lung cancer and cardiac disease in nonsmokers. Also, exposure to secondhand smoke can result in severe asthma attacks, respiratory infections, sinus infections, sudden infant death syndrome, and other cardiovascular and pulmonary diseases.⁴ Not only the Surgeon General, but air quality experts such as the American Society of Heating, Refrigerating and Air Conditioning Engineers have concluded that “the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.”⁵ The most important benefit of a smoke-free housing policy is that it enables tenants, employees, and other visitors to breathe air free of hazardous secondhand smoke.

- **Market Advantage:** Resident surveys show that a growing number of tenants and owners are seeking smoke-free housing, and are willing to pay more to ensure their home environments are smoke-free.⁶ Apartments, condominiums, and townhouses that smell of tobacco smoke are harder to rent and sell.
- **Reduced Costs:** Smoke-free housing policies can save landlords and property owners excess building maintenance costs, because cleaning and replacement expenses are significantly higher in units with smoking tenants. Depending on the length of residency and amount of smoking in a unit, the costs for cleaning or repainting walls; cleaning or replacing carpets, drapes, appliances and fixtures exposed to smoke; or replacing floors and countertops burned by cigarettes, can add hundreds, even thousands of dollars to unit turnover costs.⁷
- **Reduced Fire Risk:** The use of cigarettes and other combustible tobacco products is a leading cause of residential building fires.⁸ A smoke-free policy reduces the risk of fire and provides increased safeguards to tenants and their property. Moreover, some insurance companies offer owners of smoke-free multi-unit buildings discounts or credits on fire, life and property insurance.⁹
- **Positive Modeling:** Multi-unit housing developments are often highly visible within a community. Thus, when a development adopts a smoke-free policy, the public, local government and organizations learn of the advisability of such a policy, and may be encouraged to adopt similar measures in other settings. Moreover, since children and youth often reside in multi-unit housing developments, a smoke-free policy can help reduce youth initiation through positive modeling behavior.
- **Legal Liability:** With the rise of smoke-free housing policies has come an increased awareness of the legal liability of landlords, management companies, condo associations, co-op owners and smokers to tenant and resident claims brought to prevent the infiltration of smoke.¹⁰ Lawsuits related to secondhand smoke exposure in housing include claims based on legal theories such as nuisance, warranty of habitability, and quiet enjoyment.¹¹ In addition, tenants with pre-existing physical conditions aggravated by secondhand smoke may file complaints under disability laws, such as the Fair Housing Act.¹² A smoke-free policy can thus benefit property owners who might otherwise be subject to legal claims from tenants about secondhand smoke exposure.

Policy Elements

An effective smoke-free housing policy typically includes the following elements:

- An introduction that explains the policy's purpose and which can include information about the dangers of exposure to secondhand smoke.
- Clear, consistent definitions of important terms, such as "smoking," "premises," and "common area," to help ensure that the policy is interpreted, implemented, and enforced in ways that effectively protect the entire housing community.
- Information on which areas must be smoke-free, such as common areas, units (new and/or existing), outdoor areas (including patios and balconies), setbacks from entrances, etc.
- Description of who must comply, such as residents, guests and business visitors.
- Disclaimer that the landlord is not acting as a guarantor of the policy. This provision helps protect landlords of smoke-free buildings from claims brought by residents injured

as a result of policy violations unknown to the landlord.

- A provision allowing one resident to bring a claim directly against another resident based on secondhand smoke intrusion. The non-smoking resident could get a court order requiring that the smoking resident stop the smoke infiltration or the resident could potentially recover monetary damages.
- Information on enforcement:
 - Who will enforce the policy (local government, private citizens, landlords, condominium association)
 - How the policy will be enforced (verbal warnings, warning letters, fines, eviction)
 - Responsibility of landlords (post warning signs, consistently enforce the policy)
 - Responsibility of residents (notify guests and visitors, report violations)
 - Smoke-free leases and agreements are often signed by both parties (e.g., the tenant and the landlord)

Policy Considerations

Several government programs encourage property owners to adopt smoke-free policies in multi-unit dwellings.

Low Income Housing Tax Credit. The [Low Income Housing Tax Credit](#) program provides federal tax credits to states and local governments to stimulate the development of affordable housing.¹³ Local governments can develop criteria for the type of housing they want in their communities. States such as California, Maine, and Minnesota, as well as cities, such as Minneapolis and St. Paul, have included the adoption of smoke-free policies for proposed building projects as a criterion considered in the awarding of tax credits.¹⁴ Developers do not have to include a smoke-free policy in their development, but their chances in the competitive process are improved if they do. An excellent resource on the low income housing tax credit program is on the [website of the Department of Housing and Urban Development](#).¹⁵

Smoke-free Affordable Housing. The trend toward smoke-free affordable housing is accelerating. In 2009, Housing and Urban Development (“HUD”) released a Healthy Homes Strategic Plan targeting, among other measures, the elimination of secondhand smoke in homes to protect “the health of children and other sensitive populations in low-income households.”¹⁶ In addition, the Surgeon General issued a “Call to Action to Promote Healthy Homes” in 2009, also recommending the elimination of secondhand smoke to protect residents from health hazards in the home.¹⁷

In 2009 and again in 2012, HUD issued a notice strongly encouraging public housing authorities to adopt smoke-free policies in their multi-unit housing units, including common areas.¹⁸ The notices describe health problems associated with secondhand smoke and point out the additional costs to public housing authorities of rehabbing units in which smokers have lived. According to HUD, apartment owners are free under federal law to make their buildings totally smoke-free.

Similar to the notices directed at public housing, HUD also has issued two notices encouraging owners of project-based Section 8 and some other federally subsidized housing to adopt smoke-free policies. These notices emphasize the health risks of exposure to secondhand smoke and provide specific requirements for implementing smoke-free housing policies.¹⁹

Disclosing Smoking Policies for Multi-Unit Buildings. A growing number of communities are requiring that multi-unit rental apartment buildings and multi-unit condominiums disclose their smoking policies to prospective tenants and buyers. For example, the cities of Oakland, California;²⁰ Buffalo, New York; and Duluth, Minnesota; and the states of Oregon²¹ and Maine²² have passed laws that require the owners of rental apartment buildings to disclose the smoking policies for their buildings, whether the policies are smoking permitted, smoking restricted or smoke-free. The laws do not mandate that units be smoke-free; they simply require that prospective tenants be notified of the smoking policies and location of smoking and non-smoking units.

When a smoke-free or smoking permitted disclosure statement is included in a standard lease for multi-unit dwellings, tenants are alerted to living environments that may be hazardous to their health. Such statements also make it less likely that landlords and property owners will face claims based on failure to disclose or properly abate secondhand smoke issues if an uninformed tenant subsequently becomes ill from exposure to secondhand smoke.²³

Examples of Select Policies

Below are two tables providing examples of smoke-free housing policies. The first table provides sample policies, primarily designed for landlords to use to create a smoke-free lease provision. The second table provides examples of smoke-free housing policies that have been adopted in selected locations. These policies fall into four main categories: (1) laws requiring disclosure of a smoke-free housing policy; (2) laws requiring smoke-free common areas in multi-unit housing; (3) laws requiring smoke-free housing units (in apartments and/or condominiums); and (4) policies adopted by local housing authorities to create smoke-free properties. Laws requiring smoke-free housing common areas and/or units have been adopted primarily in California.²⁴ Nationwide more than 230 local housing authorities had adopted smoke-free policies for some or all of their apartment buildings.²⁵

If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policies. These examples are included simply to illustrate how different communities and multi-unit housing developments have approached the smoke-free issue.

Sample Policies

Name	Location	Sample Policy
Smoke-Free Apartment House Registry	California	Sample Smoke-free Lease Addendum http://www.smokefreeapartments.org/Registry_Pix/caa_smoking_addendum.pdf
Smoke-Free Apartments	Michigan	Model Smoke-free Lease Addendum for Multi-Unit Dwellings http://www.mismokefreeapartment.org/modellease.pdf
Live Smoke Free	Minnesota	Model Smoke-free Lease Addendum for Apartment Building http://mnsmokefreehousing.org/documents/Smoke_free_addendum.pdf
My Smoke-Free Housing (GASP)	Colorado	Model Lease with Penalties http://mysmokefreehousing.org/pdf/LeaseWithPenalties.pdf
ChangeLab Solutions	California	Model Ordinance: Smokefree Housing http://changelabsolutions.org/publications/model-ord-smokefree-housing

Examples of Policies Adopted by Selected Communities

Location	Type	Link
Oregon OR. REV. STAT. § 479.305	Disclosure Requires disclosure of the smoking policy for the premises in the rental agreement for new tenants.	http://www.oregonlaws.org/ors/479.305
Maine ME. REV. STAT. ANN. § 6030-E	Disclosure Requires landlords to disclose smoking policy to tenants and potential tenants.	http://bit.ly/13g72Fj
Oakland, CA OAKLAND, CA MUNICIPAL CODE § 8.30.050	Disclosure Landlords in multi-unit housing complexes are required to disclose the smoking policy for the individual unit and the complex to prospective tenants. Condominium sellers also must disclose the smoking policy for the individual unit and the complex.	http://bit.ly/YZHXfi
Huntington Park, CA	Smoke-free Common Areas	http://qcode.us/codes/huntingtonpark/view.php?topic=4-12a-

HUNTINGTON PARK, CA MUNICIPAL CODE § 4-12A.	Prohibits smoking in indoor and outdoor common areas of multi-unit housing. Allows landlords and condominium homeowners' associations to designate no more than 10% of outdoor smoking areas as smoking permitted if they meet certain criteria.	4_12a_02&frames=off
Sonoma County, CA SONOMA COUNTY, CA MUNICIPAL CODE § 32.17	Smoke-free Common Areas Prohibits smoking in indoor and outdoor common areas of multi-unit housing. Allows landlords and condominium homeowners' associations to designate outdoor smoking areas that meet certain conditions.	http://www.municode.com/Library/#/CA/Sonoma_County/Code_of_Ordinances/CH32ORRESMSES_M_ART4MUITRE_S32-17SMPRCOAREXDESMAR
Richmond, CA RICHMOND, CA MUNICIPAL CODE Chapter 9.57	100% Smoke-free Housing Prohibits smoking in 100% of new and existing complexes with two or more units. Applies to both apartments and condominiums. Includes patios and balconies. Does not grandfather in existing smokers.	http://www.municode.com/Library/#/CA/Richmond/Code_of_Ordinances/toc/ARTIXHE_CH9.57PRSMARMUITRE
Pasadena, CA PASADENA, CA MUNICIPAL CODE § 8.78.085	100% Smoke-free Housing Prohibits smoking in 100% of the units in both new and existing multi-unit housing with two or more units. Applies to apartments and condominiums.	http://www.municode.com/Library/#/CA/Pasadena/Code_of_Ordinances/TIT8HESA_CH8.78TOUSP_ROR_8.78.085REDRTOSMMUITHO
Boston, MA Housing Authority	Non-smoking Lease Addendum Lease addendum to be signed by tenants to create a completely smoke-free Boston Housing Authority	http://www.bostonhousing.org/pdfs/Non-Smoking%20Lease%20Addendum.pdf

Other Helpful Resources

The Consortium, and its parent organization, the [Public Health Law Center](#), have a [web page](#) containing several publications and resources on smoke-free housing. Included are resources that discuss concepts related to [condominiums, apartments and other multi-unit dwellings](#), [affordable housing](#), and [smoke-free housing disclosure policies](#). The [Smoke-free Environments Law Project](#) also has many smoke-free housing policy resources and links on its website, including helpful resources for both tenants and landlords, such as the National Apartment Association's Guidelines for [No-Smoking Policies in Apartments](#). Other organizations, such as [Americans for Nonsmokers' Rights](#), have [web pages](#) containing the latest news and resources on smoke-free housing initiatives.

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at publichealthlaw@wmitchell.edu with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

Last updated: December 2013

Notes

¹ The information contained in this document is not intended to constitute or replace legal advice.

² U.S. DEP'T OF HEALTH & HUMAN SERVS., HOW TOBACCO SMOKE CAUSES DISEASE: THE BIOLOGY AND BEHAVIORAL BASIS FOR SMOKING - ATTRIBUTABLE DISEASE: A REPORT OF THE SURGEON GENERAL (2010), available at <http://www.surgeongeneral.gov/library/tobaccosmoke/report/full-report.pdf>; see also U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL (2006), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/fullreport.pdf>.

³ This publication contains general guidelines on smoke-free housing that could apply to all types of housing, including rental housing that is publicly or privately operated and condominium associations, as well as tenant and residents.

⁴ See U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL, 6 MAJOR CONCLUSIONS OF THE SURGEON GENERAL REPORT (2006), available at <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/factsheet6.html>.

⁵ AM. SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC., ASHRAE POSITION DOCUMENT ON ENVIRONMENTAL TOBACCO SMOKE (2013), available at https://www.ashrae.org/File%20Library/docLib/About%20Us/PositionDocuments/ASHRAE_PD_Environmental_Tobacco_Smoke_2013.pdf.

⁶ See, e.g., SMOKE-FREEHOUSINGINFO.COM, <http://www.smokefreehousinginfo.com/pages/Facts&Figures.html> (last visited Sept. 13, 2013); Chicago Respiratory Health Association, *Smoke-Free Housing*, available at <http://www.lungchicago.org/smoke-free-housing/> (last visited Sept. 16, 2013); National Apartment Association, *No-Smoking Policies in Apartments*, National Apartment Association (2008), available at <http://www.tcsg.org/sfelp/NAA-SFMemo.pdf> (last visited Sept. 16, 2013).

⁷ NATIONAL APT. ASS'N, UNITS, CLEARING THE AIR: INDUSTRY DISCUSSES TREND TOWARD SMOKE-FREE HOUSING (2007), available at <http://www.tcsg.org/sfelp/UnitsDec2007.pdf> (last visited Sept. 16, 2013); see also SmokeFreeWashington.com, *Benefits of Going Smoke-Free*, available at <http://www.smokefreewashington.com/apartments/landlords/benefits.php> (last visited Sept. 16, 2013).

⁸ JOHN R. HALL, JR. NAT'L FIRE PROT. ASS'N, *THE SMOKING-MATERIAL FIRE PROBLEM* (2013), available at <http://www.nfpa.org/~media/Files/Research/NFPA%20reports/Major%20Causes/ossmoking.pdf>.

⁹ See, e.g., CAPITAL INSURANCE GROUP, *Going Smoke-free Cuts Stress, Costs for Rental Property Owners and Managers*, *The Landlord Times* (July 2011) <http://www.ciginsurance.com/wp-content/uploads/2011/08/CIGOnLandlordTimes.pdf> (last visited Sept. 13, 2013); SMOKEFREEWASHINGTON.COM, *Benefits of Going Smoke-Free*, <http://www.smokefreewashington.com/apartments/landlords/benefits.php> (last visited Sept. 13, 2013).

¹⁰ See, e.g., Susan Schoenmarklin, Tobacco Control Legal Consortium, *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings: 2009* (2009), available at http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2009_0.pdf; see also ChangeLab Solutions, *Legal Options for Tenants Suffering from Drifting Tobacco Smoke* (updated 2012), available at: http://changelabsolutions.org/sites/default/files/Legal-Options-for-Tenants_FINAL_20130205.pdf.

¹¹ *Infiltration of Secondhand Smoke into Condominiums, Apartments, and Other Multi-Unit Dwellings*, *supra* note 10, at 4-10.

¹² Fair Housing Act, 42 U.S.C. §§ 3601–3631 (2007). The Fair Housing Act prohibits discrimination against people with disabilities, including those with severe breathing problems. It applies to owners and operators of most housing, including apartments and Section 8 and other HUD-assisted housing.

¹³ U.S. Dep't of Housing & Urban Dev., *Low Income Housing Tax Credit*, available at <http://www.hud.gov/offices/fheo/lihtcmou.cfm> (last visited Sept. 16, 2013).

¹⁴ American Lung Association, *Smokefree Multi-Unit Housing: Bringing Healthy Air Home*, available at <http://www.lung.org/assets/documents/healthy-air/smoking-in-multiunit-housing.pdf> (last visited Sept. 16, 2013); Live Smoke Free, *e-News* (Summer 2008), available at [http://www.ansrmn.org/userfiles/LSF_summer08_news\(492\).pdf](http://www.ansrmn.org/userfiles/LSF_summer08_news(492).pdf) (last visited Sept. 16, 2013).

¹⁵ U.S. Dep't of Housing & Urban Dev., *Low Income Housing Tax Credits Basics*, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/lihtc/basics (last visited Sept. 16, 2013).

¹⁶ U.S. DEP'T OF HOUSING & URBAN DEV., *LEADING OUR NATION TO HEALTHIER HOMES: THE HEALTHY HOMES STRATEGIC PLAN 7* (2009), available at http://www.hud.gov/offices/lead/library/hhi/hh_strategic_plan.pdf.

¹⁷ U.S. Surgeon General, *The Surgeon General's Call to Action to Promote Healthy Homes* (2009), available at <http://www.surgeongeneral.gov/topics/healthyhomes/actions.pdf>.

¹⁸ U.S. Dep't Of Housing And Urban Dev., *Smoke-Free Policies In Public Housing*, Notice No. PIH-2012-25 (May 29, 2012) available at <http://portal.hud.gov/huddoc/pih2012-25.pdf>; U.S. Dep't of Housing & Urban Dev., *Non-Smoking Policies in Public Housing*, Notice: PIH-2009-21 (HA) (July 17, 2009), available at <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-21.pdf>. For more information on this topic, see Susan Schoenmarklin, Tobacco Control Legal Consortium, *Secondhand*

Smoke Seepage into Multi-Unit Affordable Housing (2010), available at http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-secondhand-2010_0.pdf.

¹⁹ U.S. Dep't of Housing and Urban Dev., *Further Encouragement For O/As To Adopt Optional Smoke-Free Housing Policies*, Notice No. H 2012-22 (Oct. 26, 2012) available at <http://portal.hud.gov/huddoc/12-22hsgn.pdf>; U.S. Dep't of Housing & Urban Dev., *Optional Smoke-free Housing Policy Implementation*, Notice: H-2010-21 (Sept. 15, 2010), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=10-21hsgn.pdf>.

²⁰ OAKLAND, CA., MUNICIPAL CODE § 8.30.050 (2007), available at http://library.municode.com/HTML/16308/level2/TIT8HESA_CH8.30SM.html#TIT8HESA_CH8.30SM_8.30.050PRSMENPLNOMUUS.

²¹ OR. REV. STAT. § 479.305 (2012), available at <http://www.oregonlaws.org/ors/479.305>.

²² ME. REV. STAT. ANN. § 6030-E (2011), available at <http://www.mainelegislature.org/legis/statutes/14/title14sec6030-E.html>.

²³ Warren Ortland, *A Warning Label for Your Apartment Building: Disclosing Smoking Policies for Multi-Unit Buildings*, THE HENNEPIN LAWYER (Feb. 23, 2009).

²⁴ American Lung Association in California, Center for Tobacco Policy and Organizing, *Comparison of Non-Smoking Housing Units Ordinances* (December 2012) and *Listing of Communities with Policies Restricting Smoking in Outdoor Common Areas of Multi-Unit Housing* (December 2012) available at <http://center4tobaccopolicy.org/tobacco-policy/smokefree-multi-unit-housing/> (last visited Sept. 16, 2013).

²⁵ Smoke-Free Env'ts Law Project, Ctr. For Social Gerontology, *Housing Authorities/Commissions Which Have Adopted Smoke-Free Polices* (2011), available at <http://www.tcsg.org/sfelp/SFHousingAuthorities.pdf>.