

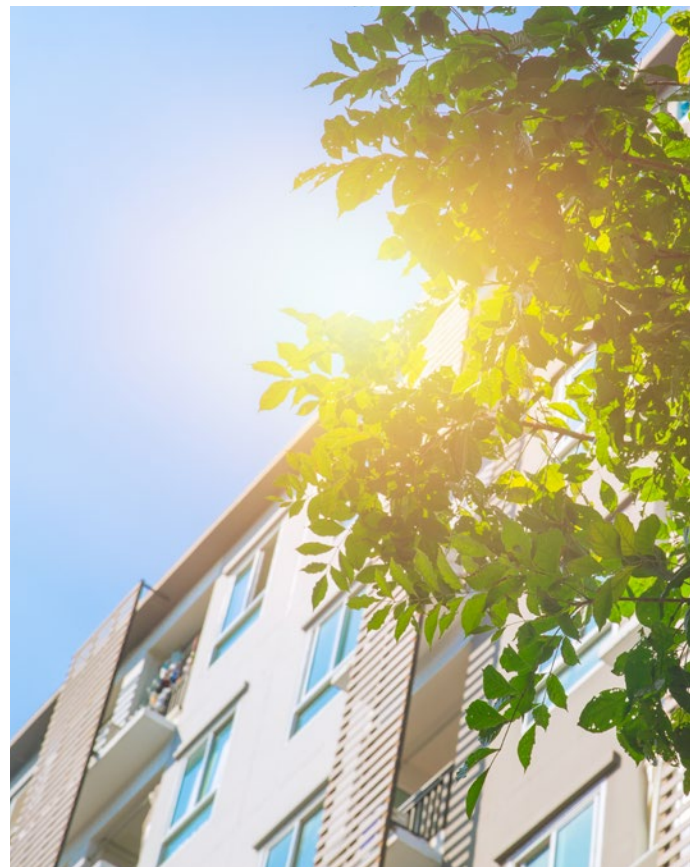


# REGULATING SMOKING IN MULTI-UNIT HOUSING



**Exposure to secondhand smoke is not just a discomfort and an annoyance, but a serious health hazard.<sup>1</sup>**

For tenants and owners of multi-unit housing, such as apartments and common interest communities, commercial tobacco smoke from a neighboring unit that infiltrates their homes can pose a daily problem.<sup>2</sup> 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.<sup>3</sup>



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The Public Health Law Center 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.<sup>4</sup> For more details about these policy considerations, please contact the Center.

## Policy Benefits

A smoke-free policy for a multi-unit housing complex, such as an apartment building or common interest community, can benefit all parties concerned — residents, as well as landlords and property owners.

- **Protection from Secondhand Smoke:** Secondhand smoke travels through lighting fixtures, cracks in walls, around plumbing, under doors, and in shared heating/ventilation. Drifting smoke outdoors can travel into nearby windows, doors, and ventilation systems. Tobacco smoke exposes users and bystanders to serious health risks, such as lung cancer, cardiovascular disease, asthma attacks, respiratory infections, sudden infant death syndrome, and other conditions.<sup>5</sup> Air quality experts have concluded that “the only means of avoiding health effects and eliminating indoor [environmental tobacco smoke] exposure is to ban all smoking activity inside and near buildings.”<sup>6</sup> The most important benefit of a smoke-free housing policy is that it enables residents, employees, and other visitors to breathe air free of hazardous secondhand smoke.
- **Market Advantage:** Surveys show that a growing number of residents and owners are seeking smoke-free housing and are willing to pay more to ensure their home environments are smoke-free.<sup>7</sup> Apartments, and units in common interest communities that smell of 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 residents who smoke. Depending on the length of residency and amount of smoking in a unit, turnover costs can be hundreds of dollars higher for units in which smoking has occurred. All of the following can add to these costs: cleaning or repainting walls; cleaning or replacing carpets, drapes, appliances and fixtures exposed to smoke; or replacing floors and countertops burned by cigarettes.<sup>8</sup>
- **Reduced Fire Risk:** The use of cigarettes and other combustible tobacco products is a leading cause of residential building fires and a cause of almost a quarter (23 percent) of annual home fire deaths.<sup>9</sup> A smoke-free policy reduces the risk of fire and provides increased safeguards to tenants and their property.
- **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 benefits 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:** The rise of smoke-free housing policies has spurred an increased awareness of the legal liability of landlords, management companies, condominium associations, co-op owners and residents who smoke to prevent secondhand smoke exposure.<sup>10</sup> Lawsuits related to secondhand smoke exposure in housing include claims based on legal theories such as nuisance, warranty of habitability, and quiet enjoyment.<sup>11</sup> In addition, residents with pre-existing physical conditions aggravated by secondhand smoke may file complaints under disability laws, such as the Fair Housing Act.<sup>12</sup>

## Policy Elements

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

- An introduction that explains the policy's purpose.
- Clear, consistent definitions of important terms, such as "smoking," "smoke," "premises," and "common area," to help ensure that the policy is interpreted, implemented, and enforced in ways that effectively protect the entire community within a building or complex.
  - A comprehensive definition of smoking would include the use of electronic cigarettes and lighted or heated tobacco, nicotine, or other plant products, including hookah and marijuana.
- Description of who must comply, such as tenants, guests, employees, and business visitors.
- Disclaimers that the landlord, management company, or homeowners association is not acting as a guarantor of the policy. This provision helps protect landlords, management companies, or homeowners associations of smoke-free buildings from claims brought by tenants injured as a result of unknown policy violations.
- A provision allowing one tenant to bring a claim directly against another tenant based on secondhand smoke intrusion. The non-smoking tenant could get a court order requiring the tenant who smokes to take action to stop the smoke infiltration.
- Graduated enforcement provisions that provide warnings, cessation information and opportunities for residents to remedy violations before more punitive measures are taken, such as fines or eviction.<sup>13</sup>

- Clear guidelines related to enforcement, including the following:
  - Where the policy will be enforced (e.g., in common areas, units, balconies, patios, outdoor areas, and/or setbacks from entrances)
  - How it will be enforced (e.g., through verbal warnings, warning letters, fines, and/or eviction)
  - The responsibilities of property managers, including requirements to post warning signs and consistently enforce the policy
  - The responsibilities of tenants, including an obligation to notify guests and visitors of the policy and to report violations)
  - A requirement that smoke-free leases and agreements be signed by both parties (e.g., the tenant and the landlord)

## Other Policy Considerations

Some jurisdictions encourage or require landlords, management companies, or homeowners associations to adopt smoke-free policies in multi-unit dwellings. Before adopting a smoke-free policy, landlords, management companies, or homeowners associations should review the local laws to ensure that the property's smoke-free policy will complement any existing requirements.

**Smoke-free Affordable Housing.** The trend toward smoke-free affordable housing is accelerating. In recent years, multiple federal agencies and the Surgeon General have encouraged the development of smoke-free affordable housing.<sup>14</sup> Significantly, the U.S. Department of Housing and Urban Development (HUD) now prohibits smoking in all public housing, meaning that individuals may no longer smoke in individual units, common areas, or within 25 feet of residential and administrative public housing buildings.<sup>15</sup> Some public housing authorities are also requiring mixed-finance properties and project-based housing voucher properties to be smoke-free, and some are making their smoke-free policies stricter than HUD requires (by, for example, prohibiting e-cigarette use).<sup>16</sup> Landlords that accept individual Housing Choice Vouchers may adopt smoke-free policies of their own.<sup>17</sup> For more information about this rule, visit the [HUD website](#) or read HUD's *Smoke-free Public Housing Rule: An Overview*.

**Low Income Housing Tax Credit.** The [Low Income Housing Tax Credit](#) program provides federal tax credits to states and local government units to stimulate the development of affordable housing.<sup>18</sup> Local governments can develop criteria for the type of housing they want in their communities. States such as California,<sup>19</sup> Maine,<sup>20</sup> Minnesota,<sup>21</sup> and New Hampshire,<sup>22</sup> as well as cities such as Minneapolis and St. Paul, Minnesota,<sup>23</sup> have included the adoption of smoke-



free policies for proposed building projects as mandatory prerequisites or as optional criteria for consideration in the awarding of tax credits.

**Requiring Smoke-free Multi-Unit Housing.** Some jurisdictions prohibit smoking in multi-unit housing. In Belmont, California, for example, smoking is not allowed in common areas, individual units of multi-unit housing, or outdoors within 20 feet of windows or doors.<sup>24</sup> As of March 2021, the only such policies are city or county policies in California. A list of jurisdictions with these policies in place is available from the [American Nonsmokers' Rights Foundation](#).<sup>25</sup>

**Disclosing Smoking Policies for Multi-Unit Buildings.** A growing number of communities are requiring that multi-unit rental apartment buildings and common interest communities disclose their smoking policies to prospective tenants and buyers. For example, Oakland, California,<sup>26</sup> and the State of Oregon<sup>27</sup> 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. The Oakland ordinance also requires that sellers of condominiums disclose the smoking policy for the unit and the complex.<sup>28</sup> 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.

Disclosure policies are not as effective in protecting public health as policies that prohibit smoking, but they can serve a role in alerting policymakers to the dangers of secondhand smoke in residential settings and provide prospective tenants or buyers with helpful information.

## Examples of Select Policies

Below are examples of smoke-free policies in select multi-unit housing locations. 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 Public Health Law Center does not endorse or recommend any of the following policies. These examples are included simply to illustrate how different multi-unit housing developments have approached the smoke-free issue.

Name	Location	Sample Policy
California Apartment Association	California	<a href="#">Sample Smoke-free Lease Addendum</a>
Breathe Easy Maine	Maine	<a href="#">Model Smoke-free Policies and Other Documents</a>
Smoke-Free Apartments	Maryland	<a href="#">Rental Model Smoke-free Lease Addendum for Multi-Unit Dwellings</a> <a href="#">Common Interest Community Model Smoke-free Lease Addendum for Multi-Unit Dwellings</a>
Live Smoke Free	Minnesota	<a href="#">Model Smoke-free Policies and Other Documents</a>
Utah Department of Health	Utah	<a href="#">Model Smoke Free Policies and Related Documents</a>

## Other Helpful Resources

The [Public Health Law Center](#) has a [web page](#) containing several publications and resources on smoke-free policies in apartments, [condominiums](#), [affordable housing](#), and other multi-unit dwellings, and best practices for smoke-free policies. In addition, the site includes a Minnesota-specific [Model Smoke-Free Lease Addendum \(2020\)](#); [Model Smoke-Free Condo Policy \(2020\)](#); and information on [Smoke-Free Tribal Housing Policies \(2020\)](#); [Smoke-free Multi-Unit Housing: Equitable Enforcement Strategies \(2020\)](#); and [Marijuana in Multi-Unit Residential Settings \(2019\)](#). 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 Public Health Law Center at [publichealthlaw@mitchellhamline.edu](mailto:publichealthlaw@mitchellhamline.edu) with any questions about the information included in this guide or to discuss local concerns you may have about implementing such a policy.

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This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, Saint Paul, Minnesota. The Center provides information and technical assistance on law and policy issues related to public health. The Center does not provide legal advice or enter into attorney-client relationships, and this document should not be considered legal advice. This publication was made possible by funding from Clean Air for All: The Smoke-Free Public Housing Project and the Robert Wood Johnson Foundation. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of Clean Air for All or the Foundation.

## Endnotes

- 1 U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), <https://www.hhs.gov/sites/default/files/consequences-smoking-exec-summary.pdf>.
- 2 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit resulting in disease and death. For more information visit: <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 3 This publication contains general guidelines on smoke-free housing that could apply to all multi-unit housing types, including common interest communities and rental properties, including condominium associations, as well as tenants and property managers.
- 4 The information contained in this document is not intended to constitute or replace legal advice.
- 5 U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 1, at 2-4.
- 6 AM. SOC'Y OF HEATING, REFRIGERATING & AIR-CONDITIONING ENG'RS, ASHRAE POSITION DOCUMENT ON ENVIRONMENTAL TOBACCO SMOKE 5 (2020), [https://www.ashrae.org/File%20Library/About/Position%20Documents/pd\\_environmental-tobacco-smoke-2020-07-1.pdf](https://www.ashrae.org/File%20Library/About/Position%20Documents/pd_environmental-tobacco-smoke-2020-07-1.pdf).
- 7 SMOKEFREE HOUSING PROJECT, A LANDLORD'S GUIDE TO NO-SMOKING POLICIES 5, [https://www.co.lincoln.or.us/sites/default/files/fileattachments/health\\_amp\\_human\\_services/page/4327/landlordguide.pdf](https://www.co.lincoln.or.us/sites/default/files/fileattachments/health_amp_human_services/page/4327/landlordguide.pdf).
- 8 Rachel E. Wilbur et al., *12 Smoke-Free Multiunit Housing Policy: Caretakers' Perspectives on Economic and Personal Impacts*, INT'L J. ENV'T RSCH. PUB. HEALTH 8092, 8093 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4515710/pdf/ijerph-12-08092.pdf> (“Few studies ... have attempted to document the actual cost savings achieved at properties with a smoke-free MUH policy. Ong et al. found that properties with a comprehensive smoke-free policy experienced fewer smoking-related costs than properties with a partial or non-existent smoke-free policy, with properties experiencing average smoking-related costs of \$282 per unit. Further, in a study of affordable housing properties in North Carolina, property managers reported that turnover costs are on average \$348 higher in units where tenants have smoked.”).
- 9 MARTY AHRENS, NAT'L FIRE PROT. ASS'N, HOME FIRES STARTED BY SMOKING 1 (2019), <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/US-Fire-Problem/Fire-causes/ossmoking.ashx>.

- 10 Susan Schoenmarklin, Tobacco Control Legal Consortium, *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings: 2009* (2009), <https://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2009.pdf>.
- 11 *Id.* at 4-10.
- 12 Fair Housing Act, 42 U.S.C. §§ 3601-3631. 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 project-based housing vouchers and other HUD-assisted housing.
- 13 Public Health Law Center, *Smoke-free Multi-unit Housing: Equitable Enforcement Strategies* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/SF-MUH-Equitable-Enforcement-Strategies.pdf>.
- 14 FED. HEALTHY HOMES WORK GRP., *ADVANCING HEALTHY HOUSING: A STRATEGY FOR ACTION* (2013), [https://www.hud.gov/sites/documents/STRATPLAN\\_FINAL\\_11\\_13.PDF](https://www.hud.gov/sites/documents/STRATPLAN_FINAL_11_13.PDF); U.S. DEP'T OF HOUSING & URBAN DEV., *LEADING OUR NATION TO HEALTHIER HOMES: THE HEALTHY HOMES STRATEGIC PLAN* (2009), [https://www.hud.gov/sites/dfiles/HH/documents/hh\\_strategic\\_plan\\_web\\_posting.pdf](https://www.hud.gov/sites/dfiles/HH/documents/hh_strategic_plan_web_posting.pdf); Unnumbered Letter from Tammye Treviño, Administrator, Housing and Community Facilities Program, to State Directors Rural Development, November 21, 2012, [http://www.carh.org/wp-content/uploads/2015/08/MC\\_RD-SmokeFreePolicy.pdf](http://www.carh.org/wp-content/uploads/2015/08/MC_RD-SmokeFreePolicy.pdf).
- 15 U.S. DEP'T OF HOUSING & URBAN DEV., *SMOKE-FREE POLICY RECOMMENDED CHECKLIST*, [https://www.hud.gov/sites/documents/2\\_SMOKEF\\_POLICYCHECKLIST.PDF](https://www.hud.gov/sites/documents/2_SMOKEF_POLICYCHECKLIST.PDF).
- 16 *Id.*; *Smokefree Public Housing — One Year Later*, AM. NONSMOKERS' RIGHTS FOUND. (July 11, 2019), <https://no-smoke.org/smokefree-public-housing-one-year-later>.
- 17 See *Smokefree Public Housing — One Year Later*, *supra* note 16.
- 18 *Low-income Housing Tax Credits*, U.S. DEP'T OF HOUSING & URBAN DEV., <https://www.huduser.gov/PORTAL/datasets/lihtc.html> (last updated June 5, 2020).
- 19 CAL. CODE REGS. tit. 4, § 10325(c)(8)(C) (2019).
- 20 99-346 Me. St. Hous. Auth. § 5(L) (2020).
- 21 LIVE SMOKE FREE, *LOW-INCOME HOUSING TAX CREDITS IN MINNESOTA 1* (2020), <https://mnsmokefreehousing.org/wp-content/uploads/Low-Income-Housing-Tax-Credits-in-MN.pdf>.
- 22 N.H. Hous. Fin. Auth. 109.06(I) (2020).
- 23 LIVE SMOKE FREE, *LOW-INCOME HOUSING TAX CREDITS IN MINNESOTA 1* (2020), <https://mnsmokefreehousing.org/wp-content/uploads/Low-Income-Housing-Tax-Credits-in-MN.pdf>.
- 24 BELMONT, CAL., MUNICIPAL CODE § 20.5-3(a)(3)-(4) (2021).
- 25 AM. NONSMOKERS' RIGHTS FOUND., *U.S. LAWS FOR 100% SMOKEFREE MULTI-UNIT HOUSING* (2021), <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.
- 26 OAKLAND, CAL., MUNICIPAL CODE § 8.30.050 (2021)..
- 27 OR. REV. STAT. § 90.220(4) (2021).
- 28 OAKLAND, CAL., MUNICIPAL CODE § 8.30.050 (2021).