



Disclosure of Smoking Policies in Multi-Unit Housing

Background

As evidence of the dangers of third-hand smoke continues to build, combined with existing scientific research on the hazards of secondhand smoke, landlords are facing increasing expectations that they should inform prospective renters whether smoking is allowed on their property. Just as property owners are required to warn prospective renters or purchasers of buildings that contain lead-based paint or radon, some jurisdictions now require owners to notify renters or purchasers about a building's smoking policy. This fact sheet explains the concept of a smoking policy disclosure ordinance or statute, and reviews benefits and concerns that authorities might want to keep in mind when considering such measures.

Legal Basis for Smoking Policy Disclosure

Currently, most jurisdictions do not require that landlords disclose their smoking policies. However, some courts have found that if a dangerous condition exists on a property that a prospective resident may not be aware of or notice upon a casual inspection, then the property owner has a responsibility to warn the resident of the danger.¹ Federal laws require a disclosure notifying renters or purchasers of the potential presence of lead-based paint in pre-1978 properties.² Some states require disclosures if a property was previously used as a methamphetamine laboratory³ or if radon testing was conducted on the premises.⁴ Possible exposure to secondhand smoke could qualify as a dangerous condition that should be disclosed.



Disclosure Approaches

Several municipalities and two states have adopted disclosure laws requiring property owners to inform prospective residents of the smoking policy on the property. Oakland, California's disclosure provisions apply to both multi-unit rental properties and to multi-unit owner-occupied dwellings.⁵ Maine's law only applies to multi-unit rental properties, but also requires identification of any designated smoking areas.⁶ The coverage and strength of the law or ordinance will depend on the profile of multi-unit properties in a jurisdiction and the political support from housing industry advocacy organizations.

Enforcement and Evaluation

All smoking policy disclosure laws and ordinances have been enacted relatively recently and little evaluation has been done on their effect. No problems to date have been reported with enforcement and none of the laws have been challenged legally.

Benefits

Because the disclosure ordinances are so new, the benefits listed below are based on anecdotal evidence from several communities with disclosure ordinances.

- *Property owner education.* In some cities and counties that have adopted disclosure ordinances, calls to tobacco control organizations from landlords asking about adopting smoke-free policies have increased. Many owners state that they had been unaware that they could implement such a policy prior to the law's enactment.
- *Resident awareness / protection.* Providing information to prospective residents or purchasers prior to entering into a lease or purchase agreement may keep individuals from entering into an agreement that would make it difficult to avoid exposure to secondhand smoke. Residents may also become aware that smoke-free policies are an amenity that they can seek in their residential housing choice.
- *Adoption of smoke-free policies.* As prospective renters or purchasers decide not to rent or buy a property after learning that smoking is permitted, property owners may become more aware of the significant preference for smoke-free living. This could motivate more property owners to adopt smoke-free policies.

Concerns

Opinions on the strategy of adopting smoke-free policies are not uniform; some advocates speculate that this approach may have the following drawbacks:

- *May not result in adoption of any smoke-free policies.* The disclosure laws and ordinances do not require that residential units be smoke-free; all they require is that smoking policy information be disseminated to residents and potential residents. Passage of the ordinance may not result in more properties going smoke-free.
- *May result in stalling adoption of some policies.* A property manager who may have been considering a smoke-free policy, but had reservations about implementation and enforcement, may feel that disclosure is a sufficient step. Therefore, instead of promoting smoke-free policies, disclosure may replace the adoption of 100% smoke-free policies for some multi-unit properties. However, requiring disclosure does ensure that prospective residents in a jurisdiction are aware of the potential for exposure.
- *May make it more difficult for residents exposed to secondhand smoke to get relief through legal channels.* If a resident signs a lease with the disclosure language and is subsequently exposed to excessive amounts of secondhand smoke intrusion, the resident may find it more difficult to get relief on the grounds of a nuisance claim. The courts may

decide that the resident assumed the risk of exposure by signing the lease with the language acknowledging that the property was smoking permitted. The number of lawsuits brought by residents is extremely low, so this concern will likely have little impact.

Policy Examples (Excerpts)

Locality / Statute Reference	Text	Link
States		
Maine ME. REV. STAT. ANN. § 6030-E (2011)	A landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement for residential premises that are used by a tenant or will be used by a potential tenant as a primary residence shall provide to the tenant or potential tenant a smoking policy disclosure that notifies tenants or potential tenants of the landlord's policy regarding smoking on the premises.	http://bit.ly/13g72Fj
Oregon OR. REV. STAT. § 479.305 (2012)	Except as provided in subsection (2) of this section, the rental agreement for a dwelling unit regulated under ORS chapter 90 must include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.	http://bit.ly/16LXK2L
Select County	Rockland County Multiple Dwelling Smoking Policy Act	http://www.ecode360.com/15553166
Rockland County, New York Rockland Cty., chap. 349, art. IV (2012)	Landlords of multiple dwelling apartment units must develop a smoking policy and advise in writing, all current and prospective tenants of the smoking policy. If the multiple dwelling complex has 5 or more apartment units, landlords must submit the smoking policy to the Rockland County Health Department.	

Policy Examples (Excerpts)

Locality / Statute Reference	Text	Link
Select Cities	<p>The rental agreement or lease for a dwelling unit regulated under this chapter must include a disclosure of the smoking policy for the premises on which the dwelling is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.</p>	<p>http://bit.ly/ZXrmDR</p>
<p>Buffalo, New York</p> <p>Buffalo, New York, City Code § 264-11 (2010)</p>		
<p>Duluth, Minnesota</p> <p>Duluth Legislative Code Chapter 29A-40</p>	<p>The licensee, prior to the commencement of the term of any rental agreement beginning on or after July 14, 2010, must include a smoking policy disclosure as part of the rental agreement.</p>	<p>http://www.duluthmn.gov/media/112857/CrimeFreeMultiHousing-Ordinance.pdf</p>
<p>Oakland, California</p> <p>Oakland City Code § 8.30.050</p>	<p>Disclosure of Smoking Policy in New and Existing Multi-Housing:</p> <p>All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented, which units are designated smoking units, and the smoking policy for the complex.</p> <p>All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex.</p>	<p>http://bit.ly/1w4aIIF</p>

Locality / Statute Reference	Text	Link
<p>San Francisco, California</p> <p>Health Code Section 19M.2</p>	<p>An owner or manager ("landlord") of a Multi-Unit Housing Complex with less than one hundred percent (100%) smoke free residential rental units shall:</p> <ul style="list-style-type: none"> a) Designate each residential unit as either smoke free or smoking optional, using the process and timeline provided in Section 19M.3 "Procedure for Designation of Residential Units as Smoke Free or Smoking Optional." b) Include in residential vacancy listings the unit designation as smoke free or smoking optional. c) Provide a residential rental applicant with a list showing the designation of units in the building that are smoking optional, before offering a unit to that applicant. d) Disclose in writing to any residential rental applicant whether the landlord has designated the unit for rent as a smoke-free unit or as a smoking optional unit, before entering into the new lease or rental agreement. e) Develop and maintain a master list for tenants that identifies the location of each smoking optional unit. Notify tenants that this master list is available upon request in the leasing office or from building management. 	<p>http://bit.ly/1w4bBAV</p>

Other Resources

Articles

Warren Ortland, *A Warning Label for Your Building: Disclosing Smoking Policies for Multi-Unit Buildings*; available at

<http://hennepin.timberlakepublishing.com/article.asp?article=1302&paper=1&cat=147>

Erie-Niagara Tobacco-Free Coalition, *Smoking Disclosure Release*, available at

<http://www.tobaccofreewny.com/smoking-disclosure-release>

Sample Disclosure Forms

Duluth, Minnesota sample disclosure form: <http://bit.ly/YIMBbn>

Maine sample disclosure form: <http://bit.ly/14QrwEg>

Oregon sample disclosure form: <http://bit.ly/1tUs3MV>

Contact Us

Please feel free to contact the Tobacco Control Legal Consortium at (651) 290-7506 or publichealthlaw@wmitchell.edu with any questions about the information included in this fact sheet or to discuss local concerns you may have about implementing these policy options.

The Tobacco Control Legal Consortium provides information and technical assistance on issues related to tobacco and public health. The Consortium does not provide legal representation or advice. This document should not be considered legal advice or a substitute for obtaining legal advice from an attorney who can represent you. We recommend that you consult with local legal counsel before attempting to implement any of these measures.

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Notes

¹ See *Johnson v. O'Brien*, 108 N.W.2d 244, 247 (1960) (“... where a landlord has information which would lead a reasonably prudent owner exercising due care to suspect that danger exists on the leased premises at the time the tenant takes possession, and that the tenant exercising due care would not discover for himself, then he must at least disclose such information to the tenant.”).

² 42 U.S.C.A. § 4852d (1992).

³ MINN. STAT. § 152.075, subdiv. 2 (m) (2012).

⁴ 420 ILL. COMP. STAT. 46/1 (2012).

⁵ OAKLAND, CAL., CODE § 8.30.050 (2007), available at https://www.municode.com/library/ca/oakland/codes/code_of_ordinances?nodeId=TIT8HESA_C H8.30SM_8.30.050PRSMENPLNOMUUS

⁶ Act to Improve Awareness of Smoking Policies in Maine Rental Housing, Pub. L. ch. 199, ME. REV. STAT. ANN. Tit. 1.14, § 6030-E (2011), available at http://www.mainelegislature.org/legis/bills/bills_125th/chapters/PUBLIC199.asp.