



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, around plumbing, under doors, and in shared heating/ventilation. 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, as well as 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 eliminating health risks associated with

indoor exposure is to ban all 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 and 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, warrant 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.
- 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.
- Description of who must comply, such as residents, guests and business visitors.

- Disclaimers 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 the smoking resident to take action to stop the smoke infiltration.
- Information on enforcement:
 - Where the policy will be enforced (common areas, units, outdoor areas, setbacks from entrances)
 - How it 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 government units 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, Minnesota and New Hampshire, 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. 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](#).¹⁴

Smoke-free Affordable Housing. The trend toward smoke-free affordable housing is accelerating. In June of 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.”¹⁵ 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.¹⁶

On July 17, 2009, HUD issued a notice strongly encouraging public housing authorities to adopt smoke-free policies in their multi-unit housing units, including common areas.¹⁷ The notice described health problems associated with secondhand smoke and pointed 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, as long as they grandfather current residents who are smokers.¹⁸

In September of 2010, HUD issued another notice “encouraging” owners of project-based Section 8 and other federally subsidized housing to adopt smoke-free policies. Similar to the earlier notice directed at public housing, this notice emphasized the health risks of exposure to secondhand smoke and the fire risks posed by allowing smoking in multi-unit properties.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 State of Oregon²¹ 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.²²

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 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 Tobacco Control Legal Consortium 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
Smoke-Free Apartment Registry	California	Sample Smoke-free Lease Addendum http://www.smokefreeapartments.org/Registry_Pix/Smokefree%20Lease%20Addendum.pdf
Smoke-Free Apartments	Michigan	Model Smoke-free Lease Addendum for Multi-Unit Dwellings http://www.mismokefreeapartment.org/mo-dellease.pdf
Live Smoke Free	Minnesota	Model Smoke-free Lease Addendum for Apartment Building http://mnsmokefreehousing.org/documents/Smoke_free_addendum.pdf

Smoke-free Housing Project	Oregon	Sample Smoking Disclosure Law for Multi-Unit Dwellings http://www.smokefreehousinginfo.com/pages/Landlord%20disclosure%20law.html
Pacifica Gardens	Utah	No Smoking Policy – Multi-Unit Dwelling http://www.tobaccofreeutah.org/nosmokingpolicy-example.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](#), [multi-unit 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 at <http://www.tcsg.org/sfelp/home.htm>, 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.

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 housing authorities, including condominium associations, as well as tenant and residents.

⁴ *See* 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, FACT SHEET (2010), *available at* <http://www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html>.

⁵ AM. SOCIETY OF HEATING, REFRIGERATING AND AIR-CONDITIONING ENGINEERS, INC., ENVIRONMENTAL TOBACCO SMOKE: POSITION DOCUMENT 6 (2005), available at http://oehha.ca.gov/air/environmental_tobacco/pdf/app3partb2005.pdf.

⁶ See SMOKE-FREEHOUSINGINFO.COM, <http://www.smokefreehousinginfo.com/pages/Resident%20Survey.html> (last visited February 25, 2011); see also National Apartment Association, *No-Smoking Policies in Apartments*, National Apartment Association (2008), available at <http://www.tcsg.org/sfelp/NAA-SFMemo.pdf>.

⁷ NATIONAL APT. ASS'N, UNITS, CLEARING THE AIR: INDUSTRY DISCUSSES TREND TOWARD SMOKE-FREE HOUSING (2007), available at

<http://www.smokefreehome.org/documents/UNITSR reprint.pdf>

⁸ JOHN R. HALL, JR. NAT'L FIRE PROT. ASS'N, THE SMOKING-MATERIAL FIRE PROBLEM 1 (2007), available at <http://www.nfpa.org/assets/files/PDF/OS.SmokingMaterials.pdf>.

⁹ See, e.g., SMOKEFREEWASHINGTON.COM, *Protect Your Investment*, <http://www.smokefreewashington.com/> (last visited 2/27/2011).

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://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-condos-2009_0.pdf.

¹¹ *Id.* 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>.

¹⁴ U.S. Dep't of Housing & Urban Dev., *Low Income Housing Tax Credits Basics*, available at <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/>

¹⁵ 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.

¹⁶ 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>.

¹⁷ 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.

¹⁸ 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>.

¹⁹ U.S. Dep't of Housing & Urban Dev., *Optional Smoke-free Housing Policy Implementation*, Notice: H-2010-21 (Sept. 15, 2010), available at <http://www.tcsg.org/sfelp/HUD-SFHsgImplemt091510.pdf>.

²⁰ OAKLAND, CA., MUNICIPAL CODE § 830.050 (2008).

²¹ OR. REV. STAT. § 90.220 (2009).

²² OAKLAND, CA., MUNICIPAL CODE § 830.050 (2008).

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

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