

# FIREBAUGH'S SMOKE-FREE MULTI-UNIT HOUSING LAW

## A Case Study

 This case study examines the successful adoption of the city of Firebaugh's 2019 smoke-free multi-unit housing ordinance.

Due to Firebaugh's strategic planning and community collaboration, the city has led the way in Fresno County and the rest of the Central Valley with a smooth transition to smoke-free multi-unit housing.

### Impact of Secondhand Smoke

Secondhand tobacco smoke contains over 7,000 chemicals, including formaldehyde, arsenic, and hydrogen cyanide.<sup>1</sup> Exposure to secondhand smoke can result in severe asthma attacks, respiratory infections, sinus infections, and other heart and lung diseases.<sup>2</sup> Because of its negative health impact, the California Air Resources Board considers secondhand smoke a toxic air contaminant<sup>3</sup> and the California Environmental Protection Agency includes secondhand smoke



on its list of chemicals known to cause cancer, birth defects, and other reproductive harm.<sup>4</sup>

The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.<sup>5</sup> Unfortunately, studies have shown that approximately one in four nonsmokers, and

two in five children, are exposed to secondhand smoke — primarily in their own homes.<sup>6</sup> Tobacco smoke can travel through living spaces in common areas through plumbing, electrical lines, cracks in walls, and heating/ventilation systems. What's more, secondhand smoke residues create thirdhand smoke — harmful particles and gases from tobacco smoke that are absorbed by and cling to indoor surfaces. In some cases, thirdhand smoke can remain on surfaces for up to a year and a half after the last exposure.<sup>7</sup> Thirdhand smoke contains hazardous cancer-causing

“The City of Firebaugh has been, and continues to be, a leader in Fresno County to protect its residents from secondhand smoke exposure.”

Martha Zarate, Program Coordinator with the Fresno Economic Opportunities Commission<sup>8</sup>



materials that are slowly released in the air and can be absorbed through direct contact with the skin, leading to coughing, asthma, and respiratory tract infections.<sup>9</sup>

## Overview of Firebaugh<sup>10,11</sup>

Firebaugh is located in Fresno County in the San Joaquin Central Valley.

The city's economy depends largely on farming — mainly the growing and processing of pistachios and almonds and the packaging of industrial tomato products.



±8,000 residents



91% Latino/Hispanic



agricultural economy



8 multi-unit housing complexes

Under California state law, property owners have the authority to make their properties smoke-free.<sup>12</sup> Many cities and counties in the state have passed smoke-free multi-unit housing policies to ensure that their communities have the right to breathe smoke-free air.<sup>13</sup> Because California law does not prohibit local smoke-free laws and there is no constitutional “right to smoke,”<sup>14</sup> local governments can take additional steps to protect people who live in multi-unit housing from secondhand smoke. In 2019, the city of Firebaugh took such a step.

In 2019, Firebaugh city officials discussed the negative health impact of secondhand smoke on city residents and multi-unit housing tenants.<sup>15</sup> As Fresno County's Interim Health Officer Dr. Rais Vohra explained, "It is impossible to contain smoke from even a single tenant, to assure that it does not drift into hallways and neighboring apartments through vents, outlets, or even cracks in the walls. It is important to remember that even 'minor' exposure is enough to be a serious health risk for tenants with respiratory ailments, for children, the elderly, and for pets"<sup>16</sup> The only way to protect multi-unit housing tenants, guests, and staff from the health effects of secondhand smoke exposure was to prohibit all smoking activity indoors and in common areas.<sup>17</sup>

In response to this public health concern, the Firebaugh city council adopted an ordinance requiring all multi-unit housing buildings in the city to be smoke-free as of July 1, 2019.<sup>18</sup> According to Firebaugh Mayor Dr. Marcia Sablan, "The Firebaugh city council took this step to protect the health and well-being of Firebaugh residents. This ordinance adds to the city's previous ordinances requiring tobacco sales licenses and not allowing smoking in parks."<sup>19</sup>

## Ordinance Key Points

- Prohibits smoking of tobacco products and the use of electronic smoking devices by tenants, guests, or staff in any apartments, common areas and anywhere less than 25 feet from nonsmoking areas in the residence.
- "Multi-unit residences" include property containing two or more units (such as apartments, co-ops, condominiums, senior and assisted living facilities, and long-term healthcare facilities).
- "Common areas" include private decks, balconies, and porches.
- "Smoking" is defined as inhaling, exhaling, burning, or carrying any lighted, heated or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.<sup>20</sup>
- The prohibition of smoking includes the smoking of cannabis.<sup>21</sup>

## Implementing the Ordinance

To make the law easier to follow, the city of Firebaugh ensured that the rationale for the smoke-free measure was communicated clearly to all concerned and that resources were available to answer any questions. The city worked with landlords and property owners to gain their acceptance of the ordinance and to let them know how the city would support them in the implementation process.



**“Kids are more at home [and] if you have someone that smokes in the complex they will be exposed.”**

**Ben Gallegos, Firebaugh City Manager**

## Notice

The city gave landlords, property owners, and managers clear notice that as of July 1, 2019, smoking would not be allowed in all multi-unit housing units and common areas. Existing tenants were also given written notice of the policy.

## Educational Resources

In collaboration with the health department, the city of Firebaugh provided educational resources to help landlords and property owners explain the smoke-free policy to tenants. These materials included notification letters to tenants, as well as brochures for tenants and the community at large that contained information about the health risks of secondhand smoke and an overview of the new ordinance. Contact information for smoking cessation services was provided, along with online information for additional resources. Tenants were also given information on how to file a complaint if smoking occurred in their building. Materials are available on the city website and in the city office for distribution to tenants.<sup>22</sup>

## Lease Addendum and Agreement

The city also provided landlords and property owners with examples of model language to include in lease agreements and addendums for current and prospective tenants. This language explains that units are designated as nonsmoking and that any type of smoking violates the city ordinance.

## Signage

The ordinance requires property owners to post clear signs throughout the multi-unit housing complex and common areas stating smoking is prohibited. The city provided property owners with sign templates to include on the premises to notify tenants, staff, and guests of the non-smoking policy.

## Community-Led Compliance

The city provides information on how complaints about secondhand smoke in multi-unit housing can be handled. If communication with the smoker fails, a formal complaint to the city can be made.

The ordinance allows tenants to file a formal complaint about smoking violations by filling out the “Prohibiting Smoking in Multi-Unit Residence Complaint Form” or by contacting the city office. Once a formal complaint is made, staff will review the complaint and decide on further action.

## Fines & Penalties

Any violation of the ordinance is considered a public nuisance and is enforced by the City of Firebaugh’s Code Enforcement and Police Department. Violators are subject to civil action by the district attorney or the city attorney and fines are cumulative:

### Fines for first, second, and third violations

- A fine of not less than \$100.00 and not exceeding \$250.00 for a **first** violation in any sixty-month period.
- A fine of not less than \$250.00 and not exceeding \$500.00 for a **second** violation in any sixty-month period.
- A fine of not less than \$500.00 and not exceeding \$1,000.00 for a **third** or later violation in any sixty-month period.

The ordinance's success depends on the compliance of landlords, tenants, and others in the community and their willingness to report violations and submit formal reports if necessary.

## Firebaugh's Success

Since Firebaugh's implementation of the smoke-free ordinance, all eight of the city's multi-unit complexes have gone smoke-free, with no resistance from tenants, property owners, or the community. To date, no formal complaints regarding smoking in units have been submitted and no citations have been issued. City Manager Ben Gallagos attributes the absence of complaints to community collaboration and public support for the ordinance.

Other cities and counties in Northern and Southern California have reached out to Firebaugh based on the city's successful implementation of its smoke-free multi-unit housing ordinance. As of 2021, Firebaugh remains the only city in Fresno County with a score of 'A' in smoke-free housing and the highest grade in overall tobacco control of 'B' in the American Lung Association's State of Tobacco Control Report — California Local Grades.<sup>23</sup>

## Next Steps

Today, Firebaugh leads Fresno County and the rest of the Central Valley in advancing strong tobacco control policies. The small city of Firebaugh has set an impressive example by prioritizing public health and by proving that with careful planning and the support of the housing community and residents, cities and counties can adopt and successfully implement smoke-free housing policies.

## Implications of COVID-19

One note: Given stay-at-home orders in response to COVID-19, many people are spending more time at home than before the pandemic. Tenants living in multi-unit housing without a smoke-free policy face an increased risk of exposure to secondhand smoke in their own homes. The high stress and anxiety due to the pandemic has resulted in a rise in behaviors such as smoking, only adding to the risk of secondhand smoke.<sup>24</sup> At a time when smoking and exposure to secondhand smoke can compromise lungs and make individuals more prone to lung illnesses such as COVID-19, smoke-free multi-unit housing could not be more important.

This publication was prepared by the American Lung Association in California and the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This publication was made possible by funds received from Grant Number 19-10229 with the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California.

## Endnotes

- 1 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) [hereinafter 2006 Surgeon General Report], [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2006/pdfs/6major-conclusions.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/2006/pdfs/6major-conclusions.pdf).
- 2 *Id.*
- 3 Cal. Air Resources Bd., *Resolution 06-01* (2006) at 5, <https://ww3.arb.ca.gov/regact/ets2006/res0601.pdf>.
- 4 Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, *The Proposition 65 List* (2020), <https://oehha.ca.gov/A-65/proposition-65-list>.
- 5 See 2006 SURGEON GENERAL REPORT, *supra* note 11.
- 6 Centers for Disease Control and Prevention, *Smoking & Tobacco Use: Multiunit Housing* [https://www.cdc.gov/tobacco/basic\\_information/secondhand\\_smoke/going-smokefree-matters/multi-unit](https://www.cdc.gov/tobacco/basic_information/secondhand_smoke/going-smokefree-matters/multi-unit).
- 7 Vasundhra Bahl et al., *Thirdhand Cigarette Smoke: Factors Affecting Exposure and Remediation*, 9 PLoS ONE 10 (2014), <https://pubmed.ncbi.nlm.nih.gov/25286392>.
- 8 Martha Zarate, Rover Bytes Podcast: *The Firebaugh Ban on Smoking and Vaping in Multi-Unit Housing: An Interview with Martha Zarate* (Video file) (Retrieved from <https://rover.catcp.org/index.cfm?fuseaction=search.runSearch&searchID=207654&startRecord=2&logSearch=0&viewFormat=full>).
- 9 Christopher Roberts et al., *Environmental Tobacco Smoke: Public Perception of Risks of Exposing Children to Second- and Third-Hand Tobacco Smoke*, 31 J. PEDIATRIC HEALTH CARE 1 (2017), doi: 10.1016/j.pedhc.2016.08.008.
- 10 City of Firebaugh website, Demographics (based on 2011 U.S. Census), <https://firebaugh.org/demographics>.
- 11 Donald Promnitz, *Firebaugh: Overlooked Town Has Big Things Coming Its Way*, BUSINESS J. (Oct. 16, 2019), <https://thebusinessjournal.com/firebaugh-overlooked-town-has-big-things-coming-its-way>.
- 12 CAL. CIVIL CODE § 1427 - 3273.16.
- 13 See, e.g., Americans for Nonsmokers' Rights Found., *U.S. Laws for 100% Smokefree Multi-Unit Housing* (2021), <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.
- 14 Public Health Law Center, *There is No Constitutional Right to Smoke or Toke* (2019), <https://www.publichealthlawcenter.org/sites/default/files/resources/No-Constitutional-Right-Smoke-Toke-2019.pdf>.
- 15 Press Release, City of Firebaugh, *City of Firebaugh Bans Smoking in Multi-Unit Housing Complexes* (Feb. 2020), <https://fresnoeoc.org/city-of-firebaugh-bans-smoking-in-muh>.
- 16 *Id.*
- 17 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).

- 
- 18 Firebaugh Civil Ordinance 19-02 (2019), <https://firebaugh.org/wp-content/uploads/2019/10/Ord.-19-02-Amended-Tobacco-Cannabis-Ordinance-MUH-10-2019.pdf>.
- 19 Press Release, *supra* note 14.
- 20 City of Firebaugh, Cal. Code § 3-12.5.
- 21 *Id.*
- 22 City of Firebaugh, *Smoke-free Multi-Unit Housing* (website resources), *Smoke-Free Multi-Unit Housing — The City of Firebaugh*.
- 23 American Lung Assoc., *State of Tobacco Control 2021 — California Local Grades* (2021), <https://www.lung.org/getmedia/3b258a14-f355-42d0-9cac-18901c1802eb/state-of-tobacco-control-california-local-grades.pdf>.
- 24 Gregory Knell et al., *Health Behavior Changes During COVID-19 Pandemic and Subsequent “Stay-at-Home” Orders*, 17 INT’L J. ENVTL RESEARCH AND PUBLIC HEALTH 17 6268 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7504386>.