

Smoke-Free Multi-Unit Housing

Approaches to Protect Tenants from Secondhand Smoke

Californians have extensive protections from exposure to secondhand tobacco smoke where they work, eat, and play, but many are still exposed to secondhand smoke where they live. The U.S. Surgeon General and the California Air Resources Board have both concluded that there is no such thing as a “risk-free” level of exposure to secondhand smoke – and according to the Centers for Disease Control and Prevention (CDC), an estimated 50,000 people die every year from diseases caused by secondhand smoke exposure, such as heart disease and lung cancer.

Landlords, property managers, and local governments can all help protect their residents from drifting secondhand smoke by prohibiting smoking throughout multi-unit residences – and local governments can pass a variety of additional laws to help residents who suffer from exposure to secondhand smoke at home.



How to Go Smoke-Free

Landlords can prohibit smoking in common areas and units by amending leases to add a smoke-free provision. For new leases, they can simply add the new term before renting to new tenants.

For existing leases, they can ask current tenants for consent to amend the lease to add the smoke-free provision. In cases where tenants don't agree to the lease change, landlords must wait until the term of the lease ends, at which time they can create a new lease that includes the smoke-free clause.

Note: In communities with rent control laws, this process is different. Because rent control laws regulate how changes to the terms of tenancy may be made, it might not be possible for landlords in those jurisdictions to make existing tenancies smoke-free without the tenant's consent, even after the lease expires.

Options for Landlords and Property Managers

Many communities have passed laws prohibiting smoking in multi-unit residences (see sidebar on page 3). Even in the absence of such laws, landlords can voluntarily prohibit smoking to protect tenants from secondhand smoke and to protect their property from damage caused by smoke. Landlords have the legal right to prohibit smoking anywhere and everywhere on their property, including common areas and individual units.



Smoke-Free Common Areas

In many cases, *indoor* common areas – like hallways, stairwells, lobbies, and laundry rooms – are already required to be smoke-free under the California Smoke-Free Workplace law if there are employees on the premises, such as on-site property managers or maintenance staff. Unfortunately, because it is not always clear when an indoor common area falls under the legal definition of “place of employment,” this law is not always enforced. Meanwhile, outdoor common areas (like backyards, gardens, shared porches, and pool areas) are not covered at all by the state law. To protect residents from exposure to secondhand smoke in common areas, landlords can prohibit smoking in all common areas, indoors and out.



Disclosure

Local governments can require landlords to provide all tenants with a comprehensive description of where smoking is or is not allowed on the property (see page 3). But even in communities without this type of law in place, landlords can voluntarily provide this information to empower their tenants and to alleviate potential conflicts.



Smoke-Free Units

Landlords can choose to make some or all of the units on their property smoke-free by amending tenants' leases. Studies have shown that secondhand smoke can seep under doorways and drift from one unit into another through cracks around plumbing fixtures, lighting fixtures, and electrical outlets. Smoke-free unit policies can also apply to outdoor portions of units, including patios and balconies.



Smoke-Free Buffer Zones

When landlords prohibit smoking on parts of their property, they can also establish smoke-free “buffer zones” to keep secondhand smoke from drifting into the nonsmoking areas. Landlords can create buffer zones by prohibiting smoking within a specific distance (typically 20–25 feet) of all entrances, doorways, or operable windows of a building, or any area where smoking is prohibited. Landlords who want to create designated smoking areas for their tenants who smoke should take care to locate them outside of the buffer zone.

Options for City and County Governments

Regardless of whether local law prohibits smoking in multi-unit residences, city and county governments can take a variety of actions to help tenants who are affected by secondhand smoke.

Disclosure

A recent state law requires landlords to include a term in all new leases describing where, if anyplace, smoking is prohibited on the property. Local governments can go further to require landlords to provide *all* tenants, new and existing, with a comprehensive description of where smoking is or is not allowed on the property.

Requiring disclosure not only helps prospective tenants to make informed decisions about where to live, but also helps existing tenants reduce their exposure to secondhand smoke by helping them avoid areas where smoking is allowed. Disclosure also helps to avoid potential conflict later on if tenants are exposed to secondhand smoke on the property when they did not expect to be.



Nuisance and Trespass

Local governments can use *nuisance* laws to help protect residents from secondhand smoke. By declaring involuntary exposure to secondhand smoke a nuisance, lawmakers give residents who are exposed to secondhand smoke grounds to seek a legal remedy – regardless of a landlord’s failure to address the problem, or in cases where the smoke is drifting from property beyond the landlord’s control. Typical remedies in these cases could be an order to stop smoking in a location where it would drift into the plaintiff’s unit, or possibly an award of damages if there’s proof of harm. This is also true for other nuisances, like loud music or foul odors.

Smoke-Free Multi-Unit Housing Laws

A growing number of jurisdictions have protected residents of multi-unit housing from drifting secondhand smoke by passing laws prohibiting smoking in these residences.

A city council or county board of supervisors can pass an ordinance that becomes part of the municipal code that applies everywhere within city or county borders.

Most smoke-free housing laws prohibit smoking in both common areas and individual units, and create smoke-free buffer zones around nonsmoking areas, doors, and windows. Smoke-free housing laws may include a variety of enforcement options, from imposing fines to empowering residents to pursue additional legal remedies.

Dozens of cities and counties throughout California have already passed smoke-free multi-unit housing laws, and ChangeLab Solutions has developed a model smoke-free housing ordinance (available online) that can be tailored to an individual community’s needs. For more information about communities that have already passed smoke-free housing laws or about how to use the model ordinance, **contact ChangeLab Solutions.**



Learn More About CA4Health

CA4Health is the Public Health Institute's 5-year Community Transformation Grant, funded by the Centers for Disease Control and Prevention, that is focused on reducing the burden of chronic disease in California counties with populations under 500,000. CA4Health partners with some of the state's leading technical assistance providers and content experts to provide local county partners with tools, training and guidance to make their communities healthier.

CA4Health's four strategic directions are reducing consumption of sugary beverages, increasing availability of smoke-free housing, creating safe routes to schools, and providing people with chronic disease with skills and resources to better manage their health.

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Local governments can also pass laws to declare the uninvited presence of tobacco smoke on residential property a *trespass*. This would give tenants a legal recourse in cases where, even if they can prove that secondhand smoke is drifting into their unit, they have more difficulty proving directly harm.



Last Resort Move Out Options

Local government can pass a law making a landlord's failure to remedy a drifting secondhand smoke problem grounds for a claim of *constructive eviction*. A constructive eviction is where a unit is made uninhabitable because of something the landlord did or failed to do, and the tenant has no choice but to move out. This type of law would give tenants who are chronically exposed to drifting secondhand smoke the potential ability to escape their lease without penalty if their landlord fails to address the problem.

Local governments can also pass a stand-alone early termination law that would explicitly allow tenants to break their lease early and without penalty in cases where they're exposed to secondhand smoke from another tenant, and where the landlord fails to take adequate steps to remedy the problem.

This option differs from constructive eviction in that the city or county could independently determine what standard of proof tenants would need in order to justify terminating their lease due to drifting smoke, rather than relying on existing local landlord-tenant law. For example, a stand-alone early lease termination ordinance could allow tenants to escape their lease after a specified period if they've

given written notice to the landlord of the problem, as long as the notice explains when the exposure occurred and where they think the smoke originated.

Under this option, the unit might not necessarily need to be deemed uninhabitable for a tenant to escape the lease, depending on how the ordinance is written.



Implied Warranty of Habitability/ Implied Covenant of Quiet Enjoyment

Local government can make a landlord's failure to remedy a drifting secondhand smoke problem a violation of the *implied warranty of habitability* and/or a violation of the *implied covenant of quiet enjoyment*. (These requirements are "implied" because they apply regardless of whether the landlord has included them in the lease.)

The implied warranty of habitability is the legal requirement that landlords maintain residential property in a condition that is fit for human occupation, complete with weatherproofing, running water, heat, and electricity. The implied covenant of quiet enjoyment protects tenants from physical interference with their ability to use and enjoy their unit.

Designating drifting secondhand smoke as a habitability or quiet enjoyment issue can help tenants by making it the landlord's duty to address the problem. Tenants may potentially be able to seek refunds of rent they've paid while the problem was ongoing, or in some cases they could seek a permanent reduction in their rent. They also could potentially terminate their lease without penalty.

To learn more about these options, visit www.changelabsolutions.org & www.CA4Health.org.

See the ChangeLab Solutions Smoke-Free Multi-Unit Housing resource page for research and analysis supporting these strategies. www.changelabsolutions.org/publications/model-ord-smokefree-housing