



**COOK COUNTY HEALTH  
& HOSPITALS SYSTEM**  
**CCHHS**

**Cook County Department  
of Public Health**

# **Smokefree Multi-Unit Housing: Coming Soon to Your Community**

*This project was made possible through funding from the Illinois Department of Public Health*

# Smokefree Multi-Unit Housing: Coming Soon to Your Community



**Webinar for  
Cook County Department of Public Health  
May 11, 2012**



**public health law & policy**



**Leslie Zellers, JD**

**Director of Programs  
Public Health Law & Policy**

# Public Health Law & Policy

## Who we are

We partner with state and local leaders to improve health in all communities, especially the underserved. We do this by researching legal and policy questions, drafting policy language, and training community leaders to put these ideas to work.



# Public Health Law & Policy

## Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. Public Health Law & Policy (PHLP) does not enter into attorney-client relationships.

PHLP is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy opinions to improve public health. There is no intent to reflect a view on specific legislation.



# Agenda

## Smokefree Multi-Unit Housing

- Importance
- It's legal
- Approaches
- Experience

# Today's speakers



**Robin Salsburg, JD**  
Consulting Attorney  
PHLP



**Diane Laughter, MPH**  
Public Health Consultant  
Health in Sight LLC



**Kylie Menagh-Johnson,  
MPH**  
Project Director, Rede Group

**What type of housing would you like to make smokefree?**



# What do you consider the most important reason for multi-unit housing to go smokefree?

- Prevent exposure to secondhand smoke
- Reduce fire hazard
- Attract and retain tenants
- Landlord avoid liability
- Reduce property damage / cleaning costs
- Other



**Eliminate drifting secondhand smoke**

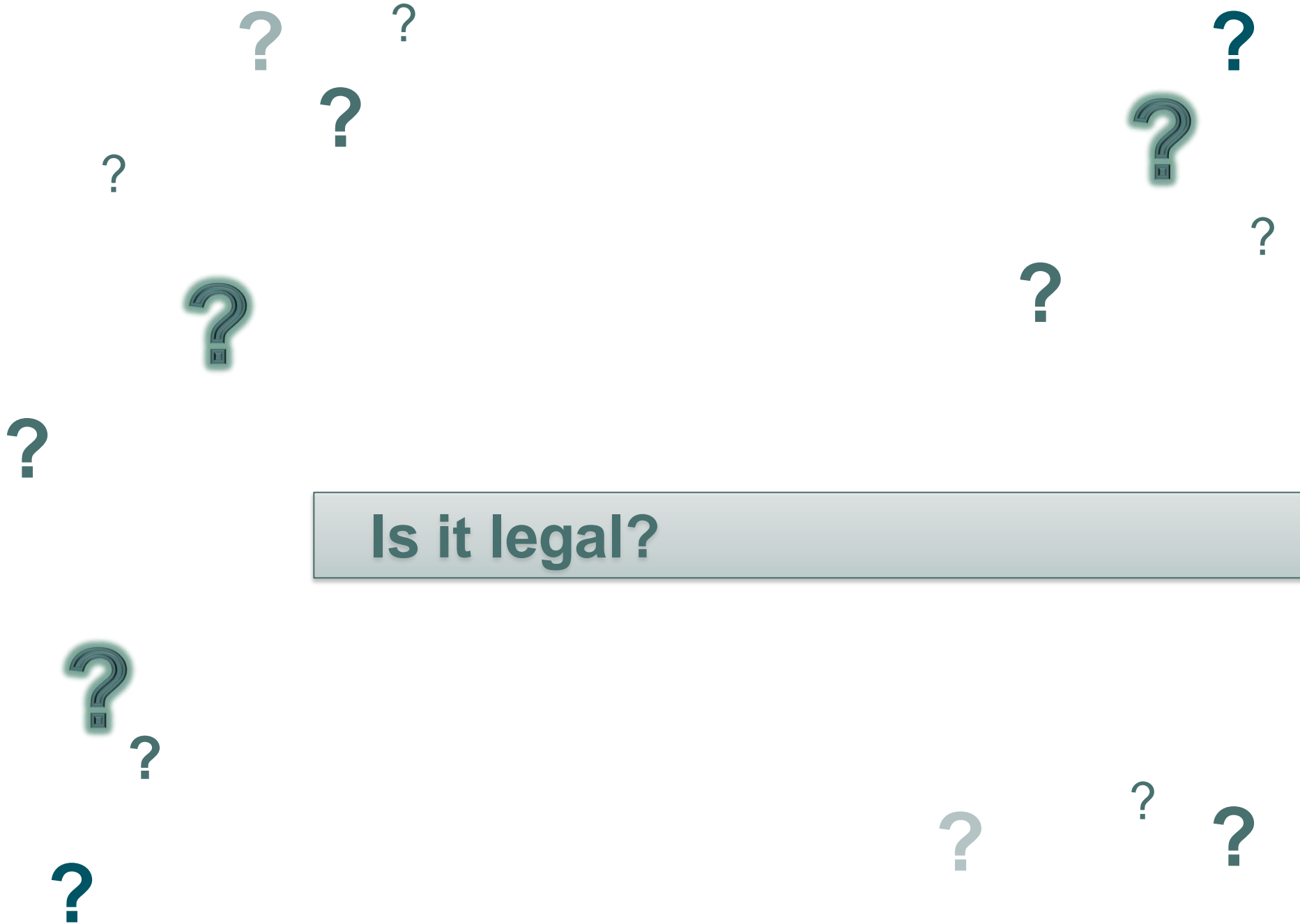


**Reduce fire risk**



**Decrease turnover costs**

Is it legal?



# Smokefree Multi-Unit Housing

## Legal Questions

- Right to smoke?
- Violate privacy rights?
- Discriminatory?



**NO legal right to smoke**





**Doesn't violate privacy rights**





**Doesn't illegally discriminate**

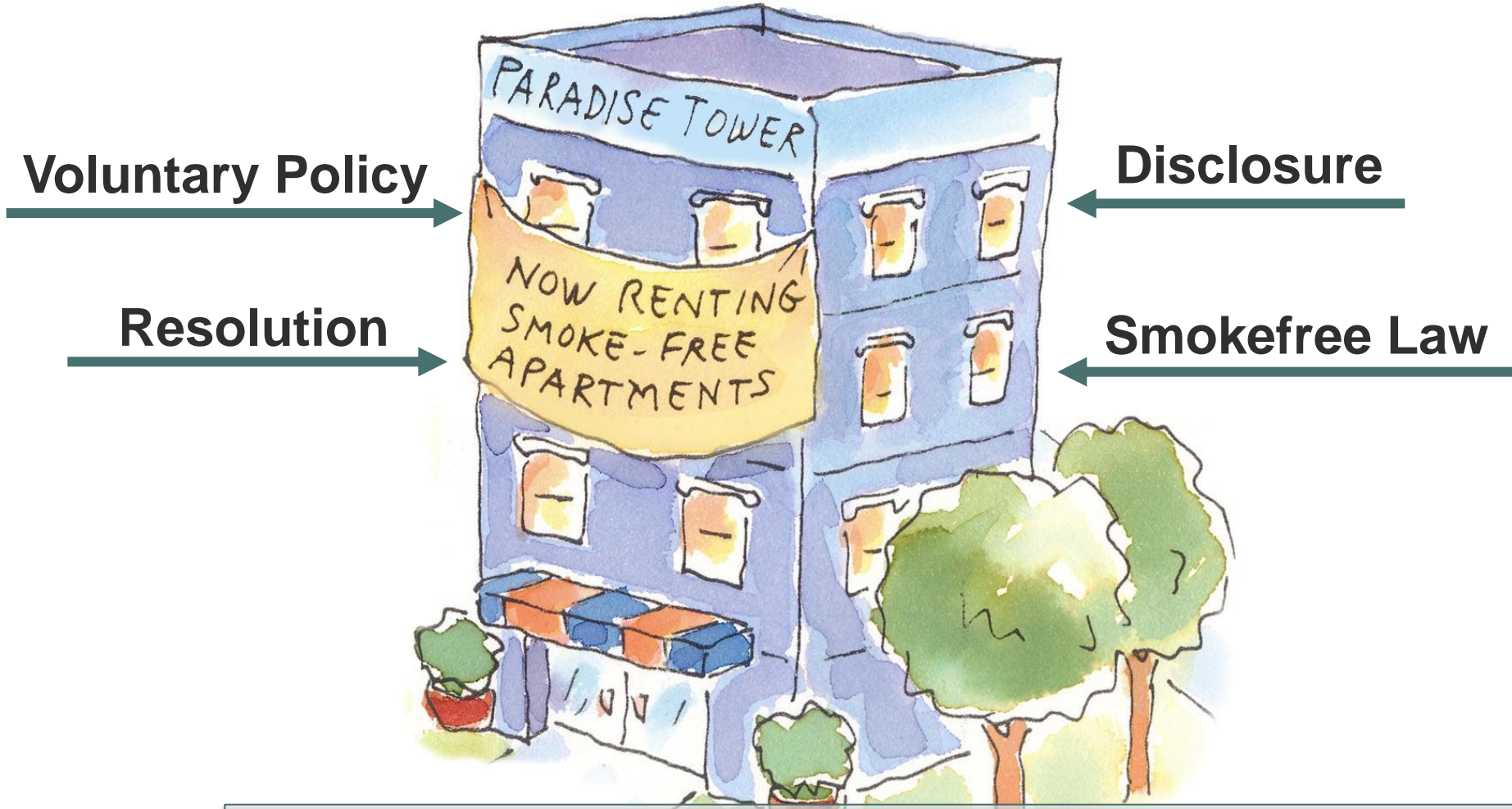
# Smokefree Multi-Unit Housing

## Key points

- **Smokefree housing policies are legal**
  - **By landlords**
  - **By local or state government**
- **Smokefree housing policies define where people smoke, not whether people smoke**

# How far along are you in making multi-unit housing in your community smokefree?

- Beginning to explore the idea
- Creating a coalition to work on this issue
- Doing outreach to housing providers
- Housing providers have adopted policies
- Other



# Approaches to going smokefree





## Voluntary policy

## PROS

- **Protects some people**
- **Educates**
- **Builds support and acceptance**
- **Demonstrates it IS legal**

## CONS

- **Complex by complex**
- **Time consuming**
- **New owner/manager could discontinue**

**Voluntary policy**



# Proclamation Of Non-Binding Resolution

Even though a resolution is just fluff, we are still making a statement

**Whereas**, readers of the Heck of a Guy Blog are individuals known for being quick-witted, helpful, good-looking, God-enduring, footnote-reading folks with a penchant for bravery and cleanliness as well as commendably low standards for humor,

**Whereas**, those readers may, upon occasion, require an official proclamation, resolution, desideratum, acknowledgment, affirmation, commemoration, endorsement, commendation, or other recognition for one or more causes, personally significant dates, accomplishments, or ephemeral whims,

**Whereas**, such non-binding resolutions issued by theheckofaguy.com possess the same lack of enforceability as non-binding resolutions issued by the US Congress, the Governors of the States, and the Village of Carpentersville – and arguably *an even greater lack of enforceability*,



I, the great and powerful DrHGuy, Potentate Extraordinaire, Master of the Subjunctive, Protector of the Existential Angst, Champion of Justice, Grand Vizier, Child of the Cosmos, One With the Universe, Devilishly Handsome Man About Town, All Around Cool Dude, and Proprietor of the Heck of a Guy Blog, do hereby authorize the holder of this certificate, \_\_\_\_\_, to proclaim, at his or her sole discretion, the following non-binding resolution with all the rights, privileges, obligations, perks, kickbacks, rebates, and votes pertaining thereunto, no King's X, no takebacks:

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In witness thereof I do hereby set my hand and cause the nifty seal of the Heck of a Guy Blog to be affixed, now and forever more. What DrHGuy hath created, let no man split asunder. Yabba Dabba Doo & Yada Yada Yada. Amen.

## Resolution

*DrHGuy*  
Emperor of the Heck of a Guy Universe  
theheckofaguy.com

## PROS

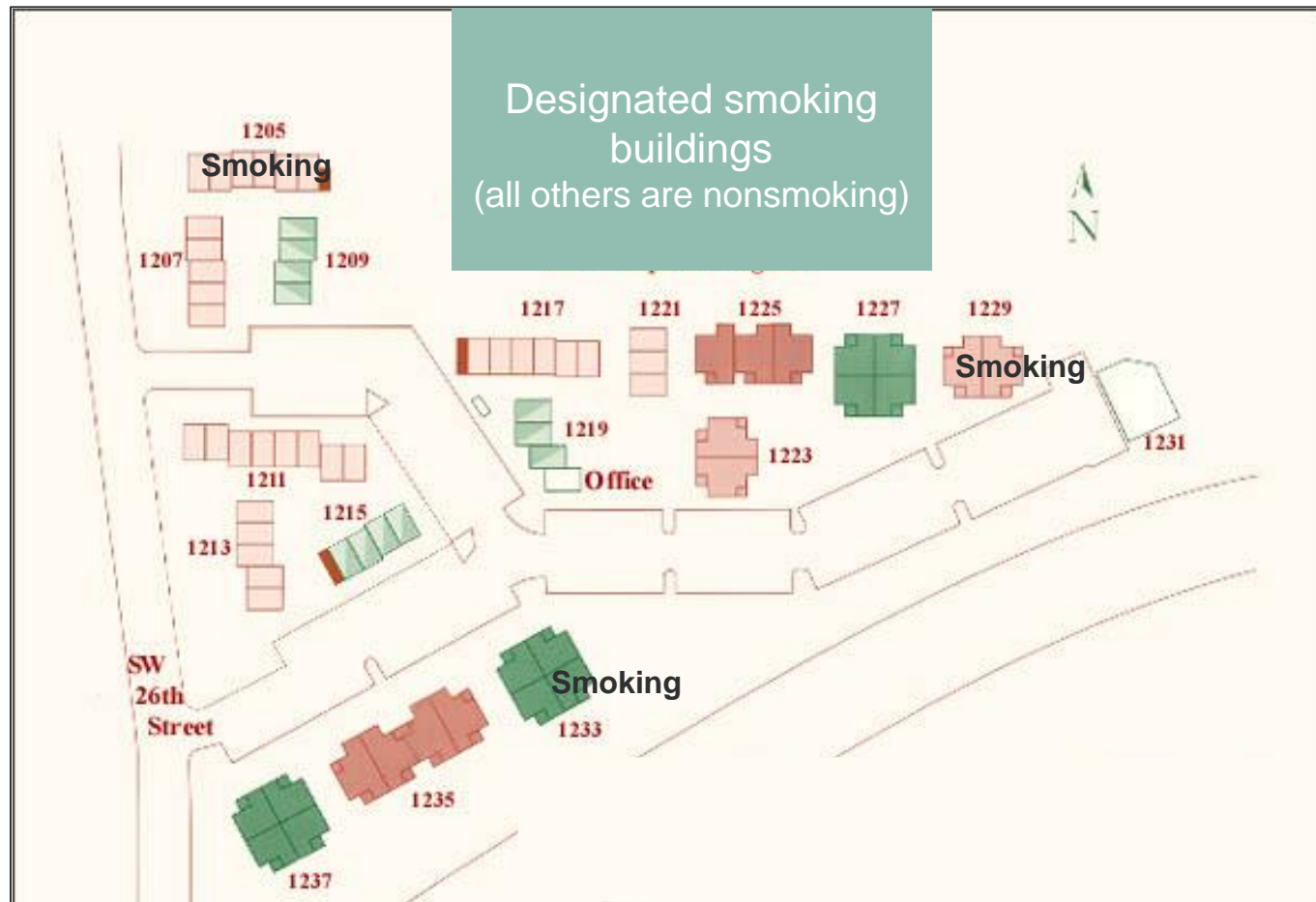
- **Increases visibility for issue**
- **Educates**
- **Rewards “first adopters”**
- **Little opposition**

## CONS

- **Doesn't mandate a change**
- **Uses up political capital**

**Resolution**





# Disclosure

## PROS

- Give people information **BEFORE** signing an agreement
- May encourage adoption of no-smoking policy

## CONS

- Doesn't create smokefree places
- Doesn't help current residents

**Disclosure**

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF HUNTINGTON PARK, CALIFORNIA,  
AMENDING TITLE FOUR OF THE HUNTINGTON PARK MUNICIPAL CODE TO PROHIBIT  
SMOKING IN AND AROUND MULTI-UNIT RESIDENCES**

**WHEREAS**, tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- Tobacco-related illness is the leading cause of preventable death in the United States,<sup>1</sup> accounting for about 443,000 deaths each year;<sup>2</sup> and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth;<sup>3</sup> and
- Some of the most common types of cancers, including stomach, liver, uterine cervix, and kidney cancers, are related to tobacco use;<sup>4</sup> and

**WHEREAS**, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>5</sup> and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>6</sup> and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>7</sup> and

**WHEREAS**, exposure to secondhand smoke causes death and disease, as evidenced by the following:

**Smokefree housing law**

## PROS

- **Broad applicability**
- **Requires a change**
- **Long-term policy solution**
- **Enforceable**

## CONS

- **Likely to be opposition**
- **Policy can be very complicated**

**Smokefree housing law**

## Legal Options for Tenants Suffering from Drifting Tobacco Smoke

April 2007 (revised August 2009)

If tobacco smoke drifts into your apartment from a neighboring unit, causing you illness, you may wonder whether you can sue your neighbor or landlord. Suing should be your last resort. Lawsuits are expensive, and the outcome is always uncertain. In most cases, and no state laws, are result is especially unpredictable.

Before suing, you should try to resolve the problem with your neighbor or landlord. You also could ask the landlord to make certain units smokefree. In addition, you can sue in multi-unit residential buildings. If you reach the point where you are considering your only option, there are things to consider.

### Evaluating Your Situation

To help you evaluate your situation, ask yourself the following questions to get out of the fog.

### What harm is being done?

As a general rule, you have the right to a safe and sound living environment. If you have a legal claim, you may be able to sue for exposure to tobacco smoke—for instance, for illness or injury.

## How Landlords Can Prohibit Smoking in Rental Housing

January 2006 (revised July 2009)

Although Californians have extensive protections from exposure to secondhand tobacco smoke where they work, eat, and play, some are still exposed to secondhand smoke where they live. Landlords and property managers can protect tenants from exposure to secondhand smoke by prohibiting smoking in common areas and in individual rental units.

This fact sheet describes how a landlord can make common areas nonsmoking and outlines the steps a landlord must follow to change a lease to make an individual unit smokefree. This information does not apply to rental housing governed by a local rent control ordinance or to a condominium complex that is seeking to adopt a no-smoking policy.<sup>2</sup> Also note that if rental housing is subsidized by a government agency, such as the U.S. Department of Housing and Urban Development (HUD), additional procedures might be required to adopt a no-smoking policy.

### Why would a landlord want to prohibit smoking?

In addition to the important health benefits of reducing exposure to secondhand smoke, restricting smoking can decrease the risk of accidental fires and may even reduce fire insurance premiums. Landlords also may see a significant reduction in maintenance and turnover costs. Cleaning and refurbishing a smoker's unit can require additional time and effort to repaint and to replace carpets and drapes. By prohibiting smoking in a unit, landlords can minimize or eliminate these expenses altogether.

### Is it legal for a landlord to prohibit smoking?

Yes. A ban on smoking in common areas is similar to other rules tenants typically must follow regarding the use of common areas, such as the hours for using the laundry facility or the requirement that children be accompanied by an adult when using the pool. It is also legal for a landlord to ban smoking in individual units. Landlords have the legal right to set limits on how a tenant may use rental property—for instance, by restricting guests, noise, and pets. A "no-smoking" term is similar to a "no pets" restriction in the lease—another way for a landlord to protect his or her property.



Illustration by Anne Chabot  
© California Department of Public Health

**Important**  
A landlord is not unlawfully discriminating against smoking tenants or violating a smoker's fundamental right to privacy when banning smoking in common areas or individual units. Claims to the contrary have no legal basis.<sup>3</sup>

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technical assistance legal center  
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## How Disability Laws Can Help Tenants Suffering from Drifting Tobacco Smoke

June 2008

If you have a medical condition made worse by secondhand smoke drifting into your apartment, federal and state disability laws might help you address the problem. You may be eligible for your disability, you may be eligible for financial make changes to your apartment.



Illustration by Anne Chabot  
© California Department of Public Health

**Disability Laws**  
California and the federal government have laws to ensure that people with disabilities have equal opportunities. If you rent, you may be required to follow rules to accommodate a tenant with a hearing disability to be eligible for a hearing.

If you are not covered under the law, other legal options may apply to you. See TALC's options for tenants from Drifting Tobacco Smoke at [www.phlpnet.org](http://www.phlpnet.org).

## Creating Smokefree Affordable Housing in California

November 2000

Do you want to help create policies limiting smoking in housing geared toward low-income residents? This fact sheet explains briefly what "affordable housing" is and how you can work with key players to establish smokefree policies for this type of housing in your community.



Illustration by Anne Chabot  
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### What is Affordable Housing?

The days when affordable housing was synonymous with public housing ("the projects") are behind us. Today, public housing is only one part of the equation. Affordable housing refers to housing that, through government subsidies, is made affordable to those unable to pay for housing priced at market rates. (This fact sheet will focus on affordable rental housing, though subsidies are available for buying a home as well.) To be eligible to receive a housing subsidy from the government, a household must make less than a certain amount per year.<sup>1</sup>

In addition to the income threshold, some affordable housing requires certain characteristics of at least one member of the household. For example, some affordable housing is built for people with disabilities (some is even more specific—requiring, for example, that at least one household member be living with HIV/AIDS). Some affordable housing is for the formerly homeless. For more information about affordable documents, see <http://californiahousing.org/base/documents/affordablehousingfactsheet.doc>.

The most common types of affordable housing fall into three categories:

**Nonprofit housing** is owned and managed by private nonprofit groups often known as community development corporations, which may be community based, regional or national in scope. They may be faith-based or have been formed to serve a specific ethnic population or a special-needs population, such as the elderly or formerly homeless. Affordable housing owned and managed by nonprofit entities varies widely, including single room occupancy buildings (SROs), family housing, and housing that is accessible to people with disabilities.

### Housing Vocabulary

To have a meaningful discussion with the key players working on affordable housing issues, you must be able to "speak their language."

- One great resource for learning the terminology is the glossary in *General Plans and Zoning, a Toolkit for Public Health Law & Policy* (see [www.healthypartners.org/toolkit/appendix/\\_Glossary.pdf](http://www.healthypartners.org/toolkit/appendix/_Glossary.pdf)).
- The U.S. Department of Housing and Urban Development (HUD) also offers a number of glossaries: see especially [www.hud.gov/local/mi/library/archives/resources/2006-04-06/glossi.cfm](http://www.hud.gov/local/mi/library/archives/resources/2006-04-06/glossi.cfm) (terms common to affordable housing) and [www.hud.gov/offices/epd/library/glossary](http://www.hud.gov/offices/epd/library/glossary) (community planning and development terms).

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# Resources from PHLIP

**Questions?**

# What do you think is the most persuasive reason for a housing provider to go smokefree?

- Prevent exposure to secondhand smoke
- Reduce fire hazard
- Attract and retain tenants
- Landlord avoids liability
- Reduce property damage / cleaning costs
- Other



# Smokefree Housing: Getting Started



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Oregon Smokefree Housing Project



# Presenters

Kylie Menagh-Johnson, MPH  
Project Director, Rede Group



Diane Laughter, MPH  
Public Health Consultant  
Health In Sight LLC

# First step: Recruiting stakeholders

- ❖ Formed an Advisory Board of Who's Who in housing world:
  - Landlord trade associations
  - Tenant rights group
  - Public and affordable housing agencies
  - Fair Housing Council
- ❖ Gave them opportunities for input when we needed them
- ❖ Didn't make them come to "coalition meetings"

# Baseline research

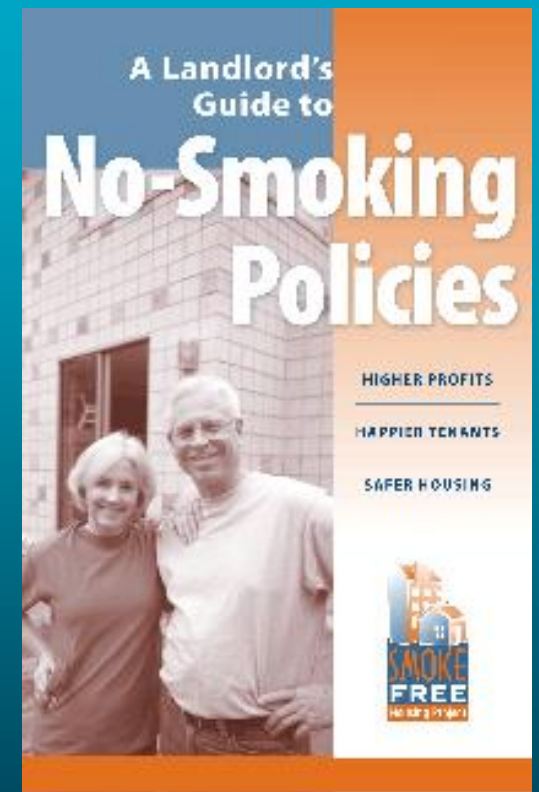
- ❖ Gathered info on what was happening nationally
- ❖ Hired a professional research firm to conduct:
  - Local market survey of tenants
  - Landlord focus groups
  - Key informant surveys
- ❖ Conducted one on one interviews with stakeholders

# Learned from Landlords:

- ❖ They knew smoking was costing them \$\$\$ in cleaning & maintenance
- ❖ They weren't sure it was legal to adopt no-smoking policies
- ❖ They were afraid to lose potential renters
- ❖ Protecting renters from SHS was not a motivator for them to change

# What Landlords Needed:

- ❖ To know no-smoking policies were legal
- ❖ To know the market was there for them
- ❖ To have simple steps and tools
- ❖ Materials with a “business” layout and look



# Focus on LANDLORDS because:

- ❖ They are in the position to make desired change
- ❖ It will result in more renters being protected faster

# Landlords make the change when:

- ❖ It makes business sense for them
- ❖ It is endorsed by their trade associations
- ❖ They are aware colleagues are doing it and having success
- ❖ Tools & support make it simple
- ❖ It is their choice as opposed to being forced on them by government

# Changing the Landlord Culture

- ❖ Incorporate smokefree messages into existing communication & training for landlords
- ❖ Make smoking status a standard feature of model lease forms
- ❖ Highlight success of early adopters - share their steps, documents and tools
  - Guardian (private) and Housing Authority of Portland (public)
- ❖ Encourage landlords to feature “No-Smoking” as an amenity in rental listings



# Rental Agreement

PAID FOR / PROVIDED BY:	ELECTRICITY	WATER	SEWER	GARBAGE SERVICE	GARBAGE CONTAINER	BASIC CABLE	GAS	OTHER	SAMPLE
	OWNER	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
RESIDENT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

THE FOLLOWING UTILITIES OR SERVICES PAID FOR BY RESIDENT WILL BENEFIT OTHER RESIDENTS OR OWNER/AGENT: SAMPLE

SERVICE CHARGE FOR CABLE / INTERNET / ETC. (\$ or %): SAMPLE

ANY YARD INCLUDED IN THE LEASED PREMISES WILL BE MAINTAINED BY:  RESIDENT  OWNER/AGENT  
(SEE SECTION 17 OF THE TERMS AND CONDITIONS BELOW FOR OWNER/AGENT ENTRY RIGHTS)

**OTHER**

ANIMALS (APPROVED BY OWNER/AGENT) NUMBER & TYPE: SAMPLE

APPROVED FOR USE:  WATERBED  AQUARIUM  THE FOLLOWING MUSICAL INSTRUMENTS: SAMPLE

IF CHECKED, RENTER'S INSURANCE IS REQUIRED MINIMUM INSURANCE AMOUNT \$ SAMPLE (\$100,000 IF LEFT BLANK)

SMOKING POLICY:  SMOKING ALLOWED—ENTIRE PREMISES  SMOKING PROHIBITED—ENTIRE PREMISES  
 SMOKING ALLOWED IN LIMITED AREAS (SEE NO-SMOKING ADDENDUM)

THE DWELLING UNIT IS LOCATED WITHIN A 100-YEAR FLOODPLAIN:  YES  NO

I / WE HAVE READ AND AGREE TO THE TERMS AND CONDITIONS LISTED ON ALL PAGES OF THIS AGREEMENT.

RESIDENT X	DATE	RESIDENT X	DATE
RESIDENT X	DATE	RESIDENT X	DATE
RESIDENT X	DATE	RESIDENT X	DATE

PERSON TO CONTACT IN THE EVENT OF AN EMERGENCY SAMPLE PHONE SAMPLE

ADDRESS, CITY, STATE, ZIP SAMPLE

PERSON TO CONTACT IN THE EVENT OF MY DEATH SAMPLE PHONE SAMPLE

ADDRESS, CITY, STATE, ZIP SAMPLE

OWNER/AGENT X	DATE	IF APPLICABLE, REAL ESTATE BROKER APPROVAL
<u>SAMPLE</u>		INITIAL _____ DATE _____

## TERMS AND CONDITIONS

1. **RENTS:** Unless another date is set forth above, rents are due and payable on the first of the month and must be paid on time. If rent is not paid by the end of the 4th day of the rental period a late fee in the amount stated on this Rental Agreement will be imposed on the 5th day of the rental period and Owner/Agent may require the rent payment and late fee to be paid by certified check or money order.

3. **APPLICATION OF PAYMENTS:** All payments made by Resident to Owner/Agent after the tenancy commences, no matter how designated by Resident, may be applied by Owner/Agent as follows: first to any outstanding amounts due Owner/Agent for damages/repairs, utilities, deposits, fees, etc.; second, to any rent outstanding from prior months; third, to the current month's rent; and last, to outstanding late charges.

termination date; advertising and administrative costs to re-rent the unit; concessions given to re-rent the unit; the difference in rent if a lower rental rate is received from a replacement resident during the remaining term of the original Rental Agreement; damages related to the condition of the unit, and interest on all amounts at the statutory rate.

5. **TERMINATION OF MONTH-TO-MONTH TENANCY:** A 30-day written notice to terminate will be required for

# Website for Housing Providers

smokefreehousinginfo.com



HOME

Affordable & Public Housing

Condos

Facts & Figures

Landlord Tools

Medical Marijuana

Rental Industry NEWS

Selling Properties

Smoking Policy Disclosure Law

Tribal Housing

Vacation Rentals

Links

About Us

## No-Smoking Rules for Residential Properties:

### A Win/Win for Business and Health

Why not join the growing number of landlords who are adopting no-smoking policies. Find the [great business reasons](#) to move forward.

[Download a free webinar](#) on WHY and HOW to adopt no-smoking rules featuring local experts.

All Oregon landlords are required by state law to disclose their smoking policy to their tenants as part of the rental agreement. [Find more information and sample language.](#)

Condominium and community associations are seeing the benefits of adopting no-smoking rules. Find [information and tools.](#)

Homebuyers and investors are looking for properties free from smoke odor and damage. Find [tips and articles](#) on how to maximize the sale.



No-smoking policies are a high impact, low cost step in going **GREEN**.

You may [download and use this image](#) to promote your no-smoking, green properties. The image (copyright 2010) is free for informational & educational purposes.

# Creating Policy Change

- ❖ Because of relationships/trust built with landlord trade associations & Fair Housing Council, they proactively supported the **Smoking Policy Disclosure Law**.
- ❖ It sailed through and became law 1/1/10.
- ❖ The housing industry helped us communicate about the law through all their channels.

# Landlord postcard



**A New Law  
for Landlords**

**THE SMOKING POLICY DISCLOSURE LAW**  
Starting **January 1, 2010**, landlords, as part of the rental agreement, are required to disclose their smoking policy.

The disclosure must identify whether smoking is:

- **prohibited** on the premises
- **allowed** on the entire premises
- or **allowed in limited areas** on the premises (these must be identified in writing)

Sample disclosure forms and more information about the law are available at [www.smokefreehousinginfo.com](http://www.smokefreehousinginfo.com)

**SMOKEFREE  
oregon**

ORS Chapter 90, ORS 479.250 to 479.300

# Creating sustainability

- ❖ Message weaves through regular landlord communication channels
- ❖ Fair Housing Council handles requests from tenants exposed to SHS
- ❖ Existing housing directories and listings incorporate info on smoking policies

# Housing world is interconnected

- ❖ Getting buy-in from and weaving messages through different sectors changes cultural landscape and has impact on other sectors:
  - Private market rate properties
  - Public and affordable properties
  - Organizations who serve/support landlords
  - Realtors and developers of multi-unit properties
  - Condo associations



# Affordable Housing Providers are Different

- ❖ They are not in it for the money
- ❖ They are afraid no-smoking policies might be “another barrier to housing”
- ❖ They do respond to:
  - changes in landlord culture
  - documentation of their own resident demand
  - encouragement from funding agencies
- ❖ They need support for their smokers who want to quit

# Measuring Success

- ❖ BRFSS questions
- ❖ Tracking of HA, tribal and community development corporation policies
- ❖ Rental ad tracking

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[www.smokefreehousinginfo.com](http://www.smokefreehousinginfo.com)

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Oregon Smokefree Housing Project

**Questions?**

# Contact information

**Cook County Department of Public Health**  
**Claudius Isfan**  
**Smokefree Illinois Coordinator**  
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**708.633.8337**

# Thank you!



[www.phlpnet.org](http://www.phlpnet.org)