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Adopting Smokefree Policies in Multi-Unit Housing, including Rent-Controlled Properties



Introduction

Landlords in the City of Los Angeles can implement smokefree policies in their buildings, and there are many good reasons for them to do so. Like any change in policy, smoking restrictions must be developed in a way that respects tenants' rights, particularly under Los Angeles' rent control laws.¹ This fact sheet describes how a landlord may legally prohibit smoking in common spaces and individual units, and explains how to implement a smokefree policy in compliance with the rent control law, where applicable. It also includes options for addressing possible enforcement and compliance issues that may arise once a policy is in place.

Smokefree Policies are Legal

Landlords generally have the right to regulate where smoking takes place on their properties. Though rent control laws grant tenants certain rights under their existing leases, tenants do not have an independent right to smoke in their homes.² In fact, some tenants may have medical conditions or disabilities that are aggravated by secondhand smoke; a smokefree policy would help to accommodate and protect these residents.³ California law has confirmed the right of landlords to prohibit smoking in all areas of their buildings provided they comply with the notice, disclosure, and change of tenancy requirements of local laws, including laws governing rent control protections for tenants.⁴

Benefits of a Smokefree Policy

Landlords choose to adopt smokefree policies for many reasons. Smokefree housing appeals to many renters, and cuts turnover costs by reducing the need to replace carpeting and drapes, clean and paint walls, and remove the smell of smoke. A smokefree policy also helps reduce the risk of fires⁵ and may qualify a building for insurance discounts.⁶ Finally, eliminating smoking in multi-unit housing limits the harmful effects of secondhand smoke.⁷ It improves and protects the health of all residents – both those who smoke and those who don't – and is particularly beneficial to vulnerable populations such as children, the elderly, and people with chronic illnesses such as heart disease and severe breathing problems.

Where to Adopt a Smokefree Policy

When a building is not subject to rent control, landlords may prohibit smoking in the following areas:

- Indoor and outdoor **common spaces**, which may include walkways, stairwells, parking lots, laundry rooms, playgrounds, swimming pools, and the like;
- Within a **buffer zone** (e.g., 25 feet) around any areas where smoking is prohibited, such as individual units, playgrounds, and windows and doorways in the buildings;
- In **individual units**, including outdoor spaces like private balconies and patios; or
- The entire premises.

Note that under the California Smokefree Workplaces Act, indoor common areas are required to be smokefree at all times if any work takes place on the property. This applies to properties serviced by any employees or vendors, including custodial, security, maintenance, and management staff, even if these individuals are not in the building.⁸ In rent-controlled buildings, landlords may require these indoor common areas to be smokefree without existing tenants' consent because the change is required by law. However, in rent-controlled buildings, to prohibit existing tenants from smoking in other areas, particularly in their units (including balconies and patios), landlords must ask tenants to voluntarily agree to change their lease to include the new smokefree policy.⁹

This fact sheet is intended as information only, and does not constitute legal advice. It is applicable only to multi-unit housing in the City of Los Angeles. This information cannot account for all possible scenarios to which these laws may apply. For specific legal concerns, please contact a local attorney or legal aid organization.



Smoking and nonsmoking areas should be clearly designated, marked with signs, and noted in leases and in the property's House Rules, if such rules exist. If there is a sufficiently secluded outdoor space on the property, a landlord may – but is not required to – provide a designated smoking area to help tenants adjust to the new policy. To provide the most protection from secondhand smoke, a smoking area should be located away from any smokefree space (indoor or outdoor) on the property. For example, a smoking area should be 25 feet away from any playground, window, or doorway.

How to Adopt a Smokefree Policy

To change the smoking policy in his or her building, a landlord must follow the steps outlined below.

1. Inform Tenants

All landlords must start by informing individual tenants of the pending changes to the property's rules about smoking. Landlords must provide written notice in advance, and the amount of notice depends on the type of rental agreement involved.¹⁰ The notice should include all areas and units that will be required to be smokefree.

2. Amend Leases in Buildings That Are Not Subject to Rent Control

Landlords must include the new smokefree policy in every lease, clearly indicating where smoking is prohibited on the property and where it is allowed (if anywhere). Some landlords choose to provide a map showing which common areas and units are designated nonsmoking or smoking to supplement the signs and House Rules posted in the building. For existing leases, landlords can ask current tenants for consent to amend the lease to add the smokefree provision. If 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 smokefree clause.

3. Special Rules for Rent-Controlled Buildings

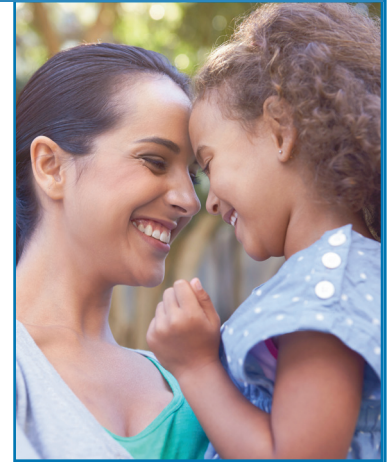
In buildings subject to rent control, existing tenants are protected from both changes in the terms of their tenancies and reductions in housing services. For some tenants, prohibiting smoking in an area where smoking was previously permitted will constitute a change in the terms of tenancy.¹¹ In rent-controlled buildings, a landlord can ask existing tenants to adopt the smokefree policy voluntarily, but cannot force a tenant to agree to such a change. A landlord could give tenants an amount of time to decide if they agree to the provision (perhaps in line with the notice periods mentioned above). If the tenant has not replied to the landlord or agreed to sign the smokefree lease provision by the deadline, the landlord may designate that unit a "smoking-permitted" unit, and wait until the next opportunity to implement the policy.

This means that for some units occupied by longer-term tenants, landlords must implement the smokefree policy tenant by tenant, as they voluntarily change their minds or as the existing tenancies naturally end (for example, at the end of the current lease, or in rent-controlled units, when the tenant moves or dies).

How to Help Tenants Comply with a Smokefree Policy

There is usually strong tenant support for smokefree policies, and in tenant surveys, even people who smoke have recognized the benefits of not smoking in their homes.¹² Landlords can help ease the transition to a voluntary smokefree policy by sharing information with residents, both in the notice period and during the implementation process. By educating tenants, landlords can help them understand the policy and its health benefits. Landlords also can provide resources to tenants who want to quit smoking. The [California Smokers' Helpline](#) and the [Los Angeles County Department of Public Health](#) are available for people who want to quit.

While smokefree policies tend to be self-enforcing once they are in place, it is important to have clear enforcement measures for violations of the new policy. Once the policy is in a lease, it can be enforced like other terms of the tenancy. Enforcement measures may include verbal reminders and requests, which many landlords have found to be sufficient. More formal enforcement could include a tiered system of notices to the tenants with written reminders of the policies.



It is important to remember that in rent-controlled buildings, a landlord cannot force existing tenants to agree to the new smokefree policy in any spaces other than indoor common areas. In addition, the landlord cannot enforce the policy against a tenant whose lease does not include the new terms.

RESOURCES

There are many examples of successful smokefree policies in multi-unit housing, and the U.S. Department of Housing and Urban Development [encourages](#) such policies. As of 2013, [61 California housing authorities](#) or commissions, including Los Angeles County, had restricted smoking in multi-unit housing, and at least [230](#) have done so nationwide. More than [69 communities in California](#) have restricted smoking in multi-unit housing using local laws; several of those jurisdictions have local rent control laws, as well. Many more owners and property management companies have created smokefree policies in buildings they own or manage.

ChangeLab Solutions has developed a number of resources that look at the legal and practical issues addressed above:

[How Landlords Can Prohibit Smoking in Rental Housing](#)

[A New Lease on Life: Landlords' Right to Make Properties Smokefree](#)

[Smokefree Multi-Unit Housing in Jurisdictions with Rent Control](#)

The following organizations have resources to assist landlords and tenants who are developing smokefree policies or working to comply with new policies:

[Centers for Disease Control and Prevention](#), with facts on health effects of secondhand smoke

[UCLA-SAFE Smokefree Apartment Living LA](#), on how to access smokefree apartments

[Americans for Nonsmokers' Rights](#), with resources for landlords on going smokefree

[Smokefree Apartment House Registry](#), with tools for landlords and model policy language

[Los Angeles County's Department of Public Health, Tobacco Control and Prevention Program](#), with information on local tobacco control policies and programs

1. L.A. Mun. Code Ch. XV § 151.00 et seq.
2. See ChangeLab Solutions, "There Is No Constitutional Right To Smoke (CA Version)." Available at www.changelabsolutions.org/publications/no-right-to-smoke-CA.
3. See ChangeLab Solutions, "How Disability Law Can Help Tenants Suffering From Drifting Tobacco Smoke." Available at www.changelabsolutions.org/publications/disability-laws-tobacco-smoke.
4. Cal. Civ. Code § 1947.5(a).
5. See the National Fire Protection Association, "Home Structure Fires" (April 2013). Available at www.nfpa.org/research/reports-and-statistics/fires-by-property-type/residential/home-structure-fires.
6. See the American Apartment Owners Association, "Landlords Offered Insurance Break for Going Smoke-free." Available at www.american-apartment-owners-association.org/property-management/latest-news/landlords-offered-insurance-break-for-going-smoke-free/.
7. The U.S. Surgeon General has concluded that there is no risk free level of exposure to secondhand smoke. U.S. Department of Health and Human Services. 2006 Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke. 2006. Available at: www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm. Accessed June 14, 2014.
8. Cal. Lab. Code § 6404.5(b).
9. LA Mun. Code Ch. XV § 151.09(A)(2)(c).
10. Cal. Civ. Code § 827 (30 days or the length of the duration of the lease, for leases that are month-to-month or for less time); Cal. Code of Civ. Proc. § 1162 (notice delivery requirements).
11. Cal. Civ. Code § 1947.5(b)(2).
12. American Lung Association, Center for Tobacco Policy & Organizing, "Findings from Opinion Research on Smoke-Free Apartments" and "Summary of 12-County Survey for the Lung Association." Available at <http://center4tobaccopolicy.org/wp-content/uploads/2013/06/Simon-memo-tenants-Statewide-June-2004.pdf> (p. 4); and <http://center4tobaccopolicy.org/wp-content/uploads/2014/06/CA4Health-Statewide-Memo.pdf> (p. 3).

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