



In recent years, many cities and counties throughout California have passed laws to protect their residents from secondhand smoke by prohibiting smoking in multi-unit residences. In communities with rent control or rent stabilization laws however, a smokefree housing law may impact the scope of the legal protections currently afforded to tenants against eviction.

This fact sheet explains how smokefree housing policies and rent control laws relate to each other, and outlines strategies for communities to tailor smokefree housing laws to preserve existing protections afforded to tenants by rent control laws. It also includes a matrix of cities in California that have rent control laws, with information about the extent to which landlords in those cities can go smokefree.

For additional resources, see our Model Smokefree Multi-Unit Housing Ordinance and the associated “Plug-in” for communities with rent control laws, at www.changelabsolutions.org/tobacco-control.

Smokefree Multi-Unit Housing in Jurisdictions with Rent Control

Background: Secondhand Smoke Exposure in Multi-Unit Housing

The health impacts of secondhand tobacco smoke are well established. According to the U.S. Centers for Disease Control and Prevention, approximately 50,000 nonsmokers die every year in the United States from illnesses, including heart disease and lung cancer, that were caused by exposure to secondhand smoke.¹ Although California has a variety of laws to protect people from secondhand smoke in places like offices, retail stores, schools, playgrounds, restaurants, and bars, most Californians are still unprotected from secondhand smoke in the place where they spend the majority of their time: their homes. Research has shown that in multi-unit residences like apartment buildings and condominiums, secondhand smoke can drift from one unit into the surrounding units, via small cracks in walls and flooring; through ventilation systems, plumbing fixtures, and electrical outlets; and under doorways.² As a result, when someone smokes in one unit, the residents in the neighboring units are exposed to secondhand smoke.

Smokefree Multi-Unit Housing: Voluntary Policies

California law explicitly affirms that landlords have the right to prohibit smoking anywhere on their property, including units and private outdoor areas like balconies and patios.³ Legally, when a landlord adopts a smokefree policy, he or she is required to include a provision in the lease describing where smoking is prohibited.⁴ For new leases, this means that the policy is effective immediately. For existing leases, adopting a smokefree policy constitutes a change to the “terms of tenancy.” This means that the policy can become effective only once the lease expires and becomes a month-to-month tenancy or a new lease is executed. If a tenant agrees to amend the lease, a nonsmoking policy can be added at any time, even in the middle of the lease. In cities with rent control laws, the terms of an existing tenancy generally cannot be amended unless the tenant agrees.

Smokefree Multi-Unit Housing: Local Ordinances

Many city and county governments have passed smokefree housing laws in their jurisdictions to protect their residents from exposure to secondhand smoke in their units.⁵ In addition to directly prohibiting smoking in some or all of the units of apartment buildings and condos, smokefree housing laws generally change the terms of tenancy for rental units, in effect making it a violation of the lease to smoke in a nonsmoking unit. These lease changes are incorporated automatically into all new leases and upon renewal for all existing leases. Many smokefree multi-unit housing laws also declare involuntary exposure to secondhand smoke to be a nuisance, which lets



other tenants use the jurisdiction's existing nuisance law to seek an injunction against a neighbor who exposes them to secondhand smoke, to ask for monetary damages if they can prove they've been harmed by the smoke, or both.

Local Rent Control Laws

Because of the extremely high cost of housing in much of California, many jurisdictions have enacted rent stabilization laws, otherwise known as "rent control" laws, which regulate how much a landlord can raise existing tenants' rent when their lease expires or goes month to month. In addition to regulating rent increases, rent control laws generally require that any changes to the terms of tenancy be done "bilaterally." This means that a tenant must consent to the changes even when the original lease has expired, because the terms of new leases are generally required to be substantially the same as the original lease. Rent control laws also include eviction control provisions, limiting the circumstances under which a landlord can evict a tenant to a specific list of "just causes." Therefore, landlords of units covered by rent control cannot evict a tenant for refusing to sign a lease that has new terms or terms different from the original. (For a list of jurisdictions in California that have rent control laws, see the rent control matrix starting on page 3.)

Voluntary Smokefree Policies in Communities with Rent Control

Because rent control laws prohibit landlords from changing the terms of tenancy without the tenant's consent, individual landlords in jurisdictions with rent control have fewer options in adopting smokefree policies. Landlords of units covered by rent control laws may include smokefree provisions in all new leases they enter into, and they may include smokefree provisions in existing leases if the tenant agrees to the change. Once a smokefree provision is in a lease, the landlord may enforce it just like any other lease term; he or she can evict a tenant for violating that (or any other) lease term. However, in the absence of a law prohibiting smoking in multi-unit housing, landlords in rent control jurisdictions cannot change the terms of existing tenancies to prohibit smoking if the tenant does not agree to the change, because that would violate the rent control law.

Smokefree Multi-Unit Housing Laws in Communities with Rent Control

Although there are no legal barriers to passing a smokefree multi-unit housing ordinance in a jurisdiction with rent control, a new smokefree housing law could impact the scope of the protections afforded to tenants by an existing rent control law. Because smokefree housing laws make it a violation of the lease to smoke in a unit that has been made smokefree pursuant to the law, and because they typically declare secondhand smoke to be a nuisance, they effectively create additional "just causes" for eviction pursuant to a rent control law. As a result, tenants who smoke and have difficulty complying with nonsmoking policies could face a heightened risk of displacement and homelessness.



That said, jurisdictions with rent control laws that wish to adopt smokefree multi-unit housing laws have options. They can pass laws to prohibit smoking in new tenancies and even some existing tenancies while preserving the protections afforded to tenants by a rent control law.

To date, one jurisdiction with a rent control law, the City of Santa Monica, has passed a smokefree multi-unit housing law that applies to units.⁶ This law requires that new tenancies be smokefree, but it allows existing tenants the ability to designate whether smoking will be allowed in their unit. Any unit that is designated as a "smoking" unit automatically becomes smokefree once the existing tenant moves out. This approach is a compromise: under this type of law, some residents will remain involuntarily exposed to secondhand smoke from neighboring units; however, residents who smoke will not face the threat of eviction.

ChangeLab Solutions' Model Smokefree Multi-Unit Housing Ordinance

ChangeLab Solutions has developed a model smokefree multi-unit housing ordinance to help California communities limit exposure to secondhand smoke in multi-unit residences. Because the ordinance was not designed to address the specific concerns discussed above that are relevant to jurisdictions with rent control laws, ChangeLab Solutions has developed a model "plug-in" provision that can be used to amend the full model ordinance to address those concerns. The model smokefree multi-unit housing ordinance and the model plug-in amendments for jurisdictions with rent control are both available for download at www.changelabsolutions.org/tobacco-control.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state. Made possible with funding from the Centers for Disease Control and Prevention through the Los Angeles County Department of Public Health.

RENT CONTROL MATRIX				
Jurisdiction*	Can landlords unilaterally adopt a smokefree policy that applies to existing tenancies by adding a smokefree provision to the lease upon renewal?	What allowable grounds for eviction in the rent control ordinance potentially relate to smoking?⁷	Are there other local laws specific to smoking in multi-unit residences?	Would legislation be required for a landlord to adopt a 100% smokefree policy?
Berkeley⁸	No: lease renewals must be “substantially identical” to the original lease terms.	“Destroy[ing] the peace and quiet of other occupants” after receiving a written request to stop.	Berkeley law forbids landlords from evicting tenants for violating a smokefree policy if the tenancy began prior to January 1, 2012. ⁹	Yes
Beverly Hills¹⁰	No: lease renewals must contain “the same terms and conditions” as the original lease.	Causing an “unreasonable interference to the peace and quiet of other residents or neighbors.”		Yes
East Palo Alto¹¹	No: lease renewals must be “substantially identical” to the original lease terms.	“Creating or permitting” a nuisance.** “Destroy[ing] the peace, quiet, comfort, or safety of the landlord or other tenants.”		Yes
Glendale^{12***}	Unclear: lease renewals must be “substantially similar” to the original lease terms.	“Creating or permitting” a nuisance. “Interfering with the comfort, safety, or enjoyment of any other residents.” Continuing to smoke in a part of the property where smoking is prohibited.	Glendale law prohibits smoking on all balconies and patios of multi-unit housing, in all indoor and outdoor common areas (except for designated smoking areas), and in all new units of multi-unit housing. Glendale also requires landlords to disclose to prospective tenants where smoking is and is not allowed on the property. ¹³	Unclear: if landlords are able to add smokefree provisions to a lease upon renewal, it would be possible for landlords to go 100% smokefree.
Hayward¹⁴	No: lease renewals must be “substantially identical” to the original lease terms.	“Destroy[ing] the peace and quiet of other tenants.”		Yes
Los Angeles¹⁵	Unclear: lease renewals must be “similar” to the original lease terms.	“Creating or permitting” a nuisance.		Unclear: if landlords are able to add smokefree provisions to a lease upon renewal, it would be possible for landlords to go 100% smokefree.
Oakland¹⁶	No: lease renewals must be “materially the same” as the original lease terms.	“Destroy[ing] the peace and quiet of other tenants.”	Oakland law prohibits smoking in indoor and outdoor common areas of multi-unit housing. Oakland law requires landlords to disclose to prospective tenants where smoking is and is not permitted on the property. ¹⁷	Yes
Palm Springs¹⁸	Yes: landlords are not prohibited from changing the terms of tenancy upon lease renewal.	“Causing or permitting” a nuisance.		Under existing law, landlords can go 100% smokefree by adding smokefree provisions in all new leases and in all leases that come up for renewal.
San Francisco¹⁹	No: lease renewals must be “materially the same” as the original lease terms.	“Creating or permitting” a nuisance.	San Francisco law prohibits smoking in indoor common areas of multi-unit housing and in the portion of outdoor common areas within 10 feet of doors and windows. ²⁰	Yes

RENT CONTROL MATRIX

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San Jose ²¹	Unclear: renewed leases must have “similar provisions” to the original lease.	San Jose law does not enumerate causes for eviction.	San Jose law prohibits smoking in indoor and outdoor common areas of multi-unit housing. ²²	Unclear: if landlords are able to add smokefree provisions to a lease upon renewal, it would be possible for landlords to go 100% smokefree.
Santa Monica ²³	No: lease renewals must be “materially the same” as the original lease terms.	Continuing to “create or permit” a nuisance after receiving a written request to stop. “Creat[ing] a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants or neighbors.”	Santa Monica law prohibits smoking in indoor and outdoor common areas of multi-unit housing, and in all units where the tenancy began after October 2012 (or with the tenant’s consent). ²⁴ Note: Santa Monica law expressly states that landlords may not evict tenants for violating the city’s smokefree housing ordinance, and that smoking in a nonsmoking area of multi-unit housing does not constitute a “violation of law” for the purposes of a lease.	Yes
West Hollywood ²⁵	No: landlords are expressly prohibited from making any unilateral changes to the terms of the tenancy.		West Hollywood law explicitly states that smoking in multi-unit housing is not a nuisance for purposes of eviction. ²⁶ West Hollywood law states that smoking in multi-unit housing does not constitute an interference with the quiet enjoyment of other residents’ units. ²⁷	Yes

*Note: some jurisdictions have rent control or rent stabilization laws that do not regulate causes for eviction or changes to the terms of tenancy other than rent increases. These jurisdictions are not discussed here, as the ability of landlords to go smokefree in those jurisdictions is legally the same as in jurisdictions without rent control laws. These jurisdictions are the cities of Campbell, Fremont, Gardena, Los Gatos, Palo Alto, San Diego, San Leandro, and Thousand Oaks.

**Note: although many of the rent control or eviction control ordinances described above allow a landlord to evict a tenant for causing a nuisance or disturbing the peace and quiet of other tenants, none of the cities in this matrix have passed laws explicitly declaring secondhand smoke a nuisance. This means that a landlord must be able to prove in court that a tenant’s smoking constitutes a nuisance in order to successfully evict on those grounds.

***Glendale does not have a rent control ordinance; however, it has a “just cause for eviction” ordinance that limits the reasons a landlord can evict a tenant.

⁷ Note: the grounds for eviction listed in this column could be interpreted to apply to a tenant who exposes other tenants to secondhand smoke on the premises. However, it is unclear under what circumstances secondhand smoke rises to the level of a nuisance or disturbance sufficient to justify eviction in a particular jurisdiction. For more detailed information on whether and how smoking can constitute grounds for eviction under the existing law of a jurisdiction, an attorney familiar with the law in that community should be consulted.

⁸ Berkeley Municipal Code Chapter 13.76.130.

⁹ Berkeley Rent Stabilization Board Regulation 1313.

¹⁰ Beverly Hills Municipal Code § 4.5.506.

¹¹ East Palo Alto Municipal Code Chapter 14.04.160.

¹² Glendale Municipal Code Chapter 9.30.

¹³ Glendale Municipal Code Chapter 8.52.

¹⁴ Hayward Residential Rent Stabilization Ordinance No. 03-01.

¹⁵ Los Angeles Municipal Code Chapter 151.09.

¹⁶ Oakland Municipal Code Chapter 8.22.360.

¹⁷ Oakland Municipal Code 8.30.050.

¹⁸ Palm Springs Municipal Code Chapter 4.02.

¹⁹ San Francisco Municipal Code Chapter 37.9.

²⁰ San Francisco Municipal Code Chapter 1009.22.f.

²¹ San Jose Municipal Code Chapter 20.170.180.

²² San Jose Municipal Code Chapter 9.44.030.

²³ Santa Monica City Charter Section 1806.

²⁴ Santa Monica Municipal Code Chapter 4.44.040.

²⁵ West Hollywood Municipal Code Chapter 17.52.010.

²⁶ *Id.*

²⁷ *Id.*

¹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. *Smoking & Tobacco Use: Secondhand Smoke (SHS) Facts*. 2012. www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm

² Klepeis N. “Measuring the Seepage of Tobacco Smoke Particles Between Apartment Units.” California’s Clean Air Project, 2008. http://changelabsolutions.org/sites/default/files/CCAP_Measuring_the_Seepage.pdf

³ Calif. Civil Code § 1947.5

⁴ *Id.*

⁵ American Lung Association in California, Center for Tobacco Policy and Organizing. *Matrix of Local Smokefree Housing Policies*. 2012. http://www.center4tobaccopoly.org/CTPO/_files/_file/Matrix%20of%20Local%20Smokefree%20Housing%20Policies%20December%202012.pdf

⁶ Santa Monica, Calif., Municipal Code § 4.44.040 (2012).