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**Model California Ordinance Regulating Smoking in Multi-Unit Residences**

**Plug-in:**

**Amendments for Jurisdictions**

**with Rent Control**

June 2013

Developed by ChangeLab Solutions

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## Introduction

ChangeLab Solutions developed its model smokefree housing ordinance to help California cities and counties limit exposure to secondhand smoke in multi-unit residences such as apartment buildings, condominium complexes, senior housing, and single-resident occupancy hotels. By creating nonsmoking living environments in multi-unit residences, communities can provide an opportunity for everyone to live smokefree—even people who can’t afford to live in a single-family home.

Several California jurisdictions have adopted rent control laws that limit the circumstances under which the terms of a tenancy can be changed and the grounds upon which a tenant may be evicted. Although no legal restrictions prevent cities and counties with such rent control laws from adopting a smokefree housing law to prohibit smoking in existing tenancies, doing so would in effect change the terms of existing tenancies and could create new legal grounds for existing tenants to be evicted.

Communities with rent control laws may wish to adopt a smokefree housing law that offers the broadest possible protections from drifting secondhand smoke but that does not alter the protections afforded to existing tenants by the local rent control law. To assist these communities, ChangeLab Solutions has developed this model plug-in provision. This plug-in is intended to be incorporated into ChangeLab Solutions’ existing model smokefree housing ordinance as a way to prohibit smoking in all new tenancies while allowing existing tenants protected by a local rent control law to choose whether to change the terms of their tenancy to prohibit smoking.

### How to Use This Plug-In

When adding this plug-in to the model smokefree housing ordinance, be sure to fill in any blanks that have been provided (e.g., [ \_\_\_\_ ] ) to customize the language to fit your community’s needs. Additionally, in some cases, the ordinance offers you a choice of options (e.g., [ choice one / choice two ] ). Some degree of customization is always necessary to make the ordinance consistent with a community’s existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

If you have questions about how to adapt this plug-in for your community, please contact ChangeLab Solutions at *www.changelabsolutions.org/tobaccoquestions*. The full model smokefree housing ordinance, as well as our other tobacco-related model ordinances, can be found on our website at [*www.changelabsolutions.org*](http://www.phlpnet.org)*/tobacco-control*.

### Amendments to ChangeLab Solutions’ Model Smokefree Housing Ordinance

1. **In SECTION I. FINDINGS,** add the following findings to the Model Ordinance prior to the clause beginning with “NOW THEREFORE”:

WHEREAS, the high cost of rental housing in California is evidenced by the following:

* California has four out of five of the most expensive rental housing markets in the country; [[1]](#endnote-0) and
* Californians in many jurisdictions spend over half their monthly income on rent;[[2]](#endnote-1) and

WHEREAS, housing instability negatively impacts communities and the public health; [[3]](#endnote-2), [[4]](#endnote-3) and

WHEREAS, to protect low-income and long-term residents from housing instability and eviction, many jurisdictions in California have passed rent control laws that regulate how the terms of tenancy may be changed;[[5]](#endnote-4) and

WHEREAS, strong rent control laws in California have been shown to keep rental housing affordable and benefit low-income households generally, and elderly residents in particular;[[6]](#endnote-5) and

WHEREAS, the Centers for Disease Control and Prevention has found that exposure to secondhand smoke is higher among low-income groups, the same groups which benefit most from rent control laws;[[7]](#endnote-6) and

WHEREAS, the goal of protecting residents from involuntary exposure to secondhand smoke is not incompatible with the need to protect housing stability for long-term residents; and

**comment:** To underscore the need for the ordinance in your community, further findings could be added based on local studies of the impact of the local rent control law on preserving affordable housing, the total number of residents protected by the local rent control law, the number of elderly or disabled residents protected by the local rent control law, or statistics about the affordability of housing in your community generally. These help “tell your story” and justify the ordinance politically, but are not legally required.

1. ***In* SECTION II:**

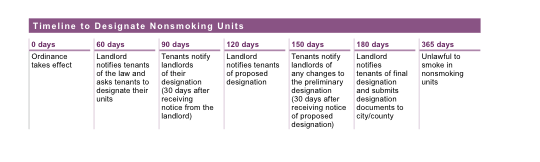
*In***Sec. [ \_\_\_\_ (\*1) ]. DEFINITIONS**, *add the following definitions in alphabetical order:*

(\_) “Tenancy” means the lawful occupation of a Unit of a Rental Complex by a Tenant.

(\_) “Tenant” means a Person or Persons who lease(s) a Unit of a Rental Complex from the Unit’s Landlord.

*Replace***Sec. [ \_\_\_\_ (\*6) ]. NONSMOKING DESIGNATIONS FOR EXISTING UNITS OF A RENTAL COMPLEX**, *with the following alternative section:*

**Sec. [ \_\_\_\_ (\*6) ]. NONSMOKING DESIGNATIONS FOR EXISTING UNITS OF A RENTAL COMPLEX.**

**comment:** This section prohibits smoking inside existing units in a rental complex, but provides a mechanism for tenants to designate their units as “smoking units” *if* the tenancy began prior to the effective date of the ordinance and smoking was already permitted. Subsection (b) describes the step-by-step approach to designating smoking units and nonsmoking units in rental complexes. This ordinance contains a recommended implementation process to allow tenants and landlords to become familiar with the new smoking restrictions over 12 months. This timeline illustrates the implementation schedule:

Implementing a smokefree housing law by using a reasonable phase-in period followed by a certain date on which everyone is required to abide by the law is generally perceived to be the most fair approach—balancing public health needs against the potential inconvenience the ordinance puts on tenants and landlords who must implement the new policy.

Your community may want to provide additional recommendations or guidelines for landlords when designating nonsmoking units. These could include holding a house meeting to discuss the new policy and hosting cessation classes for tenants.

Alternative approaches to the 12-month phase-in period could include multiple-year phase-in periods based on tenant turnover. A 12-month phase-in approach, however, is a more effective strategy. People are more likely to comply with social expectations when visible exceptions to those expectations are fewer. Please contact ChangeLab Solutions for assistance if you desire an alternative to a 12-month phase-in period.

1. Designations for new Tenancies. All Units of a Rental Complex that are not New Units; including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio; are hereby designated nonsmoking Units as of [*insert effective date of ordinance*], provided that the Tenancy commenced on or after that date.
2. Designations for existing Tenancies. All Units of a Rental Complex for which a Tenancy commenced prior to [*insert effective date of ordinance*]; including any associated exclusive-use Enclosed Areas or Unenclosed Areas, such as, for example, a private balcony, porch, deck, or patio; shall be designated as Smoking Units or nonsmoking Units as of [*insert effective date of ordinance* + *180 days* ], as follows:

(1) Every Landlord shall, no later than [*insert effective date of ordinance + 60 days*], provide each Tenant with:

1. a copy of this [ article / chapter ];
2. a written notice, clearly stating that pursuant to this [ article / chapter ] Smoking in a designated nonsmoking Unit will be illegal as of [ *insert date specified in Sec. \*9(c)* *of the Model Smokefree Housing Ordinance*];
3. a notice of the required and implied lease terms that will apply to nonsmoking Units pursuant to Section [ \_\_\_ (\*7) ] of this [ article / chapter ],
4. a request, to each Tenant of a Unit that was not previously designated as nonsmoking under existing rental terms, to designate the Unit as either a Smoking Unit or a nonsmoking Unit.

(2) Each Tenant shall respond to the Landlord’s request within thirty (30) days of receipt, notifying the Landlord of the designation of the Unit.

(3) Every Landlord shall, no later than [*insert effective date of ordinance + 120 days*], provide each Tenant with a written notice of the preliminary designation of that Tenant’s Unit based on the receipt of Tenant’s designation, clearly stating whether Tenant’s Unit is nonsmoking or Smoking.

(4) Any Tenant wishing to change or correct the preliminary designation of their Unit may do so by notifying the Landlord in writing, no later than thirty (30) days after receiving the landlord’s notice of preliminary designation.

(5) Every Landlord shall, no later than [*insert* *effective date of ordinance + 180 days*], provide each Tenant with a written notice of the final designation of that Tenant’s Unit, clearly stating that Smoking in a designated nonsmoking Unit will be illegal as of [ *insert* *date specified in Sec. \*9(c) of the Model Smokefree Housing Ordinance* ], and a copy of the final documents that will be submitted pursuant to Section [ \_\_\_ (\*10) ] of this [ article / chapter ].

(6) If a Tenant fails to designate his or her Unit, that Unit shall be deemed “undesignated” on the final documents submitted pursuant to Section [ \_\_\_ (\*10) ] of this [ article / chapter ], and the Landlord shall submit a written request to the Tenant to designate the Unit as a Smoking Unit or a nonsmoking Unit annually until the Tenant designates the Unit or the Tenancy terminates, in which case the Landlord shall designate the Unit as nonsmoking.

(7) Every Unit which has been designated as a Smoking Unit or as an undesignated Unit pursuant to the above procedure shall be re-designated as a nonsmoking Unit upon written request of a Tenant.

(8) No later than sixty (60) days of a Landlord having actual or constructive notice of a new Tenant inhabiting a designated Smoking Unit or undesignated Unit, the Landlord shall notify the new Tenant that at such time as all Persons who were Tenants as of [*insert* *effective date of ordinance*] permanently vacate the Unit, the Unit will be re-designated as a nonsmoking Unit.

(9) Every Unit which has been designated as a Smoking Unit or as an undesignated Unit pursuant to the above procedure shall be re-designated as a nonsmoking Unit at such time as the Unit becomes vacant or within ninety (90 days) after all Persons who were Tenants as of [*insert* *effective date of ordinance*], permanently vacate the Unit, whichever is sooner.

(10) The designation of a Unit as a nonsmoking Unit under this section Section [ \_\_ (\*6)] shall be permanent, regardless of any prior designation.

*Replace* **Sec. [ \_\_\_\_ (\*7) ]. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN RENTAL COMPLEXES**, *with the following alternative section:*

**Sec. [ \_\_\_\_ (\*7) ]. REQUIRED AND IMPLIED LEASE TERMS FOR ALL NEW AND EXISTING UNITS IN RENTAL COMPLEXES**

**comment:** This section requires that smoking restrictions be included or implied in leases. Note that the term “Unit” includes the defined term “New Unit,” so whenever the term “Unit” is used in the ordinance, it includes *all* units, both those existing when the ordinance is adopted and new units constructed afterward.

By requiring these provisions to be included or implied in leases, this model ordinance authorizes landlords to enforce the smoking restrictions just like any other condition in the lease, such as common provisions regarding noise, use of laundry facilities, and damage to common areas. Further, by including the “third-party beneficiary” provision, other tenants will be able to enforce a lease’s smoking restrictions. The landlord and other tenants become an alternate enforcement authority for the smoking restrictions in addition to possible local government enforcement of the law (see section \*12 of the model smokefree housing ordinance, on enforcement) and optional private citizen enforcement (see section \*13 of the model smokefree housing ordinance, on private enforcement).

Note also that after a landlord and tenant amend an existing rental agreement or enter into a new lease to include these required terms, smoking in violation of those terms becomes illegal pursuant to section \*9 of the model smokefree housing ordinance, not just a material breach of the lease.

(a) Required lease terms for new Tenancies. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex, including, for example, New Units and existing Units, entered into after [ *insert* *effective date of ordinance* ], shall include the provisions set forth in subsection (b) below.

(b) Required lease terms for existing Tenancies. Every lease or other rental agreement for the occupancy of a Unit in a Rental Complex which has been designated a nonsmoking Unit pursuant to Section \*6 of this [ article / chapter ], entered into, renewed, or continued month-to-month after [ *insert* *effective date of ordinance* ], shall be amended to include the following provisions:

**comment:** The following subsections contain both an explicit directive regarding the *legal effect* a required clause must achieve, followed by a model clause to implement the directive. Because leases vary in terms, format, and language, it is not possible to provide verbatim wording that can be easily dropped into any lease. These requirements provide a landlord with the needed flexibility to conform an existing lease to the requirements of this ordinance while using terms consistent with the rest of the lease. In many cases, a landlord can use the model language as is or with minimal changes.

(1) A clause providing that as of [ *insert date specified in Section \*9(c) of the Model Smokefree Housing Ordinance*], it is a material breach of the agreement to allow or engage in Smoking in the Unit if it has been designated a nonsmoking Unit. Such a clause might state, “It is a material breach of this agreement for Tenant or any other person subject to the control of Tenant or present by invitation or permission of Tenant to smoke in the unit as of [ *insert date specified in Section \*9(c) of the Model Smokefree Housing Ordinance*] unless the landlord has provided written notice that the unit has been designated as a Smoking Unit and smoking in the unit is not otherwise prohibited by this agreement, other agreements, or law.”

(2) A clause providing that it is a material breach of the agreement for Tenant or any other Person subject to the control of a Tenant or present by invitation or permission of a Tenant to Smoke in any Common Area of the property other than a designated Smoking area. Such a clause might state, “It is a material breach of this agreement for Tenant or any other person subject to the control of Tenant or present by invitation or permission of Tenant to smoke in any common area of the property, except in any outdoor designated smoking area.”

(3) A clause providing that it is a material breach of the agreement for a Tenant or any other Person subject to the control of a Tenant or present by invitation or permission of a Tenant to violate any law regulating Smoking while anywhere on the property. Such a clause might state, “It is a material breach of this agreement for Tenant or any other person subject to the control of Tenant or present by invitation or permission of Tenant to violate any law regulating smoking while anywhere on the property.”

(4) A clause expressly conveying third-party beneficiary status to all other occupants of the Rental Complex as to the Smoking provisions of the agreement. Such a clause might state, “Other occupants of the property are express third-party beneficiaries of this agreement’s provisions concerning smoking. As such, other occupants of the property may seek to enforce those smoking provisions by any lawful means, including by bringing a civil action in a court of law.”

**comment:** Declaring other residents third-party beneficiaries grants people living in the rental complex rights to enforce the smoking restrictions, by treating a violation of the smokefree lease term as a breach of the lease. Without the declaration, other residents usually have no legal right to enforce the lease terms (because they are not a “party” to the agreement), and the power to enforce the terms of the lease rests solely with the landlord and the city or county.

(c) Whether or not a Landlord complies with subsections (a) and (b) above, the clauses required by those subsections shall be implied and incorporated by this ordinance into every agreement to which subsections (a) or (b) apply and shall become effective as of the earliest possible date on which the Landlord could have made the insertions pursuant to subsections (a) or (b) of this section above.

**comment:** This is a back-up provision to ensure that the smoking-related terms are included by law, even if the landlord fails to comply with subsections (a) or (b).

(d) A Tenant who breaches a Smoking provision of a lease or other rental agreement for the occupancy of a Unit in a Rental Complex, or who knowingly permits any other Person subject to his or her control or present by his or her invitation or permission, shall be liable for the breach to: (i) the Landlord; and (ii) any occupant of the Rental Complex who is exposed to Smoke or who suffers damages as a result of the breach.

**comment:** This provision provides other tenants legal standing to seek damages or possibly an injunction against someone smoking in violation of a lease term.

There are two additional enforcement mechanisms in the model smokefree housing ordinance:

Section \*12, on enforcement, provides for traditional enforcement by local government officials.

Section \*13, on private enforcement, grants *any* member of the public the right to enforce the ordinance. Thus, a landlord, a tenant, or a member of the public could bring a lawsuit to enforce the ordinance in either superior court or small claims court if section \*13 of the model smokefree housing ordinance is included.

(e) This [article / chapter] shall not create additional liability in a Landlord to any Person for a Tenant’s breach of any Smoking provision in a lease or other rental agreement for the occupancy of a Unit in a Rental Complex if the Landlord has fully complied with this Section and Section [ \_\_(\*6)].

**comment:** This provision expressly states that the landlord is not the guarantor of the ordinance’s enforcement. That is, the landlord is not required to enforce the no-smoking lease terms pursuant to this ordinance, and other residents cannot force the landlord to act against a tenant who violates them. Including this provision can be extremely important in efforts to gain landlord support for or reduce landlord opposition to the ordinance.

(f) Failure to enforce any Smoking provision inserted or implied in a lease or other rental agreement for the occupancy of a Unit in a Rental Complex by this [ article / chapter ] shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

**comment:** This is a technical legal provision designed to prevent a court from inferring a permanent waiver of a smoking-related provision from a pattern of lax enforcement.

### *In* Sec. [ \_\_\_\_ (\*11) ]. SMOKING AND SMOKE GENERALLY, *add the following provision:*

(a) Notwithstanding any other provision of this [ article / chapter ], nothing in this [ article / chapter ] shall be deemed to create grounds to terminate a tenancy where no violation of the lease terms incorporated pursuant to Section [ \_\_(\*7)] has occurred.

**comment:** This provision makes it clear that the ordinance does not create an additional “just cause” for eviction pursuant to a jurisdiction’s rent control ordinance. This means that existing tenants whose leases do not include the nonsmoking lease terms outlined in section \*7 cannot be evicted for violating this ordinance, although they may still be subject to the other penalties described in sections \*12 and \*13 of the model smokefree housing ordinance. However, if section \*7 above does impose nonsmoking requirements on a unit, violation of those requirements will be just cause for eviction.

1. U.S. Census Bureau. 2010. *Rental Housing Market Condition Measures: 2009.* [*www.census.gov/prod/2010pubs/acsbr09-7.pdf*](http://www.census.gov/prod/2010pubs/acsbr09-7.pdf) [↑](#endnote-ref-0)
2. National Low Income Housing Coalition. 2013. *Congressional District Housing Profile.* [*http://nlihc.org/sites/default/files/CDP-CA.pdf*](http://nlihc.org/sites/default/files/CDP-CA.pdf) (Between 2005 and 2009, 30 percent of California renters paid more than half of their income on housing costs.) [↑](#endnote-ref-1)
3. Desmond M. “Eviction and the Reproduction of Urban Poverty.” *American Journal of Sociology*. 118: 88–133, 2012; *see also* Bartlett, Sheridan. 1997. “The Significance of Relocation for Chronically Poor Families in the USA.” *Environment and Urbanization*, 9(1): 121–132; Kappel Ramji Consulting Group. *Common Occurrence: The Impact of Homelessness on Women’s Health: Phase II: Community-Based Action Research Final Report.* Toronto: Sistering, 2002. [↑](#endnote-ref-2)
4. Desmond, *supra* note 4. [↑](#endnote-ref-3)
5. *See, e.g.,* Oakland, Calif., Municipal Code § 8.22.010(A) (2003). (“Many residents of Oakland pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens, persons in low and moderate income households, and persons on fixed incomes”); Los Angeles, Calif., Municipal Code § 151.01 (1990) (“Tenants displaced as a result of their inability to pay increased rents must relocate but as a result of such housing shortage are unable to find decent, safe and sanitary housing at affordable rent levels. Aware of the difficulty in finding decent housing, some tenants attempt to pay requested rent increases, but as a consequence must expend less on other necessities of life. This situation has had a detrimental effect on substantial numbers of renters in the City, especially creating hardships on senior citizens, persons on fixed incomes and low and moderate income households.”) [↑](#endnote-ref-4)
6. Levine N, Grisby JE, Heskin A. “Who Benefits From Rent Control? Effects on Tenants In Santa Monica, California.” *Journal of the American Planning Association*, 56(2): 112–140, 1990. *http://instructional1.calstatela.edu/mfinney/Courses/440/articles/smrent1.htm#AN9608226770-16* [↑](#endnote-ref-5)
7. Centers for Disease Control and Prevention. “Vital Signs: Nonsmokers’ Exposure to Secondhand Smoke—United States, 1999–2008.*” Morbidity and Mortality Weekly Report 2010*; 59(35):1141-6. [↑](#endnote-ref-6)