



### 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.<sup>1</sup> Although California has a variety of laws to protect people from secondhand smoke in places where they work and play, most Californians remain unprotected from secondhand smoke in the place where they spend the most time: their home. Research has shown that in multi-unit residences like apartment buildings and condominiums, secondhand smoke can drift from one unit into the surrounding units. It can pass through small cracks in walls and flooring; in and out of ventilation systems, plumbing fixtures, and electrical outlets; and under doorways.<sup>2</sup> As a result, when someone smokes in one unit, the residents in the neighboring units are exposed to secondhand smoke.*

## Smokefree Multi-Unit Housing in Jurisdictions with Rent Control

### Background: Trends in Smokefree Housing Policies

In recent years, many cities and counties in California have started passing laws that prohibit smoking in multi-unit residences. These laws are part of local efforts to protect residents from secondhand smoke. In communities with rent control or rent stabilization laws, however, a smokefree housing law may affect 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. It outlines strategies for tailoring smokefree housing laws to preserve the existing protections that rent control laws provide tenants. This resource 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.

### 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. These laws regulate how much a landlord can raise an existing tenant’s rent when his or her lease expires or goes month to month. In addition to regulating rent increases, rent control laws typically require that any changes to the terms of tenancy be done “bilaterally.” This means a tenant must consent to the changes even when the original lease has expired, because the terms of the new lease are generally required to be substantially the same as those in 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, a landlord 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.)

### How Landlords Can Go Smokefree in Communities with Rent Control

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.<sup>3</sup> 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.<sup>4</sup> For new leases, this means the policy is effective immediately. For existing leases, however, adopting a smokefree policy constitutes a change to the “terms of tenancy.”

Because rent control laws prohibit landlords from changing the terms of tenancy without their 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, a landlord may enforce that provision like any other lease term. For example, a landlord would provide proper notice of a violation, followed by any other applicable enforcement actions. 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 tenants don't agree to the change. That would violate the rent control law.

### **Smokefree Multi-Unit Housing: Local Ordinances**

Many city and county governments have passed smokefree housing laws to protect residents from exposure to secondhand smoke in their home.<sup>5</sup> In addition to directly prohibiting smoking in some or all the units of apartment buildings and condominiums, 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 of existing leases, subject to the limits of any applicable rent control law. Many smokefree multi-unit housing laws also declare involuntary exposure to secondhand smoke to be a nuisance. This provision lets 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.

### **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 affect 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 such laws 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 have options if they're considering adopting a smokefree multi-unit housing law. They can pass laws to prohibit smoking in new tenancies, and even some existing tenancies, while preserving the protections the rent control law affords to tenants.

To date, two jurisdictions with rent control laws, the Cities of Santa Monica and Berkeley, have passed smokefree multi-unit housing laws that apply to units.<sup>6,7</sup> The Santa Monica



law requires that new tenancies be smokefree, but it allows existing tenants 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.

In Berkeley, the smokefree multi-unit housing law applies to all units. However, the smokefree lease provision is optional for existing tenants. Unless existing residents have voluntarily agreed to the smokefree lease addendum, they are protected from eviction for smoking. However, the city can still take action against any tenant (existing or new) who violates the smokefree law. The Berkeley law includes a complaint process for neighbors affected by secondhand smoke, including notices to offending tenants and an infraction for repeat violations.

### **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. While the model ordinance was not designed to address the specific concerns relevant to jurisdictions with rent control laws, this fact sheet summarizes additional issues for those communities to consider. The matrix on the following pages provides information about California cities with rent control restrictions and the smokefree protections those communities already provide. Communities can use the matrix as a starting place to determine the most effective strategy for creating smokefree multi-unit housing.

## HOW SMOKEFREE HOUSING POLICIES CAN BE IMPLEMENTED IN COMMUNITIES WITH RENT CONTROL \*

Jurisdiction	Can landlords unilaterally adopt a smokefree policy that applies to existing tenancies by adding a smokefree provision to the lease upon renewal?	Which provisions in the rent control ordinance potentially relate to smoking? <sup>8</sup>	Are there other local laws specific to smoking in multi-unit residences?
<b>Berkeley<sup>9</sup></b>	No: lease renewals must be “substantially identical” to the original lease terms.	“Destroy[ing] the peace and quiet of other occupants.”	Berkeley law prohibits smoking in all units and common areas of multi-unit housing, which may be enforced by the city (i.e., separate from the enforcement of lease violations). <sup>10</sup>  Note: Berkeley law forbids landlords from evicting tenants for violating a smokefree policy if the tenancy began prior to January 1, 2012. <sup>11</sup>
<b>Beverly Hills<sup>12</sup></b>	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.”	No, as of April 1, 2016.
<b>East Palo Alto<sup>13</sup></b>	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.”	No, as of April 1, 2016.
<b>Glendale<sup>14***</sup></b>	Unclear: lease renewals must be “substantially similar” to the original lease terms.  If landlords are able to add smokefree provisions to leases upon renewal, it would be possible for them to make their property completely smokefree.	“Creating or permitting” a nuisance. “Interfering with the comfort, safety, or enjoyment of any other residents.”	Glendale law prohibits smoking in many areas of multi-unit housing: all balconies and patios, all indoor and outdoor common areas (except designated smoking areas), and all new units. Glendale also requires landlords to disclose to prospective tenants where smoking is and is not allowed on the property. <sup>15</sup>
<b>Hayward<sup>16</sup></b>	No: lease renewals must be “substantially identical” to the original lease terms.	“Destroy[ing] the peace and quiet of other tenants.”	No, as of April 1, 2016.
<b>Los Angeles<sup>17</sup></b>	Unclear: lease renewals must be “similar” to the original lease terms.  If landlords are able to add smokefree provisions to leases upon renewal, it would be possible for them to make their property completely smokefree.	“Creating or permitting” a nuisance.	No, as of April 1, 2016.
<b>Oakland<sup>18</sup></b>	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. <sup>19</sup>
<b>Palm Springs<sup>20</sup></b>	Yes: landlords are not prohibited from changing the terms of tenancy upon lease renewal.	“Causing or permitting” a nuisance.	No, as of April 1, 2016.
<b>San Francisco<sup>21</sup></b>	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. <sup>22</sup>
<b>San Jose<sup>23</sup></b>	Unclear: renewed leases must have “similar provisions” to the original lease.  If landlords are able to add smokefree provisions to leases upon renewal, it would be possible for them to make their property completely smokefree.	Note: San Jose law does not enumerate causes for eviction.	San Jose law prohibits smoking in indoor and outdoor common areas of multi-unit housing. <sup>24</sup>

## HOW SMOKEFREE HOUSING POLICIES CAN BE IMPLEMENTED IN COMMUNITIES WITH RENT CONTROL\*

Jurisdiction	Can landlords unilaterally adopt a smokefree policy that applies to existing tenancies by adding a smokefree provision to the lease upon renewal?	Which provisions in the rent control ordinance potentially relate to smoking? <sup>8</sup>	Are there other local laws specific to smoking in multi-unit residences?
<b>Santa Monica</b> <sup>25</sup>	No: lease renewals must be “materially the same” as the original lease terms.	“Creat[ing] or permit[ting]” a nuisance. “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). <sup>26</sup>  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.
<b>West Hollywood</b> <sup>27</sup>	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. <sup>28</sup>  West Hollywood law states that smoking in multi-unit housing does not constitute an interference with the quiet enjoyment of other residents’ units. <sup>29</sup>

*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. Updates to this material were made possible by funds received from Grant Number 14-10214 with the California Department of Public Health, California Tobacco Control Program.*

\*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.

<sup>1</sup> 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](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm)

<sup>2</sup> 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](http://changelabsolutions.org/sites/default/files/CCAP_Measuring_the_Seepage.pdf)

<sup>3</sup> Calif. Civil Code § 1947.5

<sup>4</sup> *Id.*

<sup>5</sup> American Lung Association in California, Center for Tobacco Policy and Organizing. *Local California Smokefree Housing Policies: Detailed Analysis*. 2015. [www.center4tobaccopolicy.org/wp-content/uploads/2013/12/FINAL-Local-California-Smokefree-Housing-Policies-Sept-2015.pdf](http://www.center4tobaccopolicy.org/wp-content/uploads/2013/12/FINAL-Local-California-Smokefree-Housing-Policies-Sept-2015.pdf).

<sup>6</sup> Santa Monica Municipal Code Section 4.44.040.

<sup>7</sup> Berkeley Municipal Code Sections 12.70.035-037.

<sup>8</sup> Note: the provisions 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 enforcement action, including possible eviction in a particular jurisdiction. For more detailed information on whether and how smoking can constitute grounds for enforcement action under the existing law of a jurisdiction, an attorney familiar with the law in that community should be consulted.

<sup>8</sup> Berkeley Municipal Code Section 13.76.130.

<sup>10</sup> Berkeley Municipal Code Sections 12.70.035-037.

<sup>11</sup> Berkeley Rent Stabilization Board Regulation 1313.

<sup>12</sup> Beverly Hills Municipal Code Section 4.5.506.

<sup>13</sup> East Palo Alto Municipal Code Section 14.04.160.

<sup>14</sup> Glendale Municipal Code Chapter 9.30.

<sup>15</sup> Glendale Municipal Code Chapter 8.52.

<sup>16</sup> Hayward Residential Rent Stabilization Ordinance No. 03-01.

<sup>17</sup> Los Angeles Municipal Code Section 151.09.

<sup>18</sup> Oakland Municipal Code Section 8.22.360.

<sup>19</sup> Oakland Municipal Code Chapter 8.30.050.

<sup>20</sup> Palm Springs Municipal Code Chapter 4.02.

<sup>21</sup> San Francisco Municipal Code Section 37.9.

<sup>22</sup> San Francisco Municipal Code Section 1009.22(f).

<sup>23</sup> San Jose Municipal Code Section 20.170.180.

<sup>24</sup> San Jose Municipal Code Section 9.44.030.

<sup>25</sup> Santa Monica City Charter Section 1806.

<sup>26</sup> Santa Monica Municipal Code Section 4.44.040.

<sup>27</sup> West Hollywood Municipal Code Section 17.52.010.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*