

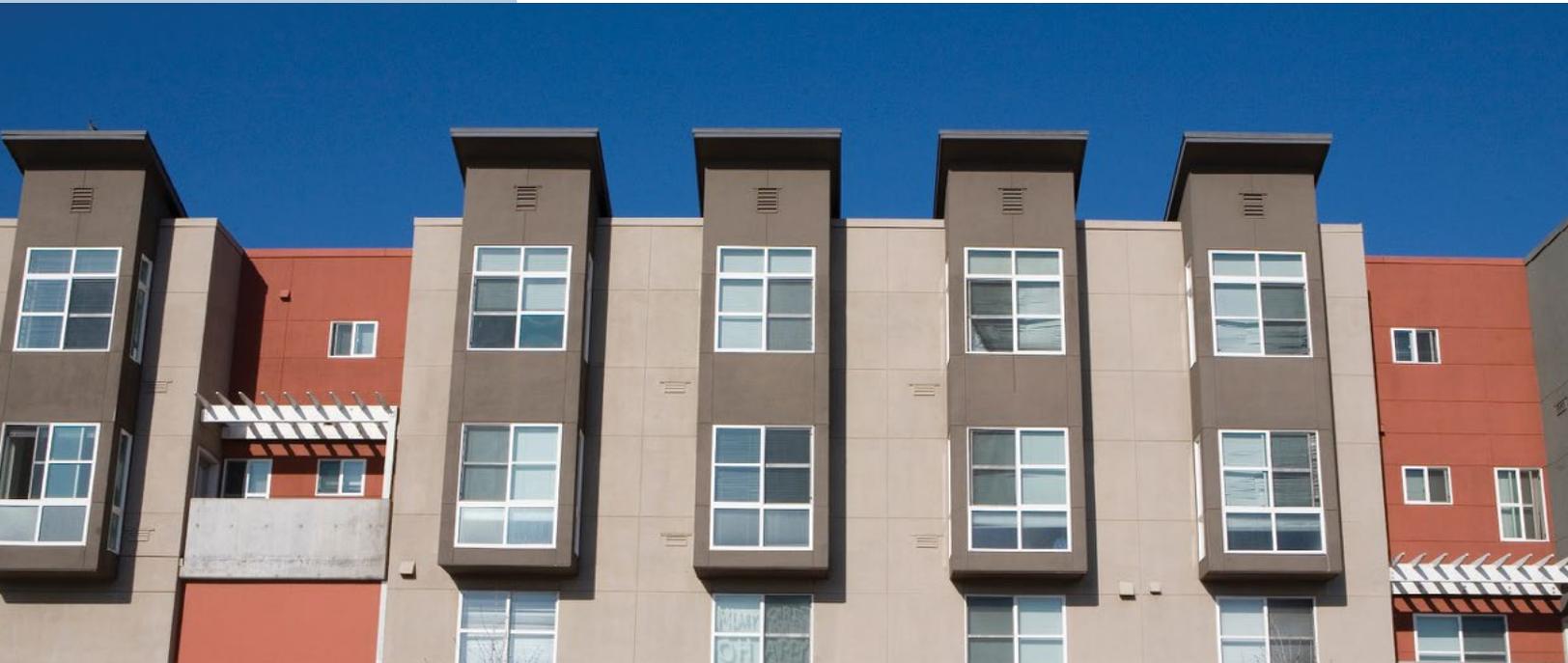


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A New Lease on Life

Landlords' Right to Make Properties Smokefree



Under California law, landlords have the right to establish smokefree policies on their properties and inside their rental units.¹ Although smokefree housing policies have been common in California for quite some time, some landlords and tenants are confused about whether landlords actually have the right to adopt such policies. In 2012, a law was passed by the California legislature and signed by the governor specifically to clarify this issue. This fact sheet answers some frequently asked questions about this law, including its effect on leases and local ordinances. Additionally, ChangeLab Solutions has prepared a variety of materials on other legal issues pertaining to smokefree housing.

For more information, please see our resources on secondhand smoke at www.changelabsolutions.org/landing-page/secondhand-smoke.

What Does California Law Say?

California Civil Code section 1947.5 (sometimes known by its bill number, SB 332) affirms that landlords have the right to make their properties 100% smokefree, not just in common areas but *everywhere* on the property, including all dwelling units, private balconies, patios, and other areas. In other words, the law makes clear that a landlord who wants to adopt a smokefree policy faces no legal barriers to doing so under state law.

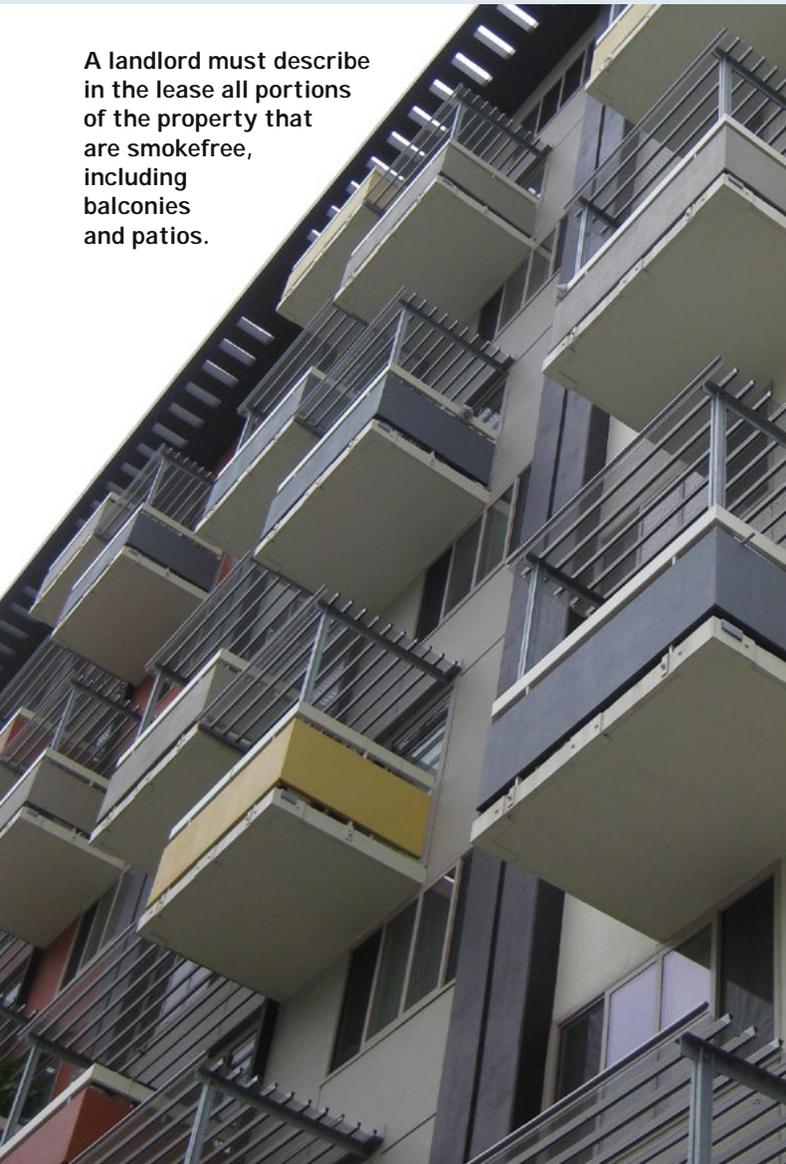
The law does not expand or create new rights for landlords. For example, the law says that landlords still have to follow all applicable local laws, such as rent control laws or other laws that control how changes to a lease can be made.

However, the law does create some *additional requirements* regarding what landlords must do when they adopt and implement smokefree policies. Also, the law prohibits local governments from passing new ordinances that would directly *prevent* landlords from going smokefree.

What about condos or subsidized housing?

Because SB 332 affirms the right of all landlords to go smokefree, condo owners who rent out their units and owners/managers of subsidized housing in California can point to SB 332 if their tenants challenge their authority to prohibit smoking. Although subsidized housing providers may, depending on the type of funding they receive, have to go through a slightly different process to become smokefree, it's important to remember that federal law also allows them to go smokefree if they so choose. In fact, the US Department of Housing and Urban Development (HUD), which manages federal funding for affordable housing, requires public housing agencies to adopt a policy by July 31, 2018, making all indoor areas, including residential units, and outdoor areas within 25 feet of indoor places smokefree. HUD has developed a toolkit and other resources to help housing authorities, landlords, and property managers go smokefree: www.hud.gov/smokefreetoolkits.

A landlord must describe in the lease all portions of the property that are smokefree, including balconies and patios.



Requirements for Landlords under Civil Code section 1947.5

What information must new lease agreements include on smokefree areas?

Under Civil Code section 1947.5, landlords who adopt smokefree policies have to specify, in all new leases, which parts of the property are going to be smokefree. This not only helps potential tenants who desire smokefree housing but may also help people who smoke to comply with the policy. A housing applicant who is considering renting at a particular property can ask to review a landlord's lease in order to find out whether smoking is prohibited and, if so, which areas are smokefree.

How must a landlord notify current tenants if she or he plans to adopt a smokefree policy?

State law has long required that landlords follow certain procedures before changing the terms of a lease or rental agreement. Civil Code section 1947.5 makes it clear that landlords must follow these procedures if they adopt a smokefree policy. The law specifically states that a new smokefree policy constitutes a change to the terms of an existing tenancy. Therefore, the law requires landlords to provide reasonable notice of such a new policy to their existing tenants. The amount of notice a landlord has to provide to a tenant is governed by California Civil Code section 827 and usually depends on the type of rental agreement involved.²

The procedures for adding a smokefree provision to the terms of an existing tenancy are described below. **Note that landlords may need to follow additional or different procedures if their property is located in a city with a rent control or eviction control ordinance or if they are participating in a subsidized housing program.**

Existing lease – with consent of the tenant

If a current tenant and landlord both agree to change an existing lease to include a smokefree provision, the landlord should either

- (a) Add the smokefree provision to the existing lease; or
- (b) Create a new lease that includes the smokefree provision.

Existing lease – without consent of the tenant

If a landlord wants to add a smokefree clause to an existing lease but the current tenant does not, the landlord is still allowed to change the lease. The process, however, depends on the type of rental agreement:

Month-to-month rental agreement

A landlord may add a smoking prohibition to a month-to-month rental agreement by giving written notice to the tenant³ and by making the smokefree restriction effective at least 30 days after giving notice.⁴

A tenant who does not accept this new term is, in effect, ending their tenancy by refusing to renew the amended month-to-month rental agreement.

Fixed-term lease

When a lease is for a fixed term (typically a 6- or 12-month period), the landlord cannot change the lease during that time period without the tenant's consent. Until the lease expires, its terms are set. However, when a fixed-term lease ends, it may convert to a month-to-month agreement. Then the landlord can add a smokefree requirement (providing the tenant with at least 30 days' notice, as described earlier). Otherwise, at the end of the lease's fixed term, the landlord and tenant may create a new multi-month lease, which can include the smokefree clause. If the tenant will not agree to a new lease, the landlord may evict them for refusing to sign it.

What if a landlord has a smokefree policy, but doesn't include it in the lease?

Although the law does not specify any penalties for a landlord who adopts a smokefree policy but fails to put it in their leases, such a landlord may have difficulty getting tenants to comply with the policy. Even if a tenant repeatedly violates the policy, without an explicit clause in the lease, the landlord likely would not have legal grounds for evicting the tenant. Including a smokefree policy in the lease helps to ensure that all tenants are aware of restrictions on smoking and makes it more likely that they will observe the policy.



Does this law have any impact on landlords who don't have smokefree policies?

Civil Code section 1947.5 does not require landlords to adopt smokefree policies. However, tenants who would like their landlords to adopt smokefree policies may want to inform them about the law, as many property owners may be unaware of it (and unaware of their rights under the law). Additional resources that tenants can share with their landlords on creating smokefree housing are available on our website at www.changelabsolutions.org/landing-page/secondhand-smoke.

The Effect of Civil Code section 1947.5 on Local Ordinances

My city already has a local smokefree housing ordinance. Does this law affect it?

Civil Code section 1947.5 does not override local laws that restrict smoking in rental housing. Landlords and tenants still must follow local laws. If they haven't already, landlords should include the requirements of any local smokefree housing ordinance in their leases. For example, if a local ordinance is passed that prohibits smoking in all multifamily housing units, including patios and balconies, landlords should update their leases to be consistent with the ordinance. However, even if a landlord does not update the lease, any local ordinance would still apply to the landlord and their tenants. For more information on how local smokefree housing ordinances can be enforced, see www.changelabsolutions.org/publications/making-new-smokefree-housing-law-work.

My city is considering adopting a smokefree housing ordinance. Does Civil Code section 1947.5 make these kinds of ordinances unnecessary?

While Civil Code section 1947.5 makes clear that landlords have the *right* to adopt smokefree policies, it neither requires them to do so nor guarantees that they will. To ensure that



By including a smokefree policy in the lease, a landlord can help ensure that tenants are aware of smoking restrictions in common areas.

all residents, especially those most vulnerable to secondhand smoke, have access to smokefree housing, cities and counties may choose to pass local ordinances that restrict smoking in multifamily properties. Civil Code section 1947.5 does not prevent local governments from adopting such ordinances.

Some localities have smokefree housing laws that “grandfather” existing tenants, meaning that tenants can continue smoking in units that they occupied before the laws became effective. Localities that are considering adopting smokefree housing laws should examine whether a grandfathering provision like this could conflict with a landlord’s right to adopt a smokefree policy under Civil Code section 1947.5. Civil Code section 1947.5 explicitly *does not* override any local laws passed *before* January 1, 2012, even if they actively require landlords to allow some tenants to continue to smoke. However, the law does override local ordinances passed *after* January 1, 2012, that deliberately prohibit owners from going 100% smokefree, because such ordinances would conflict directly with Civil Code section 1947.5. Examples of laws that could be preempted are ordinances that would require landlords to maintain designated smoking areas on their property or that would require them to keep a certain percentage of “smoking units” available for future tenants.

Note that because Civil Code section 1947.5 requires landlords to abide by all local laws about changes in the terms of tenancy, it does *not* override local rent control or eviction control ordinances. For example, it would not preempt a local ordinance that grandfathers existing tenants by allowing them to maintain the terms of their existing tenancies until they move out. Even though this type of law could limit a landlord’s ability to go smokefree, it would not *prohibit* them from doing so but rather would regulate *how* they must go about it, as discussed in the next section.

How does this law affect cities with local rent control ordinances?

Civil Code section 1947.5 does not override the tenant protections provided by local rent control ordinances.⁵ In cities with rent control, local ordinances usually state when and how a landlord can change the terms of a tenancy. For example, a rent control ordinance may require that a tenant agree in writing before a new rule can become effective or before the tenant can be evicted for violating the new rule. A new smokefree policy that applies to areas where smoking has previously been allowed is a change to the terms of a tenancy. Before they can prohibit smoking on their properties, landlords in cities with rent control have to follow local law governing how to change the terms of a lease. For information about procedures for changing the terms of a tenancy, landlords (and tenants) should consult their local rent control ordinances. For more information, please see our fact sheet, *Smokefree Multi-Unit Housing in Jurisdictions with Rent Control*, at www.changelabsolutions.org/publications/smokefree-rent-control.



California landlords have discretion to adopt smokefree policies, as long as they comply with state and local laws for amending leases.

Finally, many landlords use leases that refer to “house rules.” House rules state, in greater detail than the lease, the landlord’s expectations regarding tenants’ use of common areas. House rules are usually listed in a separate document that is attached to the lease. In the past, some landlords have used house rules to prohibit smoking in common areas. Now, however, if a landlord adopts a policy on smokefree common areas, Civil Code section 1947.5 requires them to incorporate that policy into the lease itself. This requirement is particularly relevant in jurisdictions with rent control or eviction control ordinances, because landlords in these jurisdictions typically can’t make changes to the terms of tenancy (ie, the lease) without the tenant’s consent. This means that landlords in rent-controlled jurisdictions may only apply a new policy on smokefree common areas to existing tenants who agree to the change.

ChangeLab Solutions has developed tools to help California cities and counties better understand, plan, and implement policies to establish smokefree housing. For more information, please see our resources at www.changelabsolutions.org/landing-page/secondhand-smoke.

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.

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¹ Cal. Civ. Code § 1947.5.

² Cal. Civ. Code § 827.

³ A landlord must follow the notice requirements of Cal. Civ. Proc. Code § 1162, which authorizes a landlord to serve notice of a changed lease term in three ways: the landlord must attempt to give written notice to the tenant personally; if that fails, she may leave a copy with someone of suitable age and discretion at either the tenant's residence or place of business; and if that fails, the landlord may fasten a copy in a conspicuous place on the property and mail a copy to the tenant.

⁴ Cal. Civ. Code § 827(a).

⁵ As of December 2016, California cities with local rent control ordinances included Berkeley, Beverly Hills, Campbell, East Palo Alto, Fremont, Hayward, Los Angeles, Los Gatos, Mountain View, Oakland, Palm Springs, Richmond, San Francisco, San Jose, Santa Monica, Thousand Oaks, and West Hollywood.

Photos by Meliah Schultzman.

