



Implementing & Enforcing a Smokefree Multi-Unit Housing Ordinance

A Fact Sheet for Local Jurisdictions

Smokefree housing laws can help protect residents from the harms of secondhand smoke. This fact sheet outlines options to implement and enforce local smokefree multi-unit housing laws.¹

Although California state law protects people from exposure to secondhand smoke in places like schools, playgrounds, workplaces, restaurants, and bars, most Californians remain unprotected from secondhand smoke in the place where they spend most of their time: their homes. In multi-unit residences like apartment buildings and condominiums, secondhand smoke can drift from one unit into surrounding units through small cracks in walls and flooring, doorways, ventilation systems, plumbing fixtures, and electrical outlets.² A smokefree multi-unit housing ordinance can reduce public exposure to secondhand smoke, minimize fire risk, provide economic benefits to landlords, and improve overall quality of life for residents.

Key to Success - Implementation

Implementation includes all the steps necessary for a local jurisdiction to adopt and administer its smokefree housing law. A list of the recommended steps is included below. Effective implementation of a smokefree housing law is particularly important because it can help promote compliance and preclude the need for extensive enforcement. Smokefree laws are often described as “self-enforcing,” which means that individuals voluntarily comply without any involvement by law or code enforcement officials. A law prohibiting littering is an example of a self-enforcing law. Strategic preparation and implementation will help jurisdictions obtain resident compliance without having to resort to administrative and/or legal enforcement processes.



**ChangeLab
Solutions**

Law & policy innovation
for the common good.

Step 1

Educate the public and provide notice about the new policy.

- Make information available online, through social and local media, and at community meetings. This information should include an explanation of the new law, a summary of the provisions, the effective date, and resources on smoking cessation (i.e., information on how individuals can seek help with nicotine addiction; e.g., they can call the hotline 1-800-NO-BUTTS).
- Target outreach to relevant stakeholders, including homeowners' associations and landlord and tenant groups. This may involve working with local agencies or organizations that may readily have contact information (e.g., local planning department, finance department, local nonprofit organization).

Step 2

Provide resources for landlords and homeowners' associations.

- Provide sample smokefree or No Smoking signage.
- Provide sample notification letters explaining the new law for tenants and condominium owners.
- Provide sample language for leases and/or covenants, conditions, and restrictions (CCRs).
- Provide sample warning letters (for use by landlords and homeowners' associations).

Step 3

Provide resources for tenants and condominium owners.

- Provide information on how to comply with the new law (in different languages as appropriate).
- Provide ample complaint forms (for use by residents).
- Provide smoking cessation resources (e.g., 1-800-NO-BUTTS).

Step 4

Set up a system to provide up-to-date information and handle complaints.

- Identify the department and staff that will respond to questions and handle complaints.
- Establish a phone number, e-mail address, and/or web-based form for questions and complaints.
- Establish procedure for responding to complaints, ensuring interagency collaboration where appropriate (e.g., the Police Department, City Manager's Office, local Department of Public Health, and other agencies may help enforce the law together).
- Local jurisdictions should consult and coordinate with tobacco control staff in city/county public health departments. In some jurisdictions, these departments act as the first responder for intervention (e.g., monitoring complaints, conducting follow-up calls, sending warning letters and resources, mediating resolutions). This can reduce enforcement costs for cities, but it depends on the resources available to the local public health department.



Enforcement Strategies

Many California jurisdictions that have adopted a smokefree multi-unit housing ordinance report that enforcement activity is generally limited to responding to complaints and sending warning letters. Proper implementation can increase compliance rates and reduce the need for active enforcement. Nevertheless, when adopting a local smokefree air law, local jurisdictions should be aware of the enforcement options that can be included in the law and take steps to ensure that appropriate enforcement mechanisms are established. Described below are a variety of enforcement mechanisms that localities can include in a smokefree multi-unit housing law. Jurisdictions can elect to include all or just a few of these strategies.

Administrative Enforcement

Local jurisdictions can use existing administrative enforcement procedures to enforce a smokefree housing ordinance. Many local jurisdictions already have administrative enforcement procedures to enforce the local code. It is a cost-effective enforcement method for minor offenses. California state law allows local jurisdictions to make any violation of a local ordinance subject to an administrative fine.³ The administrative enforcement process is non-judicial and thus less formal than a court setting (e.g., the rules of evidence do not apply).

Typically a code enforcement official issues a citation for an alleged violation of the local code. In some jurisdictions, police officers are involved to indicate the seriousness of the offense, even if the officer is not directly responsible for writing the citation. The alleged violator is then entitled to challenge the notice of violation through an administrative review process. Administrative enforcement is a less time-consuming process because it takes place outside the court system. If an administrative review determines that a citation was correctly issued, the alleged violator has 20 days from the date of the final order to file a civil suit in Superior Court contesting the citation.⁴

Civil Enforcement

With civil enforcement, a local jurisdiction initiates a civil lawsuit against the alleged violator. If the local jurisdiction is successful in court, the violator would be ordered by the court to pay a fine consistent with the penalty provisions specified in the local code. Civil enforcement involves a judicial proceeding and therefore may be more costly and time-consuming than administrative enforcement.



Criminal Enforcement

With criminal enforcement, the local jurisdiction initiates a criminal legal proceeding against the alleged violator. The alleged violation may be a misdemeanor (a minor crime) or an infraction (a petty crime). An infraction is the least severe crime; it is not punishable by imprisonment and an alleged violator charged with an infraction is not entitled to a trial by jury.⁵ If the local jurisdiction is successful in court, the violator would face fines consistent with the penalty provisions specified in the local code. Criminal enforcement involves a judicial proceeding and therefore may be more costly and time-consuming than administrative enforcement.

Private Enforcement

A local jurisdiction may include a provision in its smokefree housing law that allows enforcement by private individuals. An individual may then enforce the ordinance by bringing a civil suit on behalf of himself or herself, or on behalf of the general public. This type of civil suit can be brought in Small Claims Court so long as the relief sought is within the jurisdictional requirements of the court. Private enforcement involves a judicial proceeding initiated by a private individual. It therefore does not require local resources.



Conclusion

With proper implementation and enforcement, smokefree housing laws can help protect residents from the harms of secondhand smoke. Effective planning is imperative; adequate preparation can help make the law largely self-enforcing. Enforcement strategies are nevertheless important to address any compliance problems that arise.

Resources

Creating Smokefree Housing

A Model Ordinance with Summary and Checklist

www.changelabsolutions.org/publications/model-ord-smokefree-housing

Smokefree Multi-Unit Housing (Roadmap & Brochure)

Approaches to Protect Tenants from Secondhand Smoke

www.changelabsolutions.org/publications/SFMUH-roadmap

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

© 2014 ChangeLab Solutions

Photos by ChangeLab Solutions and Flickr Creative Commons.

¹ Landlords and homeowners' associations are free to voluntarily make their properties smokefree. In the case of voluntary policies, enforcement mechanisms may be spelled out in the lease; house rules; or covenants, conditions, and restrictions. This fact sheet addresses implementation and enforcement options for local governments that adopt a smokefree multi-unit housing law. It does not address implementation and enforcement of voluntary policies.

² Klepeis N. "Measuring the Seepage of Tobacco Smoke Particles Between Apartment Units." California's Clean Air Project, 2008.
www.changelabsolutions.org/sites/default/files/CCAP_Measuring_the_Seepage.pdf

³ Cal. Gov't. Code § 53069.4 (2014).

⁴ Cal. Gov't. Code § 53069.4(b)(1) (2014).

⁵ Cal. Penal Code § 19.6 (2014).