

No Pets, No Parties, No Smoking: The Case for Smoke- free Multi-Unit Housing

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Presentation Topics

- Benefits of Smoke-free Multi-Unit Housing
- Legal Issues and Smoke-free Apartment Policies
- Voluntary and Legislative Approaches
- California's Campaign for Smoke-free Multi-Unit Housing
- Resources

Benefits of Smoke-free Multi-Unit Housing

- It Protects Health
- It is Legal
- It is Supported by Owners/Managers & Tenants
- It is a Smart Investment
- It is Self-Enforcing

Drifting Tobacco Smoke Seeps Through...

- Open windows or doors (neighbor's patio or balcony or outdoor common areas)
- Electric outlets, cable or phone jacks, ceiling fixtures
- Cracks and gaps around sinks, countertops, windows, doors, floors, walls, ceilings
- The ventilation system

Smoke-free Multi-Unit Housing Protects Health

- By creating smoke-free living spaces, children, the elderly and those with chronic diseases will not have to from exposure to even small amounts of SHS
- SHS, which may cause and/or contribute to death or serious illness, is now considered a Toxic Air Contaminant by the California Air Resources Board. And, the Surgeon General concluded that there is no safe level of exposure to SHS.

Smoke-free Multi-Unit Housing is Legal

- Landlords CAN regulate smoking in their apartments and do not have to fear lawsuits if they deny a rental unit to a smoker.
- HUD housing can become smoke-free, at lease renewal or during the term of the lease

It's Legal

- It's like other rules tenants need to follow, such as laundry facility hours, or children accompanying an adult when using the pool
- Landlords can ban smoking in individual units, both inside and outside (balcony or patio). "No smoking" is like a "no pets" restriction-another way to protect property

It's Legal

- Smoking regulations are not discriminatory. Smokers are not a protected class. There is NO constitutionally protected right to smoke.
- State and local governments CAN pass laws limiting smoking in multi-unit housing.
- Housing Authorities have the right to regulate smoking in affordable housing
- The “right to privacy” does not include the right to smoke – even in one’s own home.

Potential Legal Actions for Tenants

- Breach of warranty of habitability
- Breach of covenant of quiet enjoyment
- Nuisance law violation
- Negligence, harassment, trespass, intentional infliction of emotional distress, battery
- Violations of housing or health codes

Smoke-free Multi-Unit Housing is Supported by Tenants & Owners/Managers

Tenants want it!

- 69% favor a law that would require all apartment buildings to offer non-smoking sections (including units, patios, and balconies)
- 67% support having non-smoking outdoor common areas such as entryways, swimming pools, and courtyards
- A smoke-free policy will NOT alienate tenants and valuable residents will NOT leave.

Support

Owners/Managers Want It!

- 57% favor a law requiring all apartment buildings in their city to offer non-smoking sections
- 67% would consider setting aside smoke-free units if it would reduce their fire and liability insurance costs
- 59% would consider setting aside smoke-free units if it would reduce costs associated with cleaning apartments

Smoke-free Multi-Unit Housing is a Smart Investment

- Reduces fire risk
 - Smoking causes 9% of apartment fires, but 16% of injuries and 40% of deaths from apartment fires
- Lowers insurance costs
- Lowers maintenance costs
- Reduces painting frequency and costs
- Reduces the chance of non-smokers breaking their lease
- Reduces the chance of being sued
- Increases marketability

Smoke-free Multi-Unit Housing is Self-Enforcing

- A Minnesota survey demonstrated staff time spent on managing smoke-free apartments did not increase after the policy was established. (Initiative for Smoke-free Apartments, *Adopting a No-Smoking Policy in Apartment Buildings: A Guide for Owners and Managers*)
- 71% of tenants believe that an enforcement plan would be fair (Goodwin Simon Strategic Research for The Center for Tobacco Policy and Organizing, July 2005)
- 50% of tenants would obey smoking provisions (Goodwin Simon Strategic Research for The Center for Tobacco Policy and Organizing, July 2005)

Two Major Approaches to Obtaining Smoke-free Multi-Unit Housing

- Voluntary adoption by private landlords and/or public housing authorities
- Legislation at the state or local level

Voluntary Approaches to Prohibiting Smoking in Common Areas... (lobbies, hallways, parking lots, laundry rooms, and swimming pools)

- Provide reasonable notice (30 days)
- Describe where the non-smoking areas will be located
- Post signs
- May designate smoking areas

Voluntary Approaches to Prohibiting Smoking in an Individual Unit

- New Lease: when a new tenant moves in or when an expired lease is replaced
- Existing Lease-with consent of the tenant
 - Add an amendment
 - Create a new lease
- Existing Lease-without the consent of the tenant
 - Month-to-month rental agreement
 - Fixed-term lease: convert to month-to-month agreement

Implementing Smoke-free Multi-Unit Housing

- Conduct a survey of your residents
- Transition the buildings to smoke-free
 - indoor and outdoor common areas with designated smoking areas
 - send a letter to tenants
 - designate certain units or buildings as smoke-free
- Gradually transition the building to smoke-free status
- Other
 - Require smokers to pay increased security deposits
 - Have a clause in the lease that makes the tenant responsible for smoking-caused damage
 - Disclosure by landlord
 - Declare the building smoke-free by a certain date

What Tobacco Control Advocates Can Do

- Build relationships with local rental owners
- Listen to their perceived obstacles and respect their time
- Offer to present at local apartment association meetings
- Join the local rental/apt. owners' group
- Place ads/articles in apt. association newsletters

What You Can Do (cont.)

- Place ads/articles in apartment association newsletters
- Provide samples of lease language and policies
- Provide “No Smoking” signs
- Offer assistance in phasing in “No Smoking” policies

Local Legislation: Provisions in a Smoke-free Multi-Unit Housing Ordinance

- Declaring that SHS is a nuisance, thereby using nuisance abatement laws
- No smoking in common areas with designated outdoor smoking areas
- Smoke-free buffer zones (balconies, porches, or patios within a reasonable distance of a window or door)

Ordinance Provisions (cont.)

New multi-unit residences (75% designated as non-smoking)

- Grouped together
 - Physically separated
 - With 10 or more units or all new multi-unit residences or any number
- Existing Multi-Unit residences (50% designated as non-smoking) (or all)
 - Include in lease agreement
 - Disclosure of non-smoking units by landlord
 - No smoking signs

Enforcement Options

- Civil action by city prosecutor, district attorney or city attorney, county counsel with fines for violations (\$100-250 for 1st violation, \$250-\$500 for 2nd violation in 60 months; \$500 - \$1000 for 3rd+ violation in 60 months)
- Violations are an infraction (enforced by peace officer, code enforcement, health department, city manager, county administrative officer)
- Violation is a public nuisance and thus enforced via the administrative nuisance abatement procedures

Private Enforcement

- Member of the public (local government can create a private right of action to enforce local law violations (separate from Business and Professions Code Section 17200))

Smoke-free Multi-Unit Housing Campaign

- By June 30, 2010, a smoke-free multi-unit housing campaign will have facilitated at least 10 ordinances being passed in California that would require new and existing multi-unit rental housing containing a specified number of units to designate a percent of units as non-smoking.

Provisions of the Objective

- As part of this objective, supporting policies may include:
 - Prohibiting smoking in all indoor and designated outdoor common areas
 - Prohibiting smoking on balconies or patios near non-smoking units
 - Landlords disclosing to potential tenants the location of designated smoking and non-smoking units and designated smoking areas
 - Specifying secondhand smoke as a nuisance

Campaign Activities

- Community Education
 - Presentations of landlord groups, housing associations, fair housing organizations and other housing advocacy organizations
- Training and Technical Assistance
 - SHS conference, identify housing champions, TA calls or trainings

Campaign Activities (cont.)

- Educational Materials
 - Fact sheets
 - Video
 - Brochures
 - Web site
 - Power point presentations

Campaign Activities (cont.)

- Media
 - radio/print ads
 - tool kit

Campaign Activities (cont.)

- Policy
 - Incentives for developers-Tax Credit Allocation Committee
 - Build relationships with state housing agencies, housing insurance companies
 - Matrix of policy and enforcement options

Campaign Activities (cont.)

- Evaluation/Surveillance
 - Add questions to CATS, CTS and other surveys
 - Research on economic impact (insurance cost savings, reduced maintenance costs, reduced risk of litigation from tenants' exposure, etc.)
 - Interviews, focus groups
 - Tracking system to log complaints

Resources

- Smoke-free Environments Law Project:
<http://www.mismokefreeapartment.org/>
- Americans for Nonsmokers' Rights (ANR):
<http://www.no-smoke.org/>
- Smoke-free Apartment House Registry:
<http://www.smokefreeapartments.org/>
- Technical Assistance Legal Center (TALC):
<http://www.phi.org/talc/>

Resources (cont.)

- Center for Tobacco Policy & Organizing:
<http://www.californialung.org/thecenter/>
- Smoke-free for Maine:
<http://www.smokefreeforme.org/>
- RESPECT: <http://www.respect-ala.org>
- California's Clean Air Project (CCAP):
<http://ccap.etr.org>



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