

LANDLORDS

PROTECT YOUR PROPERTY FROM TOXIC SECONDHAND SMOKE

In partnership with the trusted law and policy innovators at ChangeLab Solutions and the American Nonsmokers' Rights Foundation (ANRF), we've created this information hub so you can quickly get the help you need.

While each printable PDF contains helpful general information, you can also click on the links below to jump to specific guidance on the following topics:

1. [Quick Reference Sheet - Steps You Can Take Now](#)
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There is no safe level of [secondhand smoke](#) exposure for you and your tenants. Secondhand smoke is produced from a number of sources, including cigarettes, cigars, pipes, [hookah](#), and [electronic smoking devices](#) (also known as e-cigarettes). Smoke can drift into “smoke-free” units from other units or common spaces, making it difficult for tenants to protect their homes from secondhand smoke. Secondhand smoke damage also makes unit turnover more costly.

California law states landlords and property owners of residential dwelling units have the authority to prohibit smoking on the property, in the unit, and on the premises where the unit is located (Civ. Code §§ 1947.5). You can work with your local tobacco control program to create and implement a smoke-free housing policy for your property or city that includes language for making the property completely smoke-free.

Here are some steps you can take to begin working towards a truly smoke-free home for you and your family:

1. Talk with the tenants who smoke. Discuss how their smoking affects other residents. Ask if they would be willing to smoke at a distance or location away from common areas and the homes of their neighbors.

2. Review the lease or rental agreement. Does the lease contain any information about smoking? If not, does it mention noise and other nuisance behaviors (smoking can be classified as a “nuisance” behavior in certain situations)? If not, you can draft a new model lease agreement with appropriate language for a smoke-free policy.

3. Research your city ordinance laws. Check to see if your city has any nuisance laws or smoke-free housing ordinances already in place. If so, you can work with the enforcement agency to ensure they are adhered to. If not, you can partner with community organizations such as your local tobacco program to work towards a smoke-free housing policy for your community.

4. Reach out to your local tobacco control program. Your county's [local tobacco control program](#) can help support your efforts by providing educational materials, technical support, and assistance in navigating your particular situation.

5. Reach out to your local councilperson or board of supervisors representative. Identify your local representative and schedule a time to meet with them and discuss your situation. Provide details on your scenario, and [educational materials](#) related to the benefits of adopting a smoke-free housing policy for the community.

Many homes, condominiums, or even rental properties can be a part of a Home Owner's Association (HOA). A HOA's purpose is to provide a common basis for preserving, maintaining and enhancing homes and property! You can work with your HOA to adopt and implement a smoke-free policy for their community!

Some apartments and properties might be subject to rent-control. If your home or property is rent-controlled, you can still work with your [local tobacco control program](#) to work towards a smoke-free policy for your community.

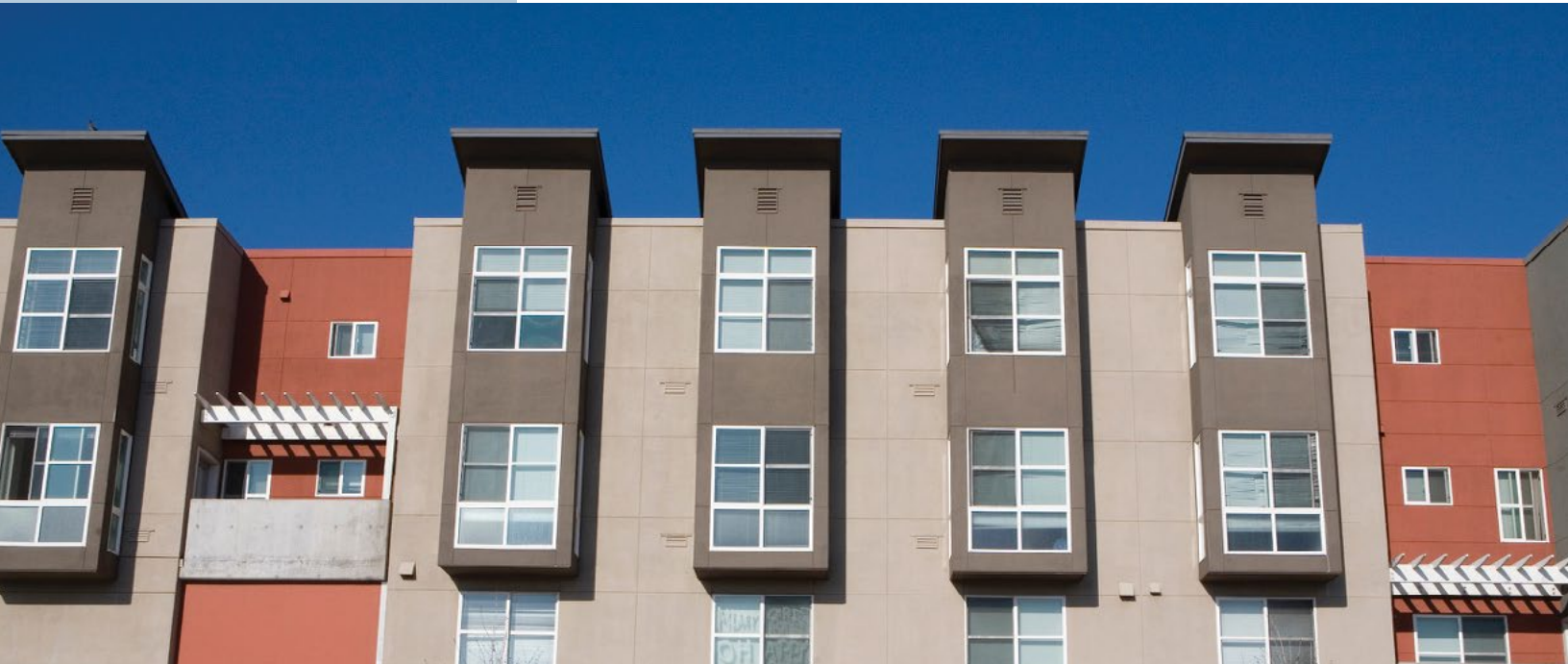


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A New Lease on Life

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.

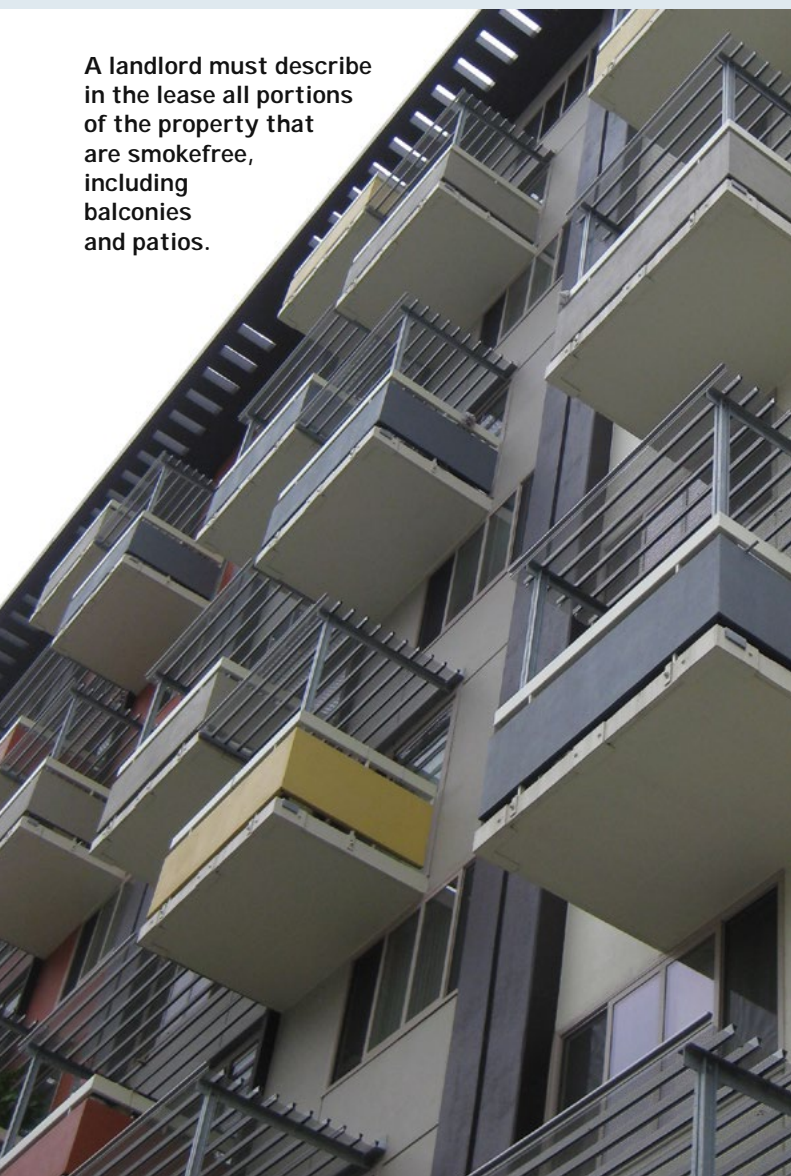
The law does not expand or create new rights for landlords. For example, the law says that landlords still have to follow all applicable local laws, such as rent control laws or other laws that control how changes to a lease can be made.

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.



The Benefits of Smokefree Buildings:

Why a Smokefree Policy is a Good Decision for Multiunit Housing Providers

A smokefree building is a sound business decision. As a property owner, building manager, home owners' association, or condominium association, you have invested a lot of time, money, and hard work into your property. Making your properties smokefree can reduce your costs, risk, and liability, and it's attractive to residents.

Learn why you should get on board with the nationwide trend for housing providers to go smokefree.



Smokefree Policies Are Legal!

Property owners and managers can legally adopt smokefree policies for all types of housing! Whether you own or manage market-rate, affordable, or public housing, you can make your buildings smokefree.

You can adopt a smokefree policy in the same manner that you adopt other rules to regulate activities that present a risk to the building or impact other residents, such as rules that address pets or loud music.

Smokefree policies are not discriminatory. There is no constitutional right to smoke and people who smoke are not a protected class.¹

Smokefree building policies can limit your liability as a property owner or manager. Residents with health issues that are caused by or exacerbated by exposure to secondhand smoke may pursue legal action against property owners or managers if appropriate steps are not taken to resolve the problem.²

A smokefree building does not mean that people who smoke cannot live in the building, or that people who smoke must quit. It simply means that people cannot smoke inside the building or in other areas specified in the policy, such as on balconies and patios.

Resources are available from ANR Foundation at <https://no-smoke.org/at-risk-places/homes/> or by calling 510-841-3032.

Smoking In Your Building Is Expensive...

Reduce the cleaning and maintenance costs—and extra turn-over time—that comes with renovating a smoke-damaged unit after a resident who smokes has moved out.

A recent study found that costs in properties that allow smoking everywhere were nearly double that of smoking-related costs incurred at smokefree properties.³

Compared to smokefree units, cleaning and refurbishing costs can be up to \$3,000 more in units with heavy smoking.⁴

Maintenance and refurbishing expenses are not the only costs associated with allowing smoking in your building. Nationally, fires caused by cigarette smoking result in over \$300 million in property loss each year.⁵

Some property insurance companies offer a discount for buildings that have a smokefree policy. Ask your insurance carrier if you could qualify for a reduced rate if your building goes smokefree.

...and Dangerous!

Allowing smoking in your building can increase the risk of fire. An estimated 7,600 smoking-related fires occur in residential buildings each year in the US.⁶

Fires caused by smoking are the leading cause of residential fire deaths in the U.S., accounting for 14% of fire deaths in residential buildings.⁷

People who smoke are not the only victims of smoking-related fires. One in four casualties of smoking-related fires are the children, friends, and neighbors of the smoker who caused the fire.⁸

Secondhand Smoke Can Transfer In Buildings

Secondhand smoke can drift through buildings and enter common areas and units occupied by non-smokers through vents, doors, windows, hallways, electrical outlets, and through gaps around fixtures and walls.⁹

If smoking is allowed in your building, even in only a few units, residents and staff can be unwillingly exposed to secondhand smoke.

According to the U.S. Surgeon General, there is no safe level of exposure to secondhand smoke, and eliminating indoor smoking is the only way to protect non-smokers from the harmful effects of secondhand smoke exposure.¹⁰

Among the 62.7 million multiunit housing residents in the U.S. who do not allow smoking in their home, the Centers for Disease Control and Prevention (CDC) estimates that 44% to 46.2% of them are involuntarily exposed to secondhand smoke in their unit.¹¹

A recent national study found that 44% of multiunit housing residents who do not allow smoking in their home have experienced secondhand smoke drifting into their unit from elsewhere in or around their building in the last year, with 31% reporting that drifting smoke occurred “most of the time” or “often.”¹²

Retain Your Current Residents

Residents want smokefree housing policies. A 2012 study found that approximately 56% of multiunit housing residents around the U.S. would support the implementation of a smokefree policy for their building.¹³

More than 55% of New York State multiunit residents support a policy that prohibits smoking in all areas of their building. Support was higher among minorities and people with children.¹⁴

Over 90% of Fort Collins, CO and approximately 80% of Charleston, SC apartment residents currently residing in smoking-allowable buildings indicated that they would not move out of their current residence if it were designated as smokefree.^{15,16}

In fact, many of these residents indicated that they would be willing to give up other amenities in order to live in a smokefree building, such as a shorter commute time to work and other local services.^{17,18}

Smokefree building policies can appeal to your current residents as well as new potential residents in your market. Non-smokers are the majority in every state.¹⁹ Additionally, surveys show that many smokers already choose not to smoke inside, in order to protect the health of their families and to prevent damage to their belongings.²⁰

Attract New Residents

People increasingly want their living environment to be smokefree to protect their health, and are looking for smokefree housing options. Secondhand smoke is a cause of heart disease, heart attacks, asthma and other respiratory ailments, SIDS, lung cancer, and many other illnesses.²¹

A recent national survey found that nearly 30% of multiunit housing residents live in smokefree buildings. However, 56% would support a smokefree policy for their building.²² This indicates that there is more demand for smokefree housing than supply.

A Minnesota study found that 54% of multiunit residents would be very likely to choose a smoke-free building, all other things being equal, and 34% would be willing to pay more to live in one.²³

65% of Charleston, SC apartment residents would prefer to have a policy in their building that prohibited smoking in all indoor areas. However, only 9% of apartment residents in this survey reported living in a smokefree building.²⁴

High support for smokefree building policies along with the low prevalence of current smokefree policies could result in a large market opportunity for multiunit housing operators who implement smokefree policies in your area.

You have the opportunity to attract residents by promoting your smokefree policy as an amenity. Advertise your smokefree status in rental listings and on promotional materials.

More information is available on our homes page at <https://no-smoke.org/at-risk-places/homes/> or by calling 510-841-3032.

¹ Graff, S.K. Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke: 2008*. 2nd edition, 2008. <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008.pdf>

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⁶ ibid

⁷ ibid

⁸ ibid

⁹ Repace, J. "Secondhand Smoke Infiltration in Apartments." 2011.

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¹² Licht, A.S.; et al, "[Attitudes, experiences, and acceptance of smoke-free policies among US multiunit housing residents](#)," *American Journal of Public Health* 102(10): 1868-1871, October 2012.

¹³ *ibid*

¹⁴ King, B.A.; et al, "Multiunit housing residents' experiences and attitudes toward smoke-free policies," *Nicotine and Tobacco Research* 6(1): 598-605, June 2010. <https://www.ncbi.nlm.nih.gov/pubmed/?term=22897557>

¹⁵ Roswell Park Cancer Institute. Preferences and practices regarding secondhand smoke exposure and smoke-free policies in multiunit housing: A survey of multiunit housing residents living in Fort Collins, Colorado, 2012.

¹⁶ Roswell Park Cancer Institute. Preferences and practices regarding secondhand smoke exposure and smoke-free policies in multiunit housing: A survey of multiunit housing residents living in Charleston, South Carolina, 2012.

¹⁷ Roswell Park Cancer Institute. Fort Collins, Colorado, 2012.

¹⁸ Roswell Park Cancer Institute. Charleston, South Carolina, 2012.

¹⁹ Centers for Disease Control and Prevention. Tobacco Control State Highlights 2012.

http://www.cdc.gov/tobacco/data_statistics/state_data/state_highlights/2012/index.htm

²⁰ California: (find Adult Tobacco Use Survey) and Oregon: Campbell DeLong Resources, Inc. "Smoking practices, Policies, and Preferences in Oregon Rental Housing 2008." Tobacco Prevention and Education Program, Oregon Public Health Division. 2008. <http://www.smokefreehousinginfo.com/pdfs-docs/OregonStatewideRenterSurvey.pdf>

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²² Licht, October 2012.

²³ Hewett, M.J.; et al, "Secondhand smoke in apartment buildings: renter and owner or manager perspectives," *Nicotine & Tobacco Research* 9(S1): S39-S47, January 2007. https://academic.oup.com/ntr/article-abstract/9/Suppl_1/S39/1138713

²⁴ Roswell Park Cancer Institute. Charleston, South Carolina, 2012.

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Secondhand Smoke in Apartments and Condominiums: A Guide for Owners and Managers

Secondhand smoke is the third leading cause of preventable death in the United States. Approximately 53,000 people die annually from diseases caused by secondhand smoke, with hundreds of thousands more suffering ill effects from exposure. Multi-unit dwellings present a particular challenge for dealing with this significant health and nuisance problem. Tobacco smoke from one unit may seep through cracks, be circulated by a shared ventilation system, or otherwise enter the living space of another. You may wonder what you can do to mitigate some of these problems. The following information should help guide you to an informed decision about what corrective actions to take.

Work Creatively With Tenants toward a Mutually Satisfying Solution

Many disputes over secondhand smoke can be resolved amicably, if both parties remain open and flexible. Creative solutions may relate to when and where smoking is to occur, as well as improvements to the actual physical structure. Keep in mind that air filtration and other ventilation systems do not eliminate the health hazards caused by secondhand smoke. Ventilation is not a viable alternative to creating safer and healthier smokefree living environments for your tenants.

Some smokers adopt the attitude that no one can tell them what to do in their own homes. In such cases, you may need to point out that their lease or condominium agreement contains covenants, conditions, or terms prohibiting persons living in the building from engaging in behaviors that unreasonably interfere with the enjoyment of another (assuming such a nuisance clause does, in fact, exist). Let the smoker know that you are willing, if necessary, to restrict or outright prohibit smoking in the building if he or she cannot voluntarily solve the problem.

You may wish to consider separating the units of smokers and nonsmokers (through voluntary relocations), or designating some buildings of a multi-building complex as smokefree. By advertising that you offer a smokefree environment, you may find that there is a sizable market for such accommodations.

At a minimum, it is a good idea to implement *and enforce* a “no smoking” policy in all common areas of the apartment or condominium. Such areas include rental or sales offices, entrances, hallways, exercise and swimming pool areas, and laundry rooms.

To Completely Solve the Problem, Eliminate Smoking

There is no constitutional or other legal right to smoke. Like other activities that cause annoyance, irritation, or health problems, smoking—even in private dwellings—can be regulated or prohibited outright. The property manager, owner, or owner’s association can implement a smokefree policy. Often these policies are phased in gradually with new leases containing a clause that prohibits smoking both indoors and on all grounds. For example, the Park Tower Apartments in Loves Park, Illinois implemented a policy that bars new tenants from smoking anywhere in the building, including inside their individual dwellings, but the policy did not affect those who were already tenants when the policy went into effect.

Allowing a smoking conflict to continue unresolved may expose you to legal liability. For example, in 1991, a Massachusetts woman sued her landlord because she was constantly exposed to a neighbor's secondhand smoke. The case was settled for an undisclosed amount (*Donath v. Dadah*; see Sweda, 1997). Similarly, a year later a tenant who was suffering from smoke coming from a lower apartment sued their landlord in Oregon. A jury, finding the landlord guilty, reduced the tenant's rent by 50 percent, and awarded her payment to cover her doctor's bills (*Fox Point Apts. v. Kippes*; see Sweda, 1997). These are illustrations of a growing body of case law that holds landlords responsible for exposing tenants to secondhand smoke. Tenants have sued on the basis of nuisance, breach of statutory duty to keep the premises habitable, breach of the common law covenant of peaceful enjoyment, negligence, harassment, battery and intentional infliction of emotional distress (Carlson, 1997).

There are a number of benefits to implementing a smokefree policy, in addition to the avoidance of legal liability. These include:

- A complex-wide policy relieves individual tenants from the burden of trying to persuade smokers not to endanger others with their smoke. Since most tenants do not smoke, they will appreciate the smokefree environment.
- There are sound economic reasons to implement a smoke-free policy. Smoking significantly increases fire hazard, and boosts cleaning and maintenance costs. Also, many property insurance companies offer a discount for buildings with no-smoking policies.

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How to Make a Condo Complex Smokefree

July 2008 (revised September 2011)

Although California laws protect people from secondhand smoke at work and in restaurants, shops, and other places, many residents still find themselves exposed to unwanted secondhand smoke in their homes—especially if they live in multi-unit buildings. In condos, where each unit is owned separately, addressing this problem can be especially challenging.¹ This fact sheet answers common questions about how condo owners can make their entire complex, including individual units, smokefree.

Why make a condo complex smokefree?

In addition to the health-related harm drifting tobacco smoke can cause,² it can increase condo maintenance costs (for sealing and repainting walls and cabinets, replacing carpets, and cleaning the ventilation system) and decrease a unit's resale value.³ Trying to block smoke from drifting between units by using air filters, installing an exhaust fan, or sealing crevices is usually ineffective.⁴ Prohibiting smoking altogether is the only sure way to avoid unwanted exposure to this toxic substance.⁵

Who can create a smokefree policy?

Most people assume that when they buy a home, they will be the ones making decisions about their property. If you live in a condo, however, much of the decision-making power lies with the homeowners' association (HOA).⁶ The HOA, either through its elected board of directors ("the board") or by a vote of the full membership, has the power to enforce or enact regulations controlling the use of property within the complex.

Owning a unit automatically means you are a member of the HOA, and any member of the HOA can begin the process of making a complex smokefree. Many board members are unaware that condos may legally prohibit smoking in part or all of the complex, so it is often up to the HOA members to educate the board. This fact sheet can help.

What areas can be designated smokefree?

Smoking can be restricted on the entire property or only in certain areas.

Indoor common areas: Lobbies, elevators, stairwells, laundry facilities, mail-rooms, and other indoor common areas can be designated smokefree by the HOA. Smoking is already prohibited in such areas in many condo complexes, through HOA restrictions or state or local law.⁷



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This fact sheet focuses on options for condo owners. If you are *renting* (either a condo or an apartment unit), see our other fact sheets on smokefree housing available at www.changelabsolutions.org/tobacco-control.



Outdoor common areas:

Courtyards, pools, playgrounds, sandboxes, gardens, pathways, parking areas, and other common areas can also be designated smokefree.⁸ In addition to protecting residents from exposure to unwanted smoke, a smokefree outdoor policy can reduce litter from cigarette butts on condo property and keep children from putting discarded butts in their mouths. Designated smoking areas in the outdoor common space are recommended so that people who smoke can do so away from shared recreational areas.



Individual units: HOAs may even restrict smoking in individual units, which would prohibit all current and future owners, renters, and guests from smoking there. A smoking restriction could include the “exclusive-use” common areas such as balconies and patios.

How can a condo complex be made smokefree?

In addition to state laws that regulate all condominiums, each complex has its own governing documents. These include the *Declaration of Covenants, Conditions, and Restrictions (CC&Rs)*⁹ and the *Rules*.¹⁰

CC&Rs describe restrictions on the use of property in the complex—for example, the number or ages of people permitted to live in a unit. Because the CC&Rs are legally binding restrictions that automatically apply to the buyer, they must be disclosed at the time of sale and officially recorded, like a deed.¹¹ Members of the HOA must vote to approve any changes to the CC&Rs.

Rules contain additional restrictions on the use of property and typically expand upon areas not fully defined in the CC&Rs—for example, whether private barbecue grills are permitted on balconies or what types of vehicles may park in the parking lot. Changes to the Rules only require a vote by the board. Because Rules are easier to pass than CC&Rs, Rules may change relatively frequently.

There are three ways to address smoking in a condo complex using these governing documents:

1. Have the HOA members (the condo owners) vote to **amend the CC&Rs to restrict smoking** in common areas and/or units.
2. Have the HOA members vote to **amend the CC&Rs’ nuisance provision** to include drifting secondhand smoke. (A condo owner can already apply the nuisance provision to unwanted secondhand smoke, but unless the provision expressly states that secondhand smoke is a nuisance, it can be difficult to prove that the amount of drifting smoke is severe enough to be considered a violation of the nuisance provision.)
3. Have the board of the HOA **adopt a new Rule restricting smoking** in common areas and/or units.

People do not have a “right” to smoke—especially in multi-unit housing, where others can be affected. See “There Is No Constitutional Right to Smoke,” a fact sheet available at www.changelabsolutions.org/tobaccoquestions.

Comparing Three Ways to Make a Condo Complex Smokefree

	Amend CC&Rs to prohibit smoking in units or common areas	Amend nuisance provision of CC&Rs to state that secondhand smoke is a nuisance	Adopt a Rule prohibiting smoking in units or common areas
Voting	Requires vote of condo owners, using formal voting procedures.	Requires vote of condo owners, using formal voting procedures.	Voted on only by the board, not all HOA members.
Drafting	The new provision should be written by a lawyer.	The new provision should be written by a lawyer but isn't overly complicated.	Doesn't need to be written by a lawyer.
Expense	Can be expensive due to lawyer fees for drafting and cost to HOA for printing and distributing ballots.	Can be expensive, due to cost of printing and distributing ballots, though lawyer fees should be less than amending the CC&Rs to prohibit smoking because drafting is less complicated.	Very inexpensive because it doesn't incur lawyer fees or ballot costs.
Enforcement	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	Only the board can enforce a Rule, usually by fining the noncompliant owner.
Important considerations	Requires votes from enough owners to get passed. Because the owners vote to change the CC&Rs, their participation in the decision may make them more likely to comply with the new no-smoking policy. If there is a violation, CC&Rs may be enforced in more ways than a Rule.	Adding smoking to the nuisance provision would not eliminate smoking in the condo—it would just allow homeowners to more easily use the nuisance provision if secondhand smoke were entering their units. This approach may be useful if a ban on smoking in units isn't feasible.	Because a Rule is only voted on by the board, this approach may work best for making the common areas nonsmoking—a less controversial restriction than smokefree units (although there is nothing preventing a Rule from prohibiting smoking in all parts of the complex). Adopting a smokefree Rule may work better for complexes where the board actively enforces Rules.

How do these three approaches differ?

Amending the CC&Rs is stronger and more enforceable than adopting a new Rule, but it's also potentially more expensive and time consuming. What follows are three areas to consider when weighing the options.

Voting Procedures: With any change to the CC&Rs, HOA members will have to vote using a fairly complicated balloting procedure that must be followed precisely to ensure that the vote is valid.¹² A new Rule, on the other hand, only needs to be voted on by the board rather than all of the HOA members, so it can be done relatively quickly—but it can also be overturned just as quickly by the same or a subsequent board.

Expense: Because the CC&Rs are a legally binding document, a new amendment should be drafted by a lawyer. This can be expensive, but it is important to ensure that the amendment is legally appropriate and enforceable.¹³ (Drafting attorneys may find it helpful to review a sample at www.smokefreeapartments.org/condos.html.) Amending the CC&Rs means the HOA must buy and print the ballots and envelopes required for the voting procedure; making a Rule change doesn't involve these costs. You also don't need to hire a lawyer to draft a new Rule, though it is encouraged. If you draft the Rule without a lawyer, make sure it clearly states what activity is prohibited, which portions of the condo complex are affected, and the penalty for failing to comply with the Rule.

Enforcement: Either the board or an individual owner can act to enforce the CC&Rs, whether it's a new policy prohibiting smoking or an amendment to the nuisance clause.¹⁴ Ordinarily, the board enforces the CC&Rs because it has a legal duty to do so,¹⁵ either by assessing a fine or suspending the unit owner's right to use recreational facilities in the condo. If the board fails or refuses to enforce the CC&Rs, an owner may sue the owner violating the CC&R *and*, in some cases, sue the HOA, if it did not act to enforce the CC&R.¹⁶ (Before bringing suit, the owner may need to first participate in a process to resolve the dispute without going to court.¹⁷)

When it comes to enforcing Rules, however, only the board of the HOA can take action—an owner cannot sue another owner for failing to comply.¹⁸ The board could fine the person who is not following the Rule. Even though individual condo owners cannot enforce the Rules against each other, if the board fails to enforce the Rules, owners can work to recall the board and elect new directors who will enforce them.

How should I decide which approach to take?

A first step could be to find out how the other condo owners in your complex feel about a no-smoking policy. You may want to distribute a survey, especially if you live in a large complex.¹⁹ Then you can assess whether and where owners are willing to restrict smoking.

If you want to restrict smoking inside units, a CC&R amendment is probably better suited than a new Rule, because there are more ways to enforce CC&Rs. Board members also may be reluctant to adopt a Rule that restricts smoking in units because they don't want to upset residents who smoke, so they may be more comfortable putting the decision in the hands of the HOA membership by calling for a vote on whether to amend the CC&Rs instead.

Limiting smoking in common areas will probably be much less controversial than restricting smoking in units, so using the more informal and less costly approach of creating a new Rule might be a more appropriate route.

Another factor that will help you decide between a new Rule and a CC&R change is whether the board



tends to enforce the Rules your complex already has. Because owners cannot enforce Rules, passing a new one is not likely to solve a drifting smoke problem if your board is lax about enforcing Rules to begin with. Also, consider that if the new restriction is ever challenged in court, CC&Rs are more likely than Rules to be upheld by a judge.²⁰

If you are concerned that the condo owners or the board won't vote for a change prohibiting smoking in units because they are hesitant to "tell others what to do," it may be easier to add secondhand smoke to the nuisance provision of the CC&Rs.²¹ However, amending the nuisance clause will not create much (if any) immediate change unless the board or an owner takes action to enforce it, so it should be pursued only if the HOA members seem unwilling to vote for the stronger measure of prohibiting smoking in units.

Changing your condo's policies can be a slow and political process. Getting the votes you need to support a change takes diplomacy and patience: it often can take months from the time you first raise your concerns until the day the votes are counted. For ideas about how to gather support for a new smoking policy, see www.center4tobaccopolicy.org/organizing-introduction.

When should the smokefree provision go into effect?

While restrictions can generally be put into effect immediately,²² delaying implementation—especially for new restrictions on smoking inside units—will give residents time to adjust.²³ A reasonable delay could be anywhere from 60 to 180 days from when the change is approved.

You can also include a "grandfather clause" exempting *current* residents from a new restriction: this exemption would apply only to current owners (or tenants, if a unit is rented), not to future owners or tenants. In general, grandfather clauses are not recommended. Residents who are already suffering from drifting secondhand smoke will not experience any relief, nor will they see other benefits of a smokefree complex such as a reduced fire hazard. Beyond that, new owners—who are not grandfathered in—can complain that they are subject to restrictions that others aren't; if they sue over the smoking ban, a court may agree that enforcing the provision only against certain owners is unfair and decide that the restriction is not legal.²⁴ Still, a grandfather clause may provide a compromise if there is significant opposition and allow a smokefree policy to get enough votes to pass.

If grandfathering seems necessary, it is a good idea to simultaneously alter the CC&Rs' nuisance provision to include secondhand smoke. This way, residents who suffer from secondhand smoke drifting from grandfathered units may be able to more easily enforce the nuisance provision.

What if my complex won't adopt a new Rule or change the CC&Rs?

You may be able to enforce the existing nuisance provision in your condo's CC&Rs, even if it doesn't specifically list smoking as a nuisance. If you have a disability that is made worse by secondhand smoke, you may be able to pursue a disability discrimination claim. You may also be able to bring a lawsuit against a neighbor whose smoke is causing you harm. For more information about each of these options, see our fact sheet, "Options for Condo Owners Suffering from Drifting Secondhand Smoke."

You can also encourage your elected officials to pass a local law against smoking in multi-unit housing. This way, apartments and condos throughout your city or county—not just your own building—could be made smokefree.²⁵

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¹ Although the term *condominium* or *condo* will be used in this document, the information in this fact sheet may also apply to co-ops, subdivisions, common interest developments (CID), planned unit developments (PUD), or other housing that is subject to a declaration of covenants and restrictions and managed by a homeowners' association.

² For more information about the negative health impacts of exposure to secondhand smoke, see US Department of Health and Human Services, Centers for Disease Control and Prevention. *Fact Sheet – Secondhand Smoke*. 2006. Available at: www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm. See also US Department of Health and Human Services, Office of the Surgeon General. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General—Executive Summary*. 2006. Available at: www.surgeongeneral.gov/library/secondhandsmoke/report/executivesummary.pdf.

³ Lingering tobacco residue can make a home difficult to sell and drive down the selling price. Clean-up costs can range from \$1,500 to \$10,000 and do not guarantee that the smell or the harmful chemicals left behind from the smoke will be fully removed. Martin A. "On Tobacco Road, It's a Tougher Sell." *New York Times*, February 8, 2004. Available at: www.nytimes.com/2004/02/08/realestate/on-tobacco-road-it-s-a-tougher-sell.html

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⁵ The California Air Resource Control Board declared secondhand smoke a "toxic air contaminant" and concluded that there is no safe level of exposure. Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf.

⁶ This fact sheet uses the term *HOA* to refer to all homeowners' associations, even though some complexes may use a different name.

⁷ If the indoor common area is a place where people such as security guards or maintenance staff work, the California smokefree workplace law prohibits smoking there. See Cal. Lab. Code § 6404.5 (West 2008). Some local governments have passed additional laws banning smoking in indoor common areas, eliminating the need for the condominium association to regulate these areas. Many condo complexes also have restrictions against smoking in indoor common spaces already in their governing documents.

⁸ As with indoor common areas, many condos already have restrictions on smoking in outdoor common areas either in their governing documents or under local law.

⁹ Some condominium associations may use a different term for this document, such as *declaration* or *restrictive covenants*, but this fact sheet will use the term *CC&R* to mean any of these documents.

¹⁰ Many condos also have Bylaws, a Condominium Plan, or Articles of Incorporation, but because those cannot be used to restrict smoking, they will not be discussed here.

¹¹ Cal. Civ. Code § 1353(a) (West 2008).

¹² Although the precise voting procedures vary, all HOAs must distribute secret ballots and two envelopes to each member 30 days

before the deadline for voting. The ballot must be put into one envelope, which is put inside a second envelope. The voter is identified on the outside envelope only. These ballots and envelopes must be prepared by the HOA.

¹³ The chances are fairly small that another owner will sue to overturn your HOA's new smoking prohibition. If that happens, it's helpful to know that there has been at least one case in another state where a court upheld a new CC&R banning smoking in units. An owner who wished to continue smoking in the unit challenged the legality of a new CC&R restricting smoking inside the condos, but the court held that the new CC&R was valid. See *Christiansen, et al., v. Heritage Hills #1 Condo. Ass'n*, WL 4585750 (Colo. Dist. Ct. Nov. 7, 2006). Available at: <http://davis-stirling.com/ds/pdf/smoking.pdf>.

¹⁴ Cal. Civ. Code § 1354(a) (West 2008).

¹⁵ *Duffey v. Superior Court*, 3 Cal. App. 4th 425, 431 (4th Dist. 1992) (noting legal duty of HOAs to enforce CC&Rs); *Cohen v. Kite Hill Cmty. Ass'n*, 142 Cal. App. 3d 642, 650-51 (4th Dist. 1983) (noting that HOAs owe a fiduciary duty to their members).

¹⁶ *Posey v. Leavitt*, 229 Cal. App. 3d 1236, 1246-47 (4th Dist. 1991). However, Boards have some discretion when it comes to enforcement of the governing documents. Boards can weigh the cost of litigation, the gravity of the violation, and the likely outcome of the litigation, and make a good faith determination not to litigate a particular violation. *Beehan v. Lido Isle*, 70 Cal. App. 3d 858, 866-67 (1977).

¹⁷ Cal. Civ. Code § 1369.520 (West 2008).

¹⁸ The method of enforcement used by the board will be different for each HOA and will be described in the governing documents.

¹⁹ A sample survey can be found at www.smokefreeapartments.org/condos.html

²⁰ CC&Rs are presumed valid by courts, "unless the restriction is arbitrary, imposes burdens on the use of lands it affects that substantially outweigh the restriction's benefits to the development's residents, or violates a fundamental public policy." *Nahrstedt v. Lakeside Village Condo. Ass'n*, 8 Cal. 4th 361, 386 (1994) (italics in original).

²¹ Some CC&Rs' nuisance provisions list specific examples of what would be considered a nuisance, such as loud noise at certain hours and foul odors, while others merely make a general statement that any activity or thing affecting residents' health or welfare will not be permitted. If secondhand smoke is expressly defined as a nuisance in the CC&Rs, individuals affected by the smoke no longer have to prove that the impact of the drifting smoke constitutes a "substantial and unreasonable interference" with the use of the unit. This makes it much easier to enforce the nuisance provision.

²² Your HOA's governing documents may require a brief notice period before changes go into effect.

²³ A short delay in implementation of a new smoking restriction may also make the provision seem more reasonable to a judge, if the provision is ever challenged in court by residents who disagree with the policy. As mentioned above, this scenario is unlikely but possible.

²⁴ See *Liebler v. Point Loma Tennis Club*, 40 Cal. App. 4th 1600, 1610-11 (4th Dist. 1995) (holding that enforcement of CC&R restrictions must be "uniformly applied" and not place a burden on the individual owner that is "disproportionate to the benefit to the whole").

²⁵ See Public Health Law & Policy, Technical Assistance Legal Center. *Sample California Ordinance Regulating Smoking in Multi-Unit Residences (with Annotations)*. 2005. Available at: <http://www.phlpnet.org/tobacco-control/products/smokefree-housing-ordinance>.



Electronic Smoking Devices and Secondhand Aerosol

Electronic smoking devices (or ESDs), which are often called **e-cigarettes**, heat and vaporize a solution that typically contains nicotine. The devices are metal or plastic tubes that contain a cartridge filled with a liquid that is vaporized by a battery-powered heating element. The aerosol is inhaled by the user when they draw on the device, as they would a regular tobacco cigarette, and the user exhales the aerosol into the environment.

"If you are around somebody who is using e-cigarettes, you are breathing an aerosol of exhaled nicotine, ultra-fine particles, volatile organic compounds, and other toxins." Dr. Stanton Glantz, Director for the Center for Tobacco Control Research and Education at the University of California, San Francisco.

Current Legislative Landscape

- As of October 1, 2018, [789 municipalities and 12 states include electronic smoking devices](#) as products that are prohibited from use in smokefree environments.

Constituents of Secondhand Aerosol

Electronic smoking devices (ESDs) do not just emit "harmless water vapor." **Secondhand aerosol (incorrectly called vapor by the industry) from ESDs contains nicotine, ultrafine particles and low levels of toxins** that are known to cause cancer.

- ESD aerosol is made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.¹
- Exposure to fine and ultrafine particles may exacerbate respiratory ailments like asthma, and constrict arteries which could trigger a heart attack.²
- ESD aerosol particles are smaller than 1000 nanometers, which is a similar size to tobacco smoke and diesel engine smoke, and bystanders can be exposed to this aerosol. "The exact size distribution depends on the chemical composition of the electronic cigarette liquid, the e-cigarette device operation, and user vaping preferences."³
- At least 10 chemicals identified in ESD aerosol are on California's Proposition 65 list of carcinogens and reproductive toxins, also known as the [Safe Drinking Water and Toxic Enforcement Act of 1986](#). The compounds that have already been identified in [mainstream](#) (MS) or [secondhand](#) (SS) ESD aerosol include: **Acetaldehyde (MS), Benzene (SS), Cadmium (MS), Formaldehyde (MS,SS), Isoprene (SS), Lead (MS), Nickel (MS), Nicotine (MS, SS), N-Nitrosornicotine (MS, SS), Toluene (MS, SS)**.^{4,5}
- **ESDs contain and emit propylene glycol**, a chemical that is used as a base in ESD solution and is one of the primary components in the aerosol emitted by ESDs.
 - Short term exposure causes eye, throat, and airway irritation.⁶
 - Long term inhalation exposure can result in children developing asthma.⁷
- Even though propylene glycol is FDA approved for use in some products, the inhalation of vaporized nicotine in propylene glycol is not. Some studies show that heating propylene glycol changes its chemical composition, producing small amounts of propylene oxide, a known carcinogen.⁸

- There are **metals in ESD aerosol, including chromium, nickel, and tin nanoparticles**.⁹
- FDA scientists found detectable levels of carcinogenic tobacco-specific nitrosamines in ESD aerosol.¹⁰
- People exposed to ESD aerosol absorb nicotine (measured as cotinine), with one study showing levels comparable to passive smokers.¹¹
- **Diethylene Glycol**, a poisonous organic compound, was also detected in ESD aerosol.¹²
- **Exhaled ESD aerosol contained propylene glycol, glycerol, flavorings, and nicotine, along with acetone, formaldehyde, acetaldehyde, propanal, diacetyl, and triacetyl.**¹³
- Many of the elements identified in the aerosol are known to **cause respiratory distress and disease**. The aerosol contained particles >1 µm comprised of tin, silver, iron, nickel, aluminum, and silicate and nanoparticles (<100 nm) of tin, chromium and nickel. The concentrations of nine of eleven elements in ESD aerosol were higher than or equal to the corresponding concentrations in conventional cigarette smoke.¹⁴
- ESDs cause exposure to different chemicals than found in conventional cigarettes and there is a need for risk evaluation for both primary and passive exposure to the aerosol in smokers and nonsmokers.¹⁵
- Short term use of ESD has been shown to increase respiratory resistance and impair lung function, which may result in difficulty breathing.¹⁶
- The first study to look at exposure to aerosol from ESDs in real-use conditions found that non-smokers who were exposed to conventional cigarette smoke and ESD aerosol absorbed similar levels of nicotine.¹⁷
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) has concluded that ESDs emit harmful chemicals into the air and need to be regulated in the same manner as tobacco smoking. The “E-cigarettes do not produce a vapor (gas), but rather a dense visible aerosol of liquid sub-micron droplets consisting of glycols, nicotine, and other chemicals, some of which are carcinogenic (e.g., formaldehyde, metals like cadmium, lead, & nickel, and nitrosamines).”¹⁸
- ESD aerosol is a source of high doses of particles being deposited in the human respiratory system.¹⁹
- ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings—especially cinnamon—are show increased oxidative stress and inflammatory responses.²⁰
- Concentrations of formaldehyde are higher than concentrations of nicotine in some samples of ESD aerosol. Formaldehyde is created when propylene glycol and glycerol are heated to temperatures reached by commercially available ESDs operating at high voltage.²¹
- Flavorings are a largely unrecognized potential hazard of ESDs. Diacetyl and acetyl propionyl are present in many sweet-flavored ESDs, and are approved by the FDA for food use (ingestion), but are not evaluated and approved for heating and inhalation, and are associated with respiratory disease when inhaled.²² High doses of diacetyl, used to flavor buttered popcorn, have been shown to cause acute-onset bronchiolitis obliterans, a severe and irreversible obstructive lung disease when inhaled by workers exposed to particulate aerosolized flavorings containing diacetyl.²³ Therefore, these chemicals cannot be deemed “generally recognized as safe” for inhalation.

- Nanoparticles in ESD aerosol are much smaller than the particles in tobacco smoke and are present in much higher concentrations. Toxic chemicals attached to nanoparticles may have greater adverse health effects than when these toxins are attached to larger tobacco smoke particles.²⁴ Nanoparticles are more easily and deeply breathed into the lungs of the user and bystander.
- ESD aerosols contain carbonyls at levels which can have cardiovascular toxicity. While ESD aerosol has lower levels of toxins than tobacco smoke, toxins from the aerosol may still have a significant cardiovascular impact because cardiovascular disease has a nonlinear dose-response, which means that high risk is possible with relatively low exposure.²⁵
- Human lung cells exposed to ESD aerosol and copper nanoparticles show signs of inflammatory stress and DNA fragmentation.²⁶
- ESD use alters the physical appearance of airways and may impact the development of chronic lung disease. The airways of people who use ESDs appear redder than the airways of both people who smoke and nonsmokers.²⁷
- ESDs that operate using a single-coil heating element produce much higher levels of toxins than double-coil devices across different e-liquids. Double-coil devices produce aerosol at lower temperatures while single-coil devices produce aerosol at higher temperatures.²⁸
- Daily ESD users have double the risk of heart attack, and the dual use of ESDs and conventional cigarettes—which is the most common use pattern among ESD users—is more dangerous than using either product alone.²⁹
- There is a risk of thirdhand exposure to nicotine released from ESD aerosol that deposits on indoor surfaces.³⁰
- Chemicals from ESDs can drift through multi-unit buildings and deposit on surfaces in spaces where ESDs are not being used.³¹ Overall, ESDs are a new source of **Volatile Organic Compounds (VOCs) and ultrafine/fine particles in the indoor environment**, thus resulting in “passive vaping.”³²
- The World Health Organization (WHO) recommends that ESDs not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.³³
- The National Institute for Occupational Safety and Health (NIOSH) recommends that employers “establish and maintain smoke-free workplaces that protect those in workplaces from involuntary, secondhand exposures to tobacco smoke and airborne emissions from e-cigarettes and other electronic nicotine delivery systems.”³⁴
- The American Industrial Hygiene Association (AIHA) also recommends that ESDs be included in smokefree laws: “**Because e-cigarettes are a potential source of pollutants (such as airborne nicotine, flavorings, and thermal degradation products), their use in the indoor environment should be restricted**, consistent with current smoking bans, until and unless research documents that they will not significantly increase the risk of adverse health effects to room occupants.”³⁵
- The American Public Health Association adopted a resolution, “Supporting Regulation of Electronic Cigarettes,” that outlines seven action steps including, “States and municipalities [should] enact and enforce laws...prohibiting the use of e-cigarettes in all enclosed areas of public access and places of employment. These standards should be incorporated into existing clean indoor air laws.”³⁶

- The American Association for Cancer Research and the American Society of Clinical Oncology supports prohibiting the use of ESDs in smokefree spaces until the safety of second- and thirdhand aerosol exposure is established.³⁷

ESD aerosol is a new source of pollution and toxins being emitted into the environment. We do not know the long-term health effects of ESD use and although the industry marketing of the product implies that these products are harmless, the aerosol that ESD emit is not purely water vapor.

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Secondhand Marijuana Smoke

"Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly. People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules."

-Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco

Facts about secondhand marijuana smoke:

- Marijuana smoke is created by burning components of plants in the genus Cannabis.
- Secondhand marijuana smoke is a complex chemical mixture of smoke emitted from combusted marijuana and the smoke that is exhaled by the user.
- Secondhand marijuana smoke contains fine particulate matter that can be breathed deeply into the lungs.
- Secondhand marijuana smoke contains many of the same cancer-causing substances and toxic chemicals as secondhand tobacco smoke. Some of the known carcinogens or toxins present in marijuana smoke include: acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinoline.ⁱ
- Marijuana smoke contains tetrahydrocannabinol (THC), the active chemical in cannabis.

Health risks of exposure to secondhand marijuana smoke:

Since marijuana is illegal under federal law, there have been a limited number of studies examining health risks associated with marijuana use and exposure in the United States. Health risks from primary and secondhand smoke exposure may also be difficult to determine as marijuana is often used in combination with tobacco.

However, peer-reviewed and published studies do indicate that exposure to secondhand marijuana smoke may have health and safety risks for the general public, especially due to its similar composition to secondhand tobacco smoke.

- Secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs,ⁱⁱ which can cause lung irritation, asthma attacks, and makes respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.ⁱⁱⁱ
- Significant amounts of mercury, cadmium, nickel, lead, hydrogen cyanide, and chromium, as well as 3 times the amount of ammonia, are found in mainstream marijuana smoke than is in tobacco smoke.^{iv}
- In 2009, the California Office of Environmental Health Hazard Assessment added marijuana smoke to its Proposition 65 list of carcinogens and reproductive toxins, also known as the Safe Drinking Water and Toxic Enforcement Act of 1986. It reported that at least 33 individual constituents present in both marijuana smoke and tobacco smoke are Proposition 65 carcinogens.^{v, vi}

- Secondhand smoke from marijuana has many of the same chemicals as smoke from tobacco, including those linked to lung cancer.^{vii}
- Secondhand marijuana exposure impairs blood vessel function. Published studies on rats show that thirty minutes of exposure to secondhand marijuana smoke at levels comparable to those found in restaurants that allow cigarette smoking led to substantial impairment of blood vessel function. Marijuana smoke exposure had a greater and longer-lasting effect on blood vessel function than exposure to secondhand tobacco smoke.^{viii}
- One minute of exposure to marijuana SHS substantially impairs endothelial function in rats for at least 90 minutes, considerably longer than comparable impairment by tobacco SHS. The findings in rats suggest that SHS can exert similar adverse cardiovascular effects regardless of whether it is from tobacco or marijuana.^{ix}
- Secondhand marijuana smoke and secondhand tobacco smoke is similar in many ways. More research is needed, but the current body of science shows that both tobacco and marijuana smoke have similar chemical composition and suggests that they may have harmful cardiovascular health effects, such as atherosclerosis (partially blocked arteries), heart attack, and stroke.^x
- Particle concentrations from dabbing and vaporizing cannabis can create levels of indoor air pollution similar as those seen in extreme air pollution events like wildfires and severe industrial pollution. Exposure at these concentrations can cause cardiovascular and respiratory disease.^{xi}
- People who are exposed to secondhand marijuana smoke can have detectable levels of THC (tetrahydrocannabinol) in their blood and urine.^{xii}
- Marijuana also can be contaminated with mold, insecticides or other chemicals that may be released in secondhand smoke.^{xiii}

Including Marijuana Smoking in Smokefree Public Place and Workplace Laws:

- Everyone has the right to breathe smokefree air. Smokefree policies are designed to protect the public and all workers from exposure to the health hazards caused by exposure to secondhand tobacco smoke. The same should be true for secondhand marijuana smoke.
- The percent of U.S. adults who use marijuana more than doubled from 4.1% to 9.5% between 2001-2002 and 2012-2013,^{xiv} which may also indicate an increase in exposure to secondhand marijuana smoke.
- The American Society for Heating, Refrigeration, and Air Conditioning Engineering (ASHRAE) is the organization that develops engineering standards for building ventilation systems. ASHRAE now bases its ventilation standard for acceptable indoor air quality on an environment that is completely free from secondhand tobacco smoke, secondhand marijuana smoke, and emissions from electronic smoking devices.^{xv}
- In order to protect public health, improve consistency, and aid enforcement, smokefree laws for public places and workplaces should include tobacco as well as marijuana, whether it is smoked or aerosolized. Allowing marijuana smoking in places where smoking is now prohibited could undermine laws that protect the public from exposure to secondhand smoke. The Tobacco Control Legal Consortium issued an informative brief on [Lessons from Tobacco Control for Marijuana Regulation](#).^{xvi}

- Smokefree policies provide incentives to quit smoking, help denormalize smoking behavior, and are particularly effective among youth and young adults who are vulnerable to visual cues and social norms of smoking. It is likely that smokefree policies for marijuana will have a similar effect.
- As of July 2018, there are approximately 346 municipalities and 13 states that restrict marijuana use in smokefree spaces in some manner.

In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.

ANR Foundation’s Position on Exposure to Secondhand Marijuana Smoke:

Marijuana smoke is a form of indoor air pollution. Therefore, ANR, our lobbying organization, includes marijuana within the definition of smoking, and all of our model laws and policies include a prohibition on smoking marijuana wherever smoking of tobacco products is not allowed. Our organization does not have a position on whether marijuana should be legalized; we are committed to smokefree protections from secondhand smoke from tobacco products, marijuana and aerosol from electronic smoking devices.

Nobody should have to breathe secondhand marijuana smoke at work, in public, or where they live. If we want healthy, smokefree air for workers and the public, then products like marijuana and electronic smoking devices (which can be used to “vape” a wide range of substances, including marijuana and hash oil) must not be used in smokefree environments where others are forced to breathe the secondhand emissions.

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For more information, visit <https://nonsmokersrights.org/marijuana-smoke> or call us at 510-841-3032.

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SMOKEFREE IS SMOKEFREE

Nobody should have to breathe secondhand marijuana smoke at work, in public, or where they live.

Smoke is smoke — regardless of the device or description. Secondhand marijuana smoke contains hundreds of chemicals — just like secondhand tobacco smoke. Many of the chemicals in secondhand marijuana smoke are **toxic and contain hazardous fine particles that pose a significant health risk to non-smokers.**

- More laws legalizing marijuana = increased exposure to secondhand marijuana smoke.
- Employees and patrons protected by current smokefree laws may have their health put at risk by exposure to marijuana smoke. Marijuana smoking should not be allowed in smokefree spaces.
- The commercialized marijuana industry looks and sounds a lot like Big Tobacco. Together they are working to circumvent progress on smokefree air.
- The vast majority of the population are non-smokers. Smokefree means smokefree — no cigarettes and cigars, e-cigarette use, or marijuana use.

SECONDHAND MARIJUANA SMOKE

contains many of the same **CANCER-CAUSING SUBSTANCES** and **TOXIC CHEMICALS** as secondhand tobacco smoke, including:



3 times
the amount of
ammonia



significant levels of **mercury, lead, formaldehyde, benzene, hydrogen cyanide, & toluene.**

PROTECT HEALTH

Protect workers and the public from exposure to secondhand smoke by prohibiting marijuana smoking in all workplaces and enclosed public places.



As of October 2018, there are approximately **396 municipalities** and **15 states** that restrict marijuana use in smokefree spaces in some manner. **Protect smokefree workplace laws — include marijuana in your policy!**

For more information about marijuana and smokefree laws, visit

 no-smoke.org





Thirdhand Smoke in Apartments and Condos: Recommendations for Property Owners and Managers

If you're a property owner or manager, you may have had tenants report that secondhand smoke is drifting into their unit from neighbors who smoke. This is a serious issue, as secondhand smoke is a confirmed health hazard with no safe level of exposure. Everyone should have the right to a healthy, safe unit that's free from toxic air.

Do you have questions and concerns about tenants smoking in your buildings?
Learn more about your options at no-smoke.org/at-risk-places/homes/

If smoking is allowed in your buildings, you're probably familiar with the stale odor of tobacco smoke that lingers in and around the units of people who smoke indoors, even after they have moved out. Even once a person who smokes has moved out, the carpets and drapes still smell like smoke, and walls and ceilings may have a yellowish stain from nicotine and tar. The smoke odor may also increase when heaters or air conditioning is turned on.

Does this sound familiar? These are all indicators of thirdhand smoke, which is the residual contamination that smoke from cigarettes, cigars, and other tobacco products leaves behind. This residue builds up on surfaces and furnishings and lingers long after smoking stops. Thirdhand smoke may seem like only an offensive, stale smell, but it also indicates the presence of tobacco toxins that harms the health of residents.

Tobacco smoke is made up of gases and particulates, including carcinogens and heavy metals, like arsenic, lead, and cyanide. Sticky, toxic substances, like nicotine and tar, cling to walls and ceilings. Gases are absorbed into carpets, draperies, and other surfaces. [Tobacco residue is present in dust and on surfaces throughout places where smoking has occurred.](#)¹ [This toxic sticky residue can reemit \(off-gas\) back into the air](#) and recombine to form harmful substances that remain at high levels long after smoking has stopped.²

[Nicotine in thirdhand smoke forms carcinogens](#) (cancer-causing substances), which are then inhaled, absorbed or ingested by tenants.³ Exposure to thirdhand smoke poses health problems, including increasing the risk of respiratory illnesses.

Evidence of the contamination can be measured in nonsmokers' bodies. Research has found that homes of former smokers remained polluted with thirdhand smoke for months after residents quit smoking, and they were continually exposed to nicotine and a tobacco-specific carcinogen.⁴ Nicotine was also measured in the bodies of nonsmokers who moved into homes that had been smoked in, even though the homes had been cleaned and left empty for several months before the new residents arrived.⁵

Tobacco residue also results in costly property damage. Because of thirdhand smoke contamination, apartment units and condominiums where smoking has taken place require **extensive turnover work and repairs at significant cost for you.** In addition to being toxic, even someone who smokes probably does not want to move into a unit that smells like stale smoke. Surveys show that [most tenants prefer smokefree housing.](#)⁶

What can property owners and managers do?

First, consider adopting a smokefree policy for your buildings. A smokefree policy is legal and easy to implement, reduces tenant complaints, [saves you money](#),⁷ [reduces fire risk](#),⁸ and is an [amenity people are looking for](#)⁹ in housing. **Renovating and repairing a unit when a smoking tenant moves out** can be expensive and time-consuming, so you might as well do it only one more time! Learn more at no-smoke.org/at-risk-places/homes/

Second, when converting a smoke-filled unit to a smokefree unit, you should, at a minimum:

1. **Thoroughly wash walls and ceilings with detergent and very hot water** to remove as much nicotine and tar residue as possible. Wear gloves and use multiple clean rags to prevent simply pushing the residue around. Wash, rinse, repeat!
2. **Repaint walls with 2 or 3 coats of paint.** If walls are not thoroughly washed prior to repainting, nicotine can seep through even multiple layers of paint.
3. **Remove carpeting and padding, and wash floors** before replacing carpeting.
4. **Replace curtains/blinds/window coverings** to prevent off-gassing into the environment.
5. **Clean out ventilation ducts and replace filters.** Heating and air conditioning systems recirculate stale smoke in the unit and throughout the building.
6. [Learn more about restoring a smoke-damaged apartment](#)¹⁰ from restoration experts.

While these steps do not and cannot remove **all** of the potential problems associated with a formerly smoke-filled apartment, it can reduce the thirdhand smoke residue and mitigate some of the off-gassing of tobacco toxins into the environment.

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Model Smokefree Lease Addendum

Date: _____ Property Name: _____ Apartment/Unit Number: _____
Tenant Name(s): _____
Tenant Address: _____

Tenant and all members of Tenant's family or household are parties to a written Lease with Landlord. This Lease Addendum states the following additional terms, conditions, and rules, which are hereby incorporated into the Lease, effective _____ [recommended 60-90 days following date of Lease Addendum]. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease.

1. Purpose and application of Smokefree Policy. The parties desire to mitigate (i) the irritation and known adverse health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smokefree building. Tenant acknowledges that the smokefree policy established by this Lease Addendum is applicable as follows:

- ___ In all properties owned or managed by Landlord or
___ In this property and the following other properties owned or managed by Landlord:

2. Definitions:

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

"Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

3. Smokefree Building and Grounds. Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household shall be designated as a smokefree living environment. Tenant and members of Tenant's household shall not smoke anywhere in the apartment unit rented by Tenant, including any associated balconies, decks, or patios; in the common areas of the building where the Tenant's dwelling is located, including, but not limited to, community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices, and elevators; or in any of the common areas or adjoining grounds of such building or other parts of the rental community, including entryways, patios, and yards, nor shall Tenant permit any guests or visitors under the control of Tenant to do so.

4. Tenant to Promote Smokefree Policy and to Alert Landlord of Violations. Tenant shall inform Tenant's guests of the smokefree policy. Further, Tenant shall promptly give Landlord a written statement of any incident where tobacco or marijuana smoke, or vapor from an electronic cigarette, is migrating into the Tenant's apartment unit from sources outside the Tenant's unit.

5. Landlord to Promote Smokefree Policy. Landlord shall post no-smoking signs at entrances and exits, common areas, and hallways, and in conspicuous places on the grounds of the apartment building.

6. Other Tenants are Third-Party Beneficiaries of Tenant's Agreement. Tenant agrees that the other Tenants in the building are third-party beneficiaries of Tenant's smokefree Lease Addendum with Landlord. A Tenant may bring legal action against another Tenant related to this smokefree Lease Addendum, but a Tenant shall not have the right to evict another Tenant. Any legal action between Tenants related to this smokefree Lease Addendum shall not create a presumption that the Landlord breached the Lease Addendum.

7. Effect of Breach and Right to Terminate Lease. A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this Lease Addendum shall be considered a material breach of the Lease and grounds for enforcement actions, including eviction, by the Landlord. Tenant acknowledges that a breach of this Lease Addendum shall also render Tenant liable to Landlord for the costs of repair to Tenant's apartment unit due to damage from smoke odors or residue.

8. Disclaimer by Landlord. Tenant acknowledges that Landlord's adoption of this smokefree policy and the efforts to designate Tenant's building as smokefree do not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as smokefree any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke or vapor. Tenant acknowledges that Landlord's ability to police, monitor, or enforce the provisions of this Lease Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Landlord shall take reasonable steps to enforce this smokefree policy. Landlord is not required to take steps in response to smoking in violation of this agreement unless Landlord knows of the smoking or has been given written notice of the smoking. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this Lease Addendum than any other landlord obligation under the Lease.

LANDLORD

TENANT(S)
