

MINNESOTA SMOKE-FREE MULTIUNIT HOUSING

Model Ordinance



Minnesota communities have the authority to enact local laws to protect their residents from secondhand and thirdhand smoke exposure.

This model ordinance includes all the minimum clean indoor air restrictions required by Minnesota state and federal law. It also includes several additional provisions a community may choose to adopt to further protect public health.

Health equity requires that unintended negative effects that disproportionately impact Black, Indigenous, people of color, low-income, and other subpopulations disproportionately harmed must be addressed and mitigated by any policy that purports to protect health. This model policy was developed with significant input from stakeholders representing national and local organizations with expertise in public health, housing, social justice, restorative justice, and racial and economic equity, as well as advocates for marginalized residents. The Public Health



Law Center is grateful for the invaluable input that we received from these stakeholders as we sought to develop a policy that will protect the health of all residents while not jeopardizing residents' housing stability. While there is no perfect policy, the advisory group that helped craft this model carefully weighed the impacts of each policy provision and enforcement measure and arrived at consensus on the provisions included here.

Acknowledgments

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Health Equity, Social Determinants of Health, Minimizing Eviction, and Fair Housing

Smoke-free housing policies are important measures to protect the health of multiunit housing residents, who are more frequently low-income, Black, Indigenous, people of color, elderly, and people with disabilities. These policies must be implemented in ways that do not unfairly target or discriminate against residents or exacerbate challenges in securing housing, which is a key social determinant of health. Jurisdictions and properties implementing a smoke-free policy need to follow fair housing laws;* avoid eviction; minimize use of fines that may threaten housing stability; and preclude criminal penalties.

The severe and lasting harms of eviction threaten housing stability, employment, education, and health. As such, communities should work on comprehensive solutions to minimize eviction and to ensure community members have access to affordable and healthy housing. Several organizations have initiatives, strategies, and policies to prevent eviction, including:

- HOMELine’s resource, [Eviction Expungement Reform & Pre-Eviction Notice \(2022\)](#)
- National Housing Law Project’s resource, [Eviction Prevention Resource for Advocates Working with Public Housing and Voucher Tenants \(2022\)](#), which outlines steps and resources to prevent eviction
- U.S. Department of the Treasury Emergency Rental Assistance Program has compiled resources on strategies for communities to support [Eviction Diversion](#).

Support for quitting or reducing smoking is critical in any smoke-free housing policy. Minnesota resources to assist with smoking cessation are available for free through the Minnesota Department of Health’s [QuitPartner program](#) or in partnership with local public health departments and local health care providers.

Any community planning to adopt this model ordinance, in whole or in part, should review it with local legal counsel to determine its suitability for the community. While model ordinance language can be modified by adding or omitting content on activities that a community does or does not seek to regulate, these changes may result in an ordinance that does not conform with best public health policy practices. In addition, because certain provisions within this model ordinance are controlled by statute and rules, the city or county attorney should review

* U.S. Dept. of Housing and Urban Development. Housing Discrimination Under the Fair Housing Act, https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview, accessed Dec. 20, 2022.

any modifications to ensure they conform to state and federal law. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

A Note About Resources for Successful Implementation

The strategies for ensuring an equitable approach to enforcement outlined in this model policy will likely require additional resources to support implementation. This might include developing materials to educate the community about the policy, establishing and administering a complaint process, conducting investigations, and hiring staff or contractors to support key elements of the policy, such as restorative justice procedures. Local public health staff will play an instrumental role in the policy's success. In addition, the jurisdiction may seek assistance from outside funders, including healthcare organizations and foundations, to support initial start-up costs. Ongoing costs may be addressed through rental license fees and taxes.

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain several key provisions. These boxes are not meant to be included in any final ordinance.

In some instances, blanks (such as [_____]) prompt you to customize the language to fit your community's needs. In other instances, the model ordinance offers you a choice of options (such as [choice one/choice two]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using the model ordinance to address local needs and engender health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms caused by commercial tobacco use and exposure to secondhand and thirdhand smoke. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to achieve this ideal. Accordingly, this model ordinance represents a balance among best public health policy practices, advancing health equity, and practicality for local governments in Minnesota.

This ordinance may be adopted as a stand-alone ordinance or may be revised and incorporated into an existing clean air ordinance, depending upon the needs of the community.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide legal technical assistance through our publications and tailored information and support to communities. In addition, we can provide referrals to experts in the field. Please contact the Public Health Law Center if you have any questions about this ordinance. You can reach us at publichealthlawcenter@mitchellhamline.edu.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health law and policy. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice.

AN ORDINANCE REGULATING SMOKING IN AND AROUND MULTIUNIT RESIDENCES IN THE [THE CITY/COUNTY OF _____], MINNESOTA

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The [the City Council/County Board of Commissioners] of the [the City/County of _____] does ordain;

Section 1. Findings of Fact and Purpose.

Comment

A Findings of Fact and Purpose section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the jurisdiction's reasoning for adopting specific provisions. This Findings of Fact and Purpose section and sample findings in the Appendix reflect language appropriate for all suggested provisions. The Public Health Law Center can provide support for communities to determine which Findings of Fact and Purpose statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the community chooses to adopt. The Sample Findings of Fact and Purpose may be found in the [Appendix](#).

NOW THEREFORE it is the intent of the [city council/county board] in enacting this ordinance, to provide for public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around nontobacco users; by protecting children from exposure to smoking where they live and play; and by protecting the public from nonconsensual exposure to secondhand and thirdhand smoke in and around their homes.

Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

- "Common Interest Community" or "CIC" means contiguous or noncontiguous real estate where persons separately own or occupy by proprietary lease a described parcel of the real estate and where their ownership or occupancy requires them to pay real estate taxes, insurance premiums, and maintenance, construction, repair, and replacement of improvements located on one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies. Common interest community includes but is not limited to condominiums, townhomes, and cooperatives.
- "Day-Fine System" means a fine system based on a process of identifying appropriate fines or penalties for individuals based on their ability to pay and the severity of the violation.

- “Dwelling Unit” means one or more rooms designed for residential use by a single household that contain cooking, living, sanitary, and sleeping facilities and that are physically separated from any other rooms or dwelling units that may be in the same structure.
- “Electronic Delivery Device” means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipes, vaping devices, mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- “Homeowners’ Association” or “HOA” means the body, regardless of name, designated in the articles of incorporation, bylaws, or declaration of a common interest community to act on behalf of the common interest community.
- “Indoor Area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area.
- “Indoor Common Area” means every indoor area, as defined, of a multiunit residence that is accessible for common use to residents, staff, and employees, including but not limited to, halls, lobbies, offices, storage facilities, janitorial facilities, utility facilities, elevators, stairs, community rooms, gym facilities, swimming pools, parking garages, restrooms, laundry rooms, cooking areas, and eating areas.
- “Landlord” means an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, of rental property. Landlord includes any owner of a unit(s) within a common interest community whose unit is leased and occupied by a tenant as a part of a residential lease agreement. For purposes of this ordinance, a residential tenant who sublets a unit (e.g., a sublessor) is not a landlord.
- “Mixed-Use Residential Development” means a development project that may provide more than one use within a shared building or development area. Mixed-use projects may include any combination of housing, office, retail, medical, recreational, commercial, or industrial components.

- “Multiunit Residence” means a building or portion thereof designed or used for residential occupancy by two or more households in separate dwelling units.

Comment

This definition of Multiunit Residence is used in conjunction with the definition of dwelling unit in this Model Ordinance, which makes clear that this term is limited to dwelling spaces within multiunit developments. The jurisdiction may choose to apply a smoke-free policy to a broader range of housing types or types of dwellings, such as hotels, motels, dormitories, campgrounds, rented single family housing, and manufactured housing parks.

The U.S. Department of Housing and Urban Development requires public housing agencies to adopt a policy prohibiting smoking in all indoor areas, including residential units, and outside spaces within 25 feet of indoor areas of public housing. For more information on the HUD Rule, see the Public Health Law Center’s publication, *HUD’s Smoke-Free Public Housing Rule: An Overview* (2017).

- “Outdoor Area” means any area of the property that is not an indoor area or indoor common area.
- “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.
- “Resident” means a unit owner or residential tenant of a multiunit residence.
- “Residential Tenant” means a person who is occupying a dwelling designed for residential use under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, and all other regular occupants of that dwelling unit.
- “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking includes carrying or using an activated electronic delivery device. Smoking does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Comment

Beginning March 2022, Minnesota’s Medical Cannabis Program was expanded to allow enrolled patients to purchase the raw flower form of cannabis (marijuana) for consumption, legalizing smoking as a form of medical cannabis consumption by enrolled patients. Smoking, including vaping, of any substance may create harmful secondhand and thirdhand exposure to particles and chemicals from the substances smoked, including cannabis. For the purposes of a smoke-free housing policy, prohibiting smoking (including the use of electronic delivery devices, also known as “vaping”) of cannabis is covered under the comprehensive definition of “smoking” that is included in this model policy. For more information on Minnesota’s medical cannabis program and secondhand or thirdhand smoke, see our fact sheet, [Smoke-Free Multi-Unit Housing and Minnesota’s Medical Cannabis Program](#).

Comment

Smoke-free policies often provide exceptions for traditional, ceremonial, and sacred uses of tobacco practiced by some Tribal communities, while prohibiting the use of commercial tobacco. If you would like more information about this topic, please visit keepitsacred.itcmi.org. This definition of “smoking” provides for such an exception.

- “Substantiated Complaint” means any alleged violation that is supported by a preponderance of the evidence or has resulted in a civil citation.
- “Unit Owner” means a declarant or other person who owns a unit, a lessee under a proprietary lease, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a secured party. In a common interest community, the declarant is the unit owner of a unit until that unit has been conveyed to another person.

Section 3. Smoking Restrictions.

(A) Effective [180] days from [*enactment date*], smoking is prohibited anywhere on:

- (1) The premises of a multiunit residence, including indoor and outdoor areas of multiunit residences, and
- (2) The premises of mixed-use residential developments, including in all indoor and outdoor areas of those mixed-use residential developments.

Comment

Advance communication, training, and technical assistance for landlords and HOAs, and provision of cessation resources by the public health department will be critical to successful implementation of the law. While this model ordinance provides a 180-day transition period before requirements are enforced, a jurisdiction may choose to have a shorter or longer transition period to more rapidly provide the public health protections of the smoke-free law or to provide additional time to prepare the community. Considerations in timing for the effective date include adequate time for community and resident education, establishing or providing cessation resources, and providing training and technical assistance to HOAs and landlords to facilitate implementation. We do not believe it is necessary to allow a lengthy timeframe to accommodate lease renewals because lease provisions cannot conflict with local laws. However, to encourage compliance, a phase-in period may be useful to ensure that residents know and understand the law and that management has capacity for implementation and enforcement.

Comment

This model ordinance also protects residents in mixed-use residential properties that include non-residential units or spaces. The ordinance would expand on the protections of the Minnesota Clean Indoor Air Act by prohibiting smoking at any retailer that is part of a mixed-use residential property. This ordinance also prohibits smoking in outdoor areas that may adjoin a non-residential business, such as a bar or restaurant if it is part of a mixed-use residential property.

(B) No landlord or HOA shall permit smoking anywhere on the premises of the multiunit residence.

Responsibilities of Landlords and HOAs

Responsibilities of Landlords and HOAs under this ordinance include:

1. LL/HOA must not permit smoking anywhere on the premises — unless the ordinance allows for a designated smoking area (DSA). (Sec. 3(B))
2. LL/HOA must not place and must remove ashtrays and ashcans where smoking is prohibited. (Sec. 3(E))
3. LL/HOA is responsible for the acts of their agents, employees, and contractors. (Sec. 3(D))
4. LL/HOA with knowledge of alleged violations must take reasonable and timely steps to investigate and enforce the policy, with written notice to the resident allegedly violating the policy that includes: knowledge of the alleged violation, a request to cease the violation, and the course of action to be taken if the violation is not corrected. (Sec. 3(E))
5. LL/HOAs are not allowed to use this ordinance to intimidate, harass, or retaliate against residents. (Sec. 3(F))
6. LL/HOA must provide a copy of the ordinance and written notice to tenants/owners about the policy. LL/CIC unit owners must also provide prospective residents (tenant applicants and buyers) a copy of the ordinance and written notice about the policy. The city/county will provide a template for the required notice. The notice will include:
 - A statement of the no-smoking policy (specifying any DSAs, if allowed/applicable)
 - Responsibility of LL/HOA to respond to complaints of violations in writing to the resident complaining
 - Information on how to file a complaint with the city/county for alleged violations by the LL/HOA or residents
 - Cessation resources. (Sec. 4(A) and (B), and Sec. 5(A) and (B))
7. Must post and maintain clear and unambiguous “No Smoking” signs at entrances and exits, in indoor common areas, and in conspicuous places adjoining the property grounds. (Sec. 4(c) and Sec. 5(C))
8. Must respond to complaints received from residents with acknowledgment of the complaint and steps taken to address the violation. (Sec. 4(D) and Sec. 5(D) and (B))

Comment

This provision and other provisions in this ordinance create a maintenance responsibility for property owners that rent their space to residents to ensure smoking does not occur on their property. This responsibility (to take measures to prohibit smoking) can be satisfied in a variety of ways (see below — including signage, responding in a timely and effective manner to resident complaints, providing cessation information and smoke-free reminders in the lobby, and creating a smoke-free policy that is incorporated into lease or HOA purchase agreements). This ordinance does not require property owners to create and implement a smoke-free policy for their property, but doing so in alignment with this ordinance would help with enforcement and compliance. This rental property ownership responsibility will be evaluated and enforced by the city or county, providing greater protection to residents whose landlords and HOAs do not have an established smoke-free policy for their property or who fail to enforce a smoke-free policy already in place. Paragraph (B) combined with paragraph (D) below, creates an obligation of property owners by making the HOA or the landlord responsible for the acts of their agents, employees, and contractors to prohibit smoking on the premises.

Comment

The most protective approach, from a public health standpoint, is to prohibit smoking anywhere on the premises of a multiunit residence. However, if a jurisdiction wants to allow some outdoor smoking, the narrowest way to do so would be to include a designated smoking area (DSA). Again, from a public health standpoint, the preferable approach would be to allow on the premises only one DSA that is required to be at least 25 feet from interior areas and from outdoor areas frequented by other residents and children. Here is sample language that would allow this:

Replace the current subsection Sec. 3 (B) with the following new subsections:

- (B) Notwithstanding subsection (A), smoking is permitted in designated smoking areas if they meet the following conditions:
- (1) Must not be an indoor area
 - (2) Must be at least twenty-five (25) feet from any:
 - (a) dwelling unit;

(continued)

(continued)

(b) indoor common area;

(c) windows, doors, air conditioning unit, air intake, ventilation unit, or similar;

(d) outdoor recreation area such as a tennis court, swimming pool, and picnic area;

(e) Parking lots and parking structures;

and

(f) outdoor area primarily used by children, such as playgrounds and school bus stops;

(3) Must have a clearly marked perimeter

(4) Must be identified by conspicuous signs

(5) Must comply with any state and local smoke-free laws.

(C) No landlord or HOA shall permit smoking in the nonsmoking area, except as provided in subsection (B) of this section.

Please contact the Public Health Law Center for more information on no-smoking buffer zones or designated smoking areas.

- (C) Landlords and HOAs shall not place, and shall remove, ashtrays, ashcans, or other receptacles designed for or primarily used for disposal of smoking waste from areas where smoking is prohibited by this [chapter/article] or other law.
- (D) Landlords and HOAs are responsible for the acts of their agents, employees, and contractors.
- (E) Landlords and HOAs with knowledge of any alleged violation shall take reasonable and timely steps, not longer than two weeks, to investigate and enforce the regulations, including providing written notice to the resident of the landlord's or HOA's knowledge of the alleged violation, a request to cease the alleged violation, and the course of action to be taken if the alleged violation is not corrected. The landlord or HOA shall also provide resources provided for free by the [city/county] to assist with nicotine dependence, such as referrals to quitline or online cessation resources.

Comment

To ensure that residents understand the requirements of this ordinance, landlords and HOAs could include smoke-free provisions in their leases, lease addenda, house rules, or declarations. The Public Health Law Center has a model [smoke-free condominium policy](#) and [lease addendum](#) that complements this model ordinance and includes equitable enforcement measures to encourage compliance. Additional resources and technical assistance are available to support landlords and HOAs with implementation, compliance, and enforcement at mnsmokefreehousing.org.

Comment

In supplying information and resources on tobacco cessation, property management, boards, and owners should rely on evidence-based cessation programs such as the Minnesota Department of Health's "Quit Partner" website, which includes counseling and medication information for youth and adults. Residents may be referred to online resources at quitpartnermn.com or to the Minnesota Quit Partner line at 1-800-QUIT-NOW (784-8669).

- (F) No person shall intimidate, harass, or otherwise retaliate against any person who seeks to comply with this [article/chapter]. No person shall use this [article/chapter] to harass or intimidate any resident with frivolous claims unsubstantiated by evidence or actual harm.

Comment

Harassment or retaliation are sometimes risks in the context of smoke-free housing. The harassment or retaliation may come from the landlord/HOA for residents complaining about secondhand or thirdhand smoke or for residents suspected of violating the no-smoking requirements. Such retaliation or harassment may include the landlord/HOA targeting enforcement against specific residents and not others. Residents may also misuse the no-smoking requirements to harass or retaliate against other residents or the landlord/HOA by threatening to lodge complaints to the city/county or to initiate frivolous lawsuits. This provision is meant to call out and prevent the potential misuse of the ordinance. Minnesota tenants are protected against retaliation by a landlord for their attempts to secure or enforce their rights or for reporting health or other violations to a government authority. [Minn. Stat. § 504B.285, subd. 2.](#)

Section 4. Requirements for Rental Properties.

The following requirements apply to multiunit residences that are offered and available for rent or are currently rented:

- (A) On or before [*enactment date + 180 days*], and annually thereafter, every landlord shall deliver to each tenant a written notice including the following information, which the [*city/county*] will provide in a notice form upon request:
- (1) Under [*city/county*] law all individual units in multiunit housing and mixed-use residential developments are designated nonsmoking units, meaning that smoking is prohibited inside all units, including any associated private balcony, porch, deck, or patio, as of [*effective date*];
 - (2) Smoking in any indoor common area, including lobbies, laundry rooms, management offices, utility areas, garages, and mailrooms, is a violation of [*this chapter/article*] as of [*effective date*];
 - (3) Smoking in any outdoor areas of a multiunit residence, including playgrounds, pools, and entryways, [*except for specifically designated outdoor smoking areas,*] is a violation of [*this chapter/article*] as of [*effective date*];
 - (4) Landlords must respond in writing to complaints made by residents upon receipt of a complaint from the resident or from the [*city/county*] for alleged violations of [*chapter/article*] as of [*effective date*]; and,
 - (5) Information on how residents can file a complaint with the [*city/county*] department of public health about either:
 - (a) An alleged smoking violation on the property by a person in an area where smoking is prohibited under this ordinance; or
 - (b) A landlord who has failed to comply with this ordinance.
 - (6) Cessation resources in the community.

Comment

Local public health could offer to provide sample language and form letters that could be used by property owners and managers to meet the notification requirements of this ordinance.

- (B) As of [*enactment date*], every landlord shall provide prospective residential tenants with written notice including the following information:
- (1) Under [*city/county*] law all individual units in multiunit housing and mixed-use residential developments are designated nonsmoking units, meaning that smoking is prohibited inside all units, including any associated private balcony, porch, deck, and patio, as of [*effective date*];
 - (2) Smoking in any indoor common area, including lobbies, laundry rooms, management offices, utility areas, garages, and mailrooms, is a violation of [*this chapter/article*] as of [*effective date*];
 - (3) Smoking in any outdoor areas of a multiunit residence, including playgrounds, pools, and entryways, [*except for specifically designated outdoor smoking areas,*] is a violation of [*this chapter/article*] as of [*effective date*];
 - (4) Landlords must respond in writing to complaints made by residents upon receipt of a complaint from the resident or from the [*city/county*] for alleged violations of [*chapter/article*] as of [*effective date*]; and,
 - (5) Information on how residents can file a complaint with the [*city/county*] department of public health about either:
 - (a) An alleged smoking violation on the property by a person in an area where smoking is prohibited under this ordinance; or
 - (b) A landlord who has failed to comply with this ordinance.
 - (6) Cessation resources in the community.

Comment

Local public health could offer to provide sample language and form letters that could be used by property owners and managers to meet the notification requirements of this ordinance. Examples of notification to prospective residents may include signage on-site, information on the property website, social media, or any place the rental property may be publicized.

- (C) As of [*effective date*], the landlord shall post and maintain clear and unambiguous “No Smoking” signs at entrances and exits, in indoor common areas, and in conspicuous

places adjoining the property grounds. Signs must use written and visual images to indicate that smoking of both combustible products and use of electronic delivery devices is prohibited and must be printed in any languages in addition to English that reflect the languages spoken by 25 percent of the residents. In addition, as of [*effective date*], the landlord shall post and maintain signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. The absence of signs shall not be a defense to a violation of any provision of this [*article/chapter*]. “No Smoking” signs are not required inside or on doorways of units.

Comment

Local public health could offer to provide free signage or templates to property owners and managers to meet the notification requirements of this ordinance.

- (D) As of [*effective date*], the landlord shall respond to complaints made by residents of alleged violations with acknowledgment of the complaint and steps taken to address the alleged violation.

Comment

To ensure that residents understand the requirements of the no-smoking policy, landlords could include smoke-free provisions in their lease agreements. The Public Health Law Center has a model smoke-free lease addendum that complements this model ordinance and includes equitable enforcement measures to ensure that compliance is the primary goal and eviction is a last resort.

- [Model Smoke-Free Lease Addendum \(2020\)](#)
- [Smoke-free Multi-Unit Housing: Equitable Enforcement Strategies \(2020\)](#)

Section 5. Requirements for Common Interest Communities.

The following requirements apply to common interest communities:

- (A) On or before [*enactment date + 180 days*], and annually thereafter, the HOA shall provide to all unit owners a copy of this [*article/chapter*] and written notice including the following information, which the [*city/county*] will provide in a notice form upon request:
- (1) Under [*city/county*] law all individual units in multiunit housing and mixed-use residential developments are designated nonsmoking units, meaning that smoking is prohibited in all units, including on any associated private balcony, porch, deck, or patio, as of [*effective date*];
 - (2) Smoking in any indoor common area is a violation of [*this chapter/article*] as of [*effective date*];
 - (3) Smoking in any outdoor area of the multiunit residence [*,* except for specifically designated outdoor smoking areas,] is a violation of [*this chapter/article*] as of [*effective date*];
 - (4) [*City/County*] law requires HOAs to respond to complaints made by residents of alleged violations of [*chapter/article*] as of [*effective date*]; and,
 - (5) Information on how residents can file a complaint with the [*city/county*] department of public health about either
 - (a) a smoking violation on the property by a person in an area where smoking is prohibited under this ordinance or
 - (b) an HOA that has failed to comply with this ordinance.
 - (6) Cessation resources in the community.
- (B) As of [*effective date*] a unit owner shall provide prospective buyers or renters of their unit, a copy of this [*article/chapter*] and written notice including the following information, which the [*city/county*] will provide in a notice form upon request:
- (1) Under [*city/county*] law, all individual units in multiunit housing and mixed-use residential developments are designated nonsmoking units, meaning that smoking is prohibited in all units, including on any associated private balcony, porch, deck, or patio, as of [*effective date*];
 - (2) Smoking is prohibited in all indoor common areas;

- (3) Smoking is prohibited in all outdoor areas [, except for specifically designated outdoor smoking areas,] as of [*effective date*];
 - (4) HOAs and landlords are required to respond to complaints made by residents of alleged violations of [chapter/article] as of [*effective date*]; and,
 - (5) Information on how residents can file a complaint with the [city/county] department of public health about either
 - (a) a smoking violation on the property by a person in an area where smoking is prohibited under this ordinance, or
 - (b) a landlord or HOA that has failed to comply with this ordinance.
- (C) As of [*effective date*], the HOA shall post and maintain clear and unambiguous “No Smoking” signs at entrances and exits, in indoor common areas, and in conspicuous places adjoining the property grounds. Signs must use written and visual images to indicate that smoking of both combustible products and use of electronic delivery devices is prohibited and must be printed in any languages in addition to English that reflect the languages spoken by 25 percent of the residents. In addition, as of [*effective date*], the HOA shall post and maintain signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. The absence of signs shall not be a defense to a violation of any provision of this [article/chapter]. “No Smoking” signs are not required inside or on doorways of units.
- (D) As of [*effective date*], the HOA shall respond to complaints of alleged violations made by residents with acknowledgment of the complaint and steps taken to address the alleged violation.

Comment

To ensure that residents understand the requirements of the no-smoking policy, HOAs could include smoke-free provisions in their house rules or declarations. The Public Health Law Center has a model smoke-free condo policy that complements this model ordinance and includes equitable enforcement measures to encourage compliance.

- [Model Smoke-free Condominium Policy \(2020\)](#)
- [Smoke-free Multi-Unit Housing: Equitable Enforcement Strategies \(2020\)](#)

Section 6. Other Remedies.

Comment

In most jurisdictions, residents, landlords, and HOAs of multiunit housing have the ability to bring a private cause of action for actions or inactions of their landlords, HOAs, or other residents based on nuisance, trespass, and other bases. The challenge with such individual legal actions as the sole basis for enforcement of smoke-free housing policies is that it is costly and burdensome to engage in such legal actions. Jurisdictions with a smoke-free multiunit housing ordinance, such as this, provide more opportunities for enforcement and therefore protections for residents as opposed to solely relying on individual lawsuits. However, nothing in this ordinance prohibits individual legal action for residents to seek remedies for secondhand smoke exposure. For more information on the potential bases for individual legal action, see the Public Health Law Center's publications *Secondhand Smoke in Condominiums: Legal Options for Owners* (2022), *Smoke-free Housing and Rent Abatement* (2019), and *Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings* (2009).

A residential tenant may terminate a lease agreement without penalty or liability, including withholding of the tenant's security deposit, upon the third substantiated complaint of a violation of this [article/chapter] by a landlord and evidence of continued secondhand or thirdhand smoke exposure by the residential tenant.

Comment

One context where the remedy of tenant lease termination is available to tenants in Minnesota is in the context of survivors of domestic violence. However, tenants in those cases must forfeit their deposit (see Minn. Stat. § 504B.206). In contrast, this provision in the smoke-free multiunit housing ordinance would protect the tenant by preventing penalty or liability, including returning the tenant's security deposit.

Section 7. Enforcement.

Comment

The enforcement of smoke-free multiunit housing policies should balance the goal of protecting residents from secondhand and thirdhand smoke exposure with the goal of ensuring housing stability for all residents. Several factors should be considered in this balance, such as the likely effectiveness of enforcement; equity (balancing the public health benefits of smoke-free housing policies with the risks of housing instability and associated health harms or negative social outcomes posed by different enforcement mechanisms); and the process of enforcement. Criminal and monetary administrative penalties can carry significant risks of discriminatory enforcement, financial hardship, and housing instability for residents. In the context of housing, another concern is the prospect of unintended criminal, immigration, and due process consequences as a result of potential increased interactions with law enforcement.

Another consideration for such criminal charges and penalties is how the criminal process may trigger a probation or parole violation or similar significant ripple effect in the residents' interaction with the justice system. Increased involvement with the criminal justice system could lead to more severe criminal sanctions and possible incarceration. In turn, these criminal sanctions could jeopardize the individual's housing, benefits, education, and employment. These risks should be carefully weighed by the municipality as policymakers consider whether to include criminal and monetary penalties and how to structure those penalties.

For these reasons, the enforcement provisions in this model policy do not include criminal sanctions and focus primary accountability on landlords and HOAs as the managers of such properties with appropriate civil penalties for any failure to meet the obligations required under this law.

The following provisions are designed to offer several enforcement options to the jurisdiction and residents. While not all enforcement mechanisms may be pursued, allowing multiple enforcement mechanisms in the ordinance may increase the likelihood of compliance, enforcement, and, in turn, protections from secondhand and thirdhand smoke.

- (A) Any person exposed to secondhand or thirdhand smoke as a result of a violation of this [article/chapter] or any person who becomes aware that a landlord or HOA is in violation of this [article/chapter] may initiate enforcement of this [article/chapter] by registering a complaint with the [City Manager/County Administrator], or their designee.

Comment

Evidence of smoking, in violation of this ordinance, may include eyewitness accounts, pattern of smell of smoke incursions from combustible products or aerosol from vaping, litter or ash left from smoking, burn marks, visible drifting smoke or aerosol, or residue on surfaces. It can be difficult to prove secondhand and thirdhand smoke exposure, so careful documentation of suspected violations is important. Sample documents residents can use to document secondhand and thirdhand smoke concerns are available at mnsmokefreehousing.org.

- (B) Enforcement of this chapter shall be the responsibility of the [department of public health and its designees]. In addition, any code enforcement official may report suspected violations of this [article/chapter] to the [department of public health or its designees].

Comment

Local public health is identified in this model ordinance as the enforcement agency due to their expertise with implementation of clean air laws, secondhand and thirdhand smoke exposure, commercial tobacco use and addiction, and knowledge of cessation resources. The enforcement approach adopted throughout this model ordinance carefully balances the public health and health equity goals of ensuring housing stability for all multiunit housing residents and avoiding the over policing of historically marginalized communities.

- (C) The [department of public health], in collaboration with the [city/county] attorney's office will:
- (1) Establish a process to receive and respond to complaints.
 - (2) Establish a digest of cessation resources for residents and to provide as a resource to landlords and HOAs;
 - (3) Establish a community-led response team comprised of [tobacco cessation provider, social worker, public health nurse, community health worker, and/or community mediation provider].

- (4) Create a fine schedule based on ability to pay using a “day fine system” with the following criteria:
 - (a) The resident’s base income from all sources of income including pensions, dividends, wages, salary, and public benefits;
 - (b) Adjusted daily income of the resident based on deductions for self-support and support of dependents;
 - (c) Resident’s assets; and,
 - (d) Multiple or repeat violations of this [article/chapter].

Comment

The Day Fine system is a process of identifying appropriate fines or penalties for individuals based on their ability to pay and the severity of the violation. In the context of smoke-free multiunit housing, using the Day Fine system to determine appropriate financial penalties would reduce the risk of housing instability of low-income residents and reduce the risk of civil penalties being escalated to more severe or criminal sanctions for failure to pay. (For more information on reforming fines and fees, see the [Fines and Fees Justice Center](#) and its resource, [First Steps Toward More Equitable Fines and Fees Practices](#) (2020)).

- (5) Develop or identify a community service program approved by the [public health department] as a diversion option for resident violations;
- (6) Use a community restorative justice program to implement restorative justice as an option for resident violations.

Section 8. Penalties, Violations, and Restoration.

- (A) **Residents and their Guests.** Upon receipt of complaints of alleged violations of Section 3(A) of this [article/chapter], the [city/county] will initiate the following process:
 - (1) Upon a first complaint, the public health department or designee will investigate and, if the complaint is substantiated, the department will provide the resident with notice of the complaint and the enforcement process for future complaints, information on cessation, information on harms of secondhand and thirdhand smoke exposure, [free] cessation resources available in the community, and process for refuting the complaint.

- (2) Upon a second substantiated complaint within one year of the first complaint, the department or designee will activate the community-led response team to engage the resident in dialogue about the alleged violation, the enforcement process for future violations, information on harms of secondhand and thirdhand smoke exposure, [free] cessation resources available in the community, and process for refuting the alleged violation. The community-led response team will provide and offer additional assistance upon request by the resident or if additional barriers to compliance are identified.
- (3) Upon a third substantiated complaint and subsequent substantiated complaints within one year of the first complaint, or if the resident will not engage with the community-led response team, the resident will be issued a civil citation and [city/county] may provide HOA or landlord a letter with notice of the complaint. The resident must:
 - (a) pay a civil fine pursuant to the fine schedule established under Sec. 7 of this [article/chapter]; or
 - (b) participate in a community service program established by the public health department or complete an approved, evidence-based tobacco cessation program, including but not limited to telephone counseling, group counseling, or individual counseling; or
 - (c) participate in a restorative justice process established by the public health department. The restorative justice program is only available if all interested parties are willing to fully participate in good faith.
- (4) Subsequent substantiated complaints within one year of the first complaint, or failure of the resident to complete the community service program or restorative justice program, will result in a civil citation and may require repeat community service and/or payment of a civil fine pursuant to the fine schedule established under Sec. 7(C)(4) of this [article/chapter].
- (5) If no substantiated complaints occur for a one-year period after the first complaint, a subsequent complaint will be treated as a first complaint.

The [city/county] shall adopt a fine system based on the criteria developed under Sec. 7(C)(4) of this [article/chapter] for any fines levied under this paragraph. The fine system may be updated from time to time.

Comment

This provision provides a compliance-focused enforcement process for residents in violation of the ordinance. A first violation is addressed with a warning, a second violation would trigger engagement of the community-led response team to work with the resident to gain compliance, a third violation results in escalation to give the resident the choice of paying a fine that is based on ability to pay, community service or diversion program participation, or participation in a restorative justice process. It provides for a focus on compliance with provision of cessation resources and allows for a “reset” if the resident has no violations for a one-year period after the first complaint.

(B) **Landlords or HOAs.** Landlords or HOAs found to have violated this [article/chapter], or whose agents, employees, or contractors have violated Section 3 of this [article/chapter], will be issued a civil citation and are subject to the following civil penalties:

- (1) A civil fine of [two hundred fifty dollars (\$250)] for the first violation;
- (2) A civil fine of [\$500] for the second violation;
- (3) A civil fine of [\$750] for the third violation;
- (4) A civil fine of [\$1,000] for the fourth violation or any subsequent violations;
- (5) If no violations occur for a one-year period, a subsequent violation will be considered a first violation.

The department may initiate a restorative justice process as an alternative to, or in addition to, the civil fine.

Comment

This provision provides civil fines for landlords and HOAs in violation of the ordinance. It provides escalating civil monetary fines and allows for a “reset” if the landlord or HOA has no violations for a one-year period. At the time of investigating each alleged violation, the public health department would provide assistance and resources to the landlord or HOA to support them in compliance with and implementation of the law. This support would occur in advance of the law’s implementation but should be ongoing to ensure the law is followed.

(continued)

(continued)

The jurisdiction may also provide the opportunity for a restorative justice process as an alternative to, or in addition to, the civil citation.

(C) Violations.

- (1) Notice. A person violating this ordinance may be issued, either personally or by mail, a civil citation or letter of notice of an alleged violation from the [city/county] that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) Hearings.
 - (a) Upon issuance of a civil citation or letter of notice of an alleged violation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 30 business days of the issuance of the civil citation or letter of notice of an alleged violation and delivered to the [City Manager/County Administrator] or other designated officer. Failure to properly request a hearing within 30 business days of the issuance of the civil citation or letter of notice of an alleged violation will terminate the person's right to a hearing unless the resident can demonstrate extenuating circumstances requiring additional time to respond.
 - (b) The [City Manager/County Administrator] or other designated officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the alleged violator at least 10 business days prior to the hearing.
- (3) Hearing Officer. The [City Council/County Board] will designate a hearing officer. The hearing officer will be an impartial employee of the [city/county] or an impartial person retained by the [city/county] to conduct the hearing.
- (4) Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the [city/county] and the alleged violator by in-person delivery or mail as soon as

practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the [city/county] and the acquitted alleged violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Section 8, paragraph (C)(5) of this section.

- (5) Appeals. Appeals of any decision made by the hearing officer must be filed in [_____] County conciliation court within 10 business days of the date of the decision.
- (6) Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (7) Violations of Section 3(A) of this [article/chapter] by multiunit housing residents shall not be used as a basis to support evictions or any criminal penalties.

Comment

This provision specifies that resident violations of Section 3(A) (the no-smoking provision) of this ordinance cannot be used as a basis for an eviction or for any criminal penalties. This provision would require that a landlord independently investigate and substantiate any alleged violations of the lease that could lead to lease termination.

Section 9. Construction, Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 10. Effective Date.

[City version:] This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

[County version:] This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 375.51, subd. 3, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Appendix: Sample Findings of Fact and Purpose.

WHEREAS tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:

- The World Health Organization (WHO) estimates that tobacco kills up to half of its users, amounting to more than 8 million deaths each year worldwide,¹ including nearly half a million people who die prematurely from smoking in the United States alone;²
- Tobacco use can cause disease in nearly all organs of the body and is responsible for an estimated 87 percent of lung cancer deaths, 32 percent of coronary heart disease deaths, and 79 percent of all chronic obstructive pulmonary disease deaths, in the United States;²
- 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;² and
- The estimated economic damage attributable to smoking and exposure to secondhand smoke in the United States is nearly \$300 billion annually;² and

WHEREAS smoking is the number one cause of preventable death and disease in Minnesota and continues to be an urgent public health issue,³ as evidenced by the following:

- An estimated 5,900 Minnesota adults die from smoking annually;⁴
- It is projected that 102,000 Minnesotans between the ages of 0 and 17 will become smokers and die prematurely as adults because of a smoking-related illness;²
- Each year, smoking costs Minnesota an estimated \$2.51 billion in direct health care expenses, \$563.2 million in Medicaid costs, and \$1.54 billion in productivity losses;⁴
- Research indicates that 26.7 percent of all adult cancer deaths in Minnesota are attributable to smoking;⁵ and
- [insert local data if available]

WHEREAS significant disparities in tobacco use exist in Minnesota which create barriers to health equity,⁶ as evidenced by the following:

- American Indian (49.3 percent) and Black (21.4 percent), Minnesotans report a higher smoking prevalence than white Minnesotans (14.6 percent) and Hispanic (13.6 percent);⁷
- The American Indian population in Minnesota reports the highest tobacco usage rate among adults (49.3 percent);⁷ American Indian youth report the highest rate of smoking among 11th graders (32.7 percent);⁸

- Minnesotans with higher income are less likely to smoke;⁷
- The rate of smoking for Minnesotans without a high school degree is 121 percent higher than among Minnesotans with a high school degree;⁹
- The smoking prevalence for LGBTQ+ Minnesotans is 21.3 percent, which is higher than the state average of 14.5 percent;¹⁰
- Nonsmokers who live in multiunit housing report smelling smoke more often than nonsmokers who live in homes (14.6 percent vs. 8.4 percent);¹¹
- 85.0 percent of affordable housing residents who are exposed to secondhand smoke in Minnesota are nonsmokers;⁹
- Minnesotans with poor mental health had a smoking prevalence of more than double the state average;¹⁰ and
- [insert local data if available]

WHEREAS secondhand smoke has repeatedly been identified as a health hazard, as evidenced by the following:

- In 2006, the U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;¹²
- The Minnesota Pollution Control Agency lists tobacco smoke as an indoor pollutant and warns that tobacco smoke contains at least 60 chemicals known to cause cancer;¹³
- The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) finds that acceptable indoor air quality in multiunit housing requires the absence of secondhand smoke, cannabis smoke, and aerosol from electronic smoking devices;¹⁴
- The American Heart Association and the American Lung Association recommend all adults and children be protected from secondhand smoke in multiunit housing;^{15,16}

WHEREAS exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;²
- Secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States.²

- Research indicates that exposure to secondhand smoke increases the risk of coronary heart disease by 25 percent to 30 percent and increases the risk of stroke by 20 percent to 30 percent;^{2,17}
- Secondhand smoke kills more than 400 infants every year;¹⁸

WHEREAS, electronic smoking device aerosol may be considered a health hazard, as evidenced by the following:

- Research has found at least twelve chemicals in electronic smoking device aerosol known to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic, and toluene;^{19,20,21,22}
- Electronic smoking device aerosol is not harmless water vapor as it contains varying concentrations of particles and chemicals, with some studies finding particle sizes and nicotine concentrations similar to, or even exceeding, conventional cigarette smoke;^{20,23,24,25}
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health;^{23,25,26,27,28,29,30,31,32}
- Given the increasing prevalence of electronic smoking device use, especially among youth and young adults, widespread nicotine exposure resulting in addiction and other harmful consequences is a serious concern;^{23,25,33}
- Indoor air experts and health authorities, including the U.S. Surgeon General, American Society of Heating Refrigerating and Air Conditioning Engineers, and the Minnesota Department of Health all support inclusion of electronic smoking devices in regulations of smoking and other tobacco product use;^{10,14,25}

WHEREAS secondhand smoke or aerosol from cannabis may be considered a health hazard, as evidenced by the following:

- Cannabis smoke contains many toxic chemicals and high levels of fine particulate matter.^{34,35}
- Compared to breathing clean air, cannabis smoke and the combustion of hard physical matter, whether organic or synthetic, is a health hazard, particularly for those with serious lung conditions, infants, and children.³⁶

WHEREAS nonsmokers who live in multiunit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Research demonstrates that secondhand smoke in multiunit housing can and does transfer between units, seeping into smoke-free areas from areas where smoking occurs;³⁷

- Residents of multiunit housing have higher levels of cotinine (a biomarker for nicotine) in their blood and saliva than those living in detached houses;³⁸
- Among children who live in homes in which no one smokes indoors, those who live in multiunit housing have 45 percent higher cotinine levels than children who live in detached houses;^{38,39}
- Twelve studies have found between 26 percent and 64 percent of residents of multiunit housing report secondhand smoke drifting into their home;⁸
- Surveys have found that 65 percent to 90 percent of multiunit housing residents who experience secondhand smoke in their home are bothered by it;⁸
- Over 81 percent of Minnesotans who live in multiunit housing have a smoke-free home policy, but between 411,000 and 431,000 people in Minnesota multiunit housing are still exposed to secondhand smoke in their homes;⁴⁰
- While 91.5 percent of Minnesota homes are tobacco smoke-free, only 84.0 percent of Minnesota homes are vape-free;⁴¹

WHEREAS harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this “thirdhand smoke” a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;^{42,43}
- Studies consistently find that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived,⁴⁴ and a recent study documents that it can remain in units for years;⁴⁵
- Human exposure to these thirdhand smoke carcinogens can occur through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;⁴⁶
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and place household items in their mouths;⁶
- Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;⁴⁴
- Research has shown that thirdhand smoke damages human cellular DNA^{47,48} and is carcinogenic at exposure levels relevant to residents of multiunit housing;⁸

WHEREAS smoking is a leading cause of fire-related injury and death,⁴⁹ and contributes to health inequities, as evidenced by the following:

- During 2012–2016, U.S. fire departments responded to an estimated 18,100 smoking related structure fires, which resulted in an estimated 1,130 injuries, 590 deaths, and \$476 million in direct property damage;⁵⁰
- During 2012–2016, smoking materials caused 5 percent of reported home fires, 23 percent of home fire deaths, 10 percent of home fire injuries, and 7 percent of the direct property damage from home fires;⁵⁰
- African American males and American Indian males have the highest mortality rates for fire-related deaths; altogether, African Americans accounted for 19 percent of all fire-related deaths in 2017, but made up only 13 percent of the U.S. population;⁹
- Elderly people 85 or older have the highest fire death rate, and the risk of dying from smoking-related fires increases with age;⁹ and
- [insert local data if available]

WHEREAS an estimated 21.8 percent Minnesotans (or 1.15 million people) live in multiunit housing;⁴⁰

WHEREAS the U.S. Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure; and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;¹²

WHEREAS, where smoke-free housing policies were implemented, there was a 24 percent reduction in self-reported exposure to secondhand smoke exposure among racially and ethnically diverse seniors living in low-income multiunit housing properties;⁵¹

WHEREAS several studies have confirmed that smoke-free multiunit housing policies are an effective method to reduce secondhand smoke exposure in multiunit housing;^{51,52,53}

WHEREAS secondhand smoke exposure occurs more often in multiunit housing compared to separate, single-unit housing;^{54,55,56} and therefore contributes to tobacco-related health inequities. For example, in Minnesota, 25 percent of African Americans own homes, while 75 percent of white people own homes. Black Minnesotans are therefore more likely to live in multiunit housing, and therefore more likely to be exposed to secondhand smoke.⁵⁷

WHEREAS secondhand smoke in multiunit housing is a significant threat to the health and safety of Minnesota children, as evidenced by the following:

- About a fifth of Minnesotans who live in multiunit housing (18.6 percent) are under the age of 18;⁴⁰
- The home is the primary source of secondhand smoke exposure for children;¹⁸
- Nearly 1 in 4 Minnesota fifth graders are exposed to secondhand smoke indoors;
- A national survey found that 56.4 percent of U.S. youth living in apartment units in which no one smokes have elevated blood cotinine levels above 0.05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;⁹
- The same survey also found that children who live in homes in which no one smokes indoors have 45 percent higher cotinine levels if they live in apartments compared with detached homes;³⁹

WHEREAS research consistently demonstrates that a majority of multiunit housing residents, including a large portion of smokers, supports smoke-free policies in multiunit residences,^{38,58,59} and that support is even greater among residents with children;⁶⁰

WHEREAS research demonstrates that a majority of adults supports smoke-free policies in multiunit residences, as evidenced by the following:

- 73.7 percent of U.S. adults surveyed favor smoke-free public housing;⁶⁰
- 80 percent of Minnesotans would definitely or probably choose a no-smoking building over a smoking-permitted building when buying a new unit, and 46 percent would be willing to pay more for non-smoking;⁵⁴ and
- [insert local data if available]

WHEREAS there are significant savings from adopting a smoke-free multiunit housing policy, as evidenced by the following:

- Prior to implementation, the U.S. Department of Housing and Urban Development's smoke-free public housing policy was conservatively estimated to produce an annual savings of 1.26 to 3.50 million dollars per year for U.S. public housing authorities in renovation-related costs, and 2.05 to 7.36 million dollars per year in health care costs in Minnesota alone;⁶¹
- The state of Minnesota has already saved \$5.1 billion dollars from the reduction in cigarette smoking (\$2.4 billion gained from worker productivity and \$2.7 billion saved from lower

medical costs), and if trends continue, the state can save another \$19.6 billion by 2037 (\$9.4 billion in worker productivity and \$10.2 billion in medical savings);⁶²

WHEREAS in 2016, the United States Department of Housing and Urban Development issued a final rule requiring all public housing agencies to adopt smoke-free policies to protect residents from secondhand smoke exposure effective February 2017;⁶³

WHEREAS children, low-income tenants of public housing, and members of racial and ethnic minority groups are disproportionately exposed to secondhand smoke; and smoke-free housing policies have shown potential to reduce exposure in these populations;^{64,65}

WHEREAS the repercussions of eviction disproportionately impact low-income, Black, Indigenous, and people of color leading to greater displacement from neighborhoods, job loss, depression and mental health hardships, and homelessness;⁶⁶

WHEREAS Minnesota state law allows local governments to adopt ordinances that permit residential rental agreements to prohibit smoking tobacco products within rental units;⁶⁷

WHEREAS there is no Constitutional right to smoke;⁶⁸

WHEREAS Minnesota law declares that anything which “unreasonably annoys, injures or endangers the safety, health, [or] comfort” of members of the public or which affects an individual’s right to enjoyment of some property, is a nuisance;^{69,70}

WHEREAS the governing body of each Minnesota city and county is required to remove and abate public health nuisances;^{70,71}

Endnotes

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