



**EXPLORING KEY ELEMENTS OF AN EQUITY-FOCUSED
SMOKE-FREE MULTIUNIT HOUSING MODEL
ORDINANCE**

COMMERCIAL TOBACCO CONTROL TEAM



LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby



based on work for First Nations Health Authority at Gathering Wisdom VI Drawing Change

AN ITERATIVE PROCESS

BUILT ON A SOLID FOUNDATION OF DECADES OF WORK

- Decades of smoke-free housing work by organizations across the country—
 - public policy and private individual policies
- ChangeLab Solutions model policy for California communities (2015, revised in 2018)
- PHLC updates to California model (2020)
- PHLC Minnesota model policy (2022)
- PHLC National model policy (2023)



AN ITERATIVE PROCESS MINNESOTA PROCESS

- Community engagement
- Research into public policy options—required policy, resolution, tied to funding mechanisms for affordable housing, etc.
- Equitable Enforcement Advisory Committee formed
- Policy drafted



PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law



Center for
Prevention



5/25/2023

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EQUITY IN SMOKE-FREE HOUSING: HOW A SOCIAL JUSTICE APPROACH SHAPED A MODEL SMOKE FREE HOUSING ORDINANCE

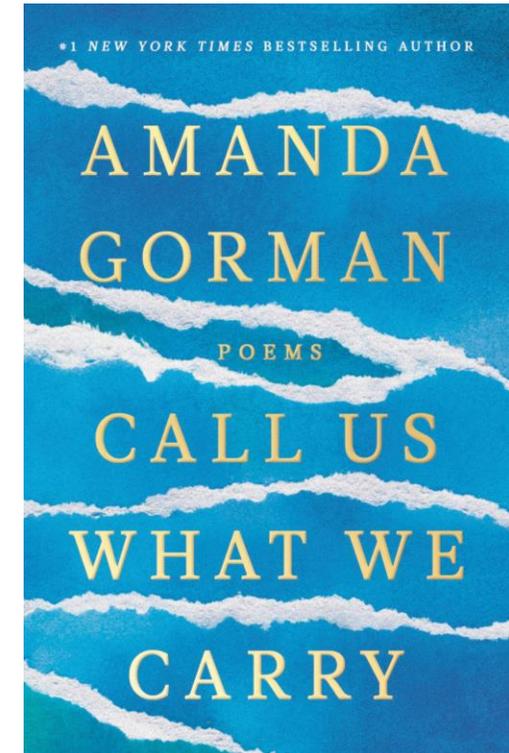


DATE
01/25/2023

AN ITERATIVE PROCESS THE FUTURE

**“The only way to correctly predict
The future is to pave it,
Is to brave it.”**

— Amanda Gorman, [Call Us What We Carry](#)



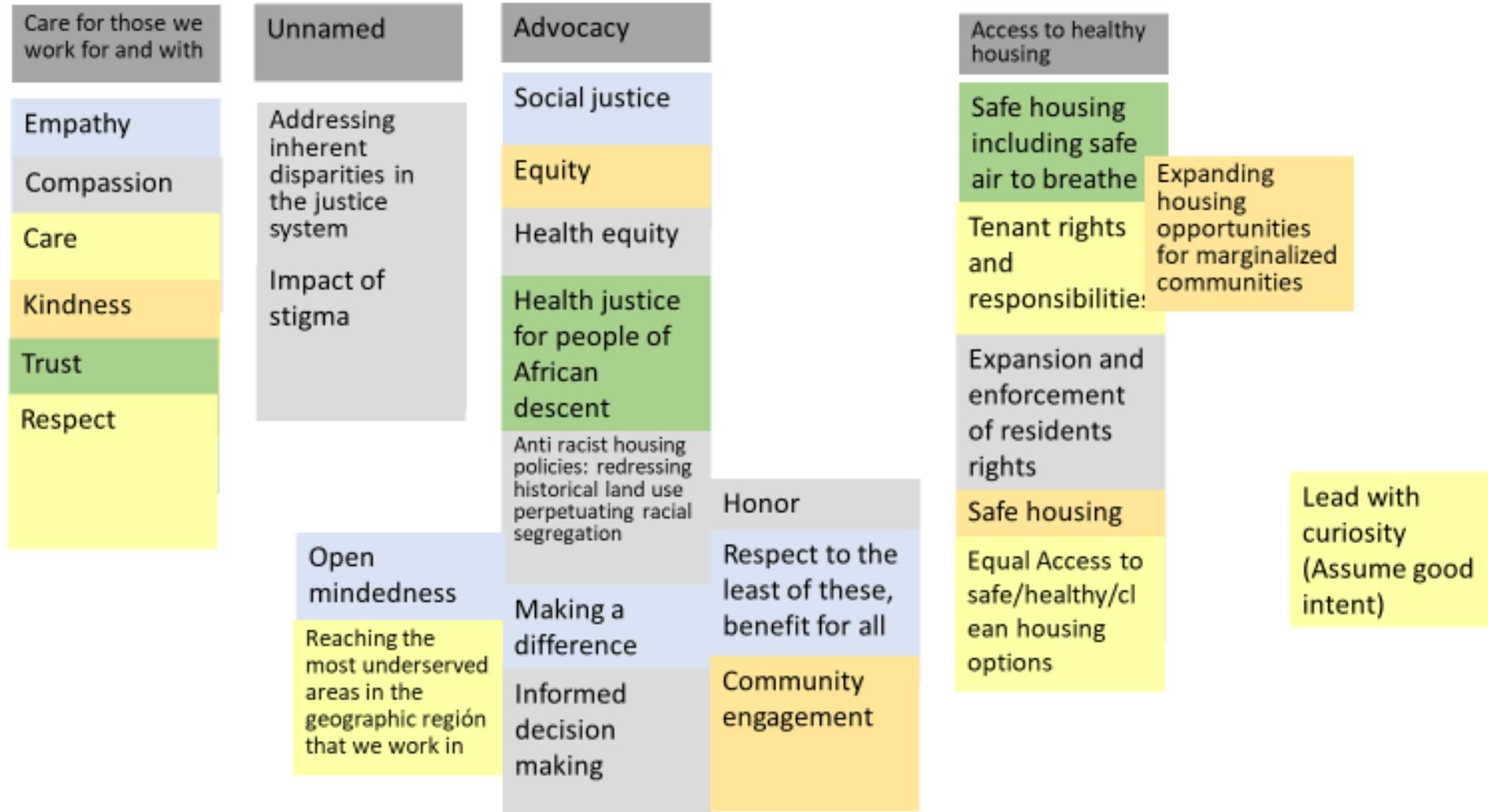
THE EQUITABLE ENFORCEMENT ADVISORY COMMITTEE

- Breathe California (CA)
- Center for Black Health and Equity (National)
- City of Bloomington, MN (MN)
- Community Mediation and Restorative Services (MN)
- HOME Line (MN)
- Live Smoke Free, ANSR-MN (MN/National)
- National Housing Law Project (National)
- Public Health Law Center (National)
- Restorative Response (MD)
- Rutgers University Behavioral Health Care (National)
- Southern MN Regional Legal Services (MN)

EQUITABLE ENFORCEMENT ADVISORY COMMITTEE

SHARED VALUES

What values guide the work you do and/or the work of your organization?



EQUITABLE ENFORCEMENT ADVISORY COMMITTEE **SHARED GOAL**

Healthy and stable housing
for all residents.



COMPREHENSIVE SMOKE-FREE HOUSING POLICY MODEL ORDINANCE

- Comprehensive definition of smoking
 - Tobacco, marijuana/cannabis, e-cigarettes/vapes
- Covers all multiunit establishments
 - Apartments, condominiums, new/existing
- Prohibits smoking in 100% of individual units, including balconies and patios
- Prohibits smoking in indoor common areas
- Prohibits smoking in all outdoor and common areas (e.g., pool areas, patios, play areas, parking areas, etc.)
- No exceptions for existing residents (no legal or health reason for this exception)

<https://www.publichealthlawcenter.org/sites/default/files/resources/SF-MUH-National-Model-Ordinance.pdf>

NATIONAL SMOKE-FREE MULTIUNIT HOUSING

Model Ordinance



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

The following model ordinance is comprehensive, covering all portions of multiunit housing, all types of products, and providing no exceptions. Before adopting a policy, communities should review any limitations in state or local law regarding smoke-free housing policies, including determining whether state law preempts local action. This model ordinance includes all the minimum clean indoor air restrictions required by federal law. It also includes several additional provisions a community may choose to adopt to further protect public health.



COMPREHENSIVE SMOKE-FREE HOUSING POLICY MODEL ORDINANCE

Clear implementation, enforcement plan, and tools for:

- Education (community buy-in, risk perception)
- Communication of the policy
- Graduated enforcement
- Cessation resources

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.

SPECIFIC PROVISIONS THAT WERE SHAPED BY EQUITABLE ENFORCEMENT ADVIS. COMMITTEE

- Optional Designated Smoking Area (DSA)
- Focus on landlord and HOA responsibilities in assuring a smokefree environment
- No lease requirement
- No retaliation
- Tenant has ability to break lease without financial liability if repeatedly exposed to secondhand/thirdhand smoke
- Complaint-based (no police involvement)
- Compliance-focused enforcement focused on housing stability for all residents



OPTIONAL DESIGNATED SMOKING AREA (DSA)

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;
 - (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).

HOA/LANDLORD RESPONSIBILITIES

Pros

- Already responsible for other policy enforcement
- Direct accountability to the jurisdiction for enforcement
- Removes criminal or administrative penalties for residents
- Removes potential police involvement



HOA/LANDLORD RESPONSIBILITIES



Cons

- May spur HOA/LL to pursue harsh measures against the resident (e.g., steep fines)
- Possible discriminatory or targeted enforcement by HOA/LL
- Risk of lax enforcement if jurisdiction has no enforcement obligation

FOCUS ON LANDLORD AND HOA RESPONSIBILITIES

- Must not permit smoking on premises
- Must remove ashtrays/ashcans
- Responsible for the acts of employees/contractors
- Must investigate and enforce the policy
- Must provide written notice and a copy of the ordinance
- Must post signage



NO LEASE REQUIREMENT

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 condo policy and lease addendum that complement this model ordinance and includes equitable enforcement measures to encourage compliance. Additional resources are available to support landlords and HOAs with implementation, compliance, and enforcement at <https://no-smoke.org/at-risk-places/homes/#1518116679261-b54caca4-5e4d>.

PROHIBITS AND PENALIZES RETALIATION

(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.

ABILITY TO BREAK LEASE FOR REPEATED EXPOSURE

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.

COMPLAINT-BASED AND PUBLIC HEALTH PRIMARY ENFORCEMENT RESPONSIBILITY

Section 7. Enforcement.

- (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.

- (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].

SMOKE-FREE MULTIUNIT HOUSING

EQUITABLE ENFORCEMENT CONSIDERATIONS

- Explored unintended consequences
- Enforcement by housing inspections or health department, not police
- Goal is compliance—
 - Not eviction or steep fines for residents, not purely punitive penalties (not criminal)
 - Notice, warning, graduated enforcement
 - Support access to cessation/nicotine dependence treatment



ENFORCEMENT FOR RESIDENT INFRACTION

CRIMINAL PENALTY?

Pros



Cons

- Inappropriate engagement of criminal justice system and law enforcement
- Risk of discriminatory enforcement (feeds over policing of some communities)
- Criminal record puts resident's housing stability in jeopardy
- Exacerbate criminal consequences (parole/probation violation)
- Immigration consequences
- Enforced by police

ENFORCEMENT FOR HOA/LANDLORD INFRACTION CRIMINAL PENALTY?

Pros

- Creates accountability for HOA/LL enforcement
- Option if civil fine not enough enticement



Cons

- Inappropriate engagement with criminal justice system and law enforcement
- Exacerbate criminal consequences (parole/probation violation)
- Immigration consequences
- Enforced by police
- Risk of harsh treatment of residents

ADMINISTRATIVE ENFORCEMENT

Pros

- Creates accountability for HOA/LL enforcement
- Non-criminal administrative penalties
- Fines for violations—calibrated for ability to pay
- Non-monetary penalties are options
- Enforced by city/county staff, not police

Cons

- Fines may be onerous and put housing of residents in jeopardy
- Possible discriminatory or targeted enforcement
- Fines may escalate penalty to criminal sanctions

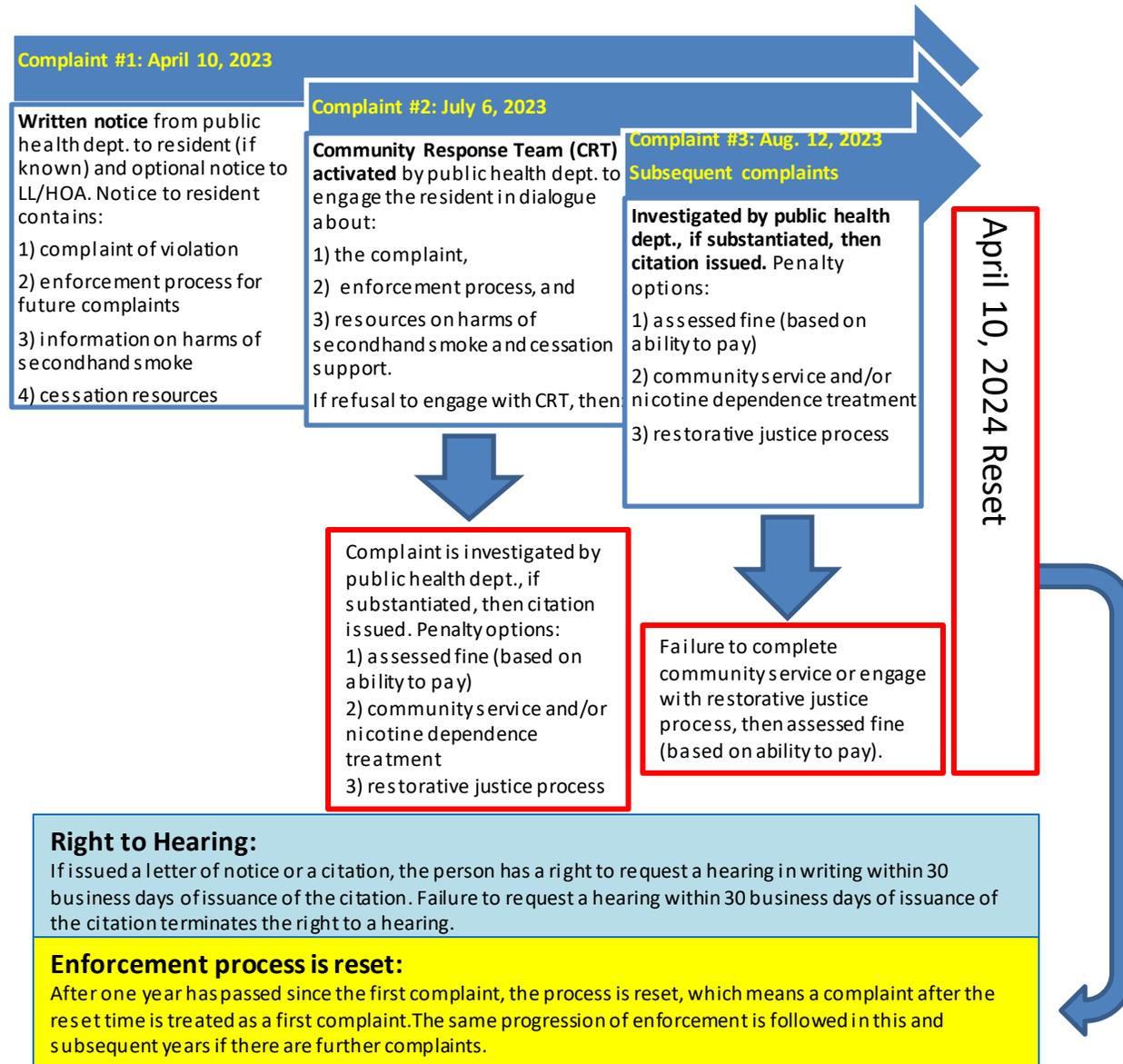
CURRENT ITERATION OF THE MODEL ORDINANCE ENFORCEMENT PROVISIONS

- Complaint based
- No criminal penalties
- Separate penalties for LL/HOAs and residents
- Penalties are graduated and are structured to support compliance



IMPLEMENTATION PROCESS

ALLEGED RESIDENT VIOLATIONS



1ST RESIDENT VIOLATION NOTICE LETTER

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.

2ND RESIDENT VIOLATION COMMUNITY-LED RESPONSE TEAM

(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.

3RD RESIDENT VIOLATION OPTIONS

CIVIL FINE/COMMUNITY SERVICE/RESTORATIVE JUSTICE

- (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.

SUBSEQUENT RESIDENT VIOLATIONS

(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].

RESIDENT INFRACTIONS RESET PROVISION

(5) If no substantiated complaints occur for a one-year period, a subsequent complaint would be considered a first complaint.



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DUE PROCESS FOR RESIDENTS/LLS/HOAS

NOTICE, HEARINGS, AND APPEALS

(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.

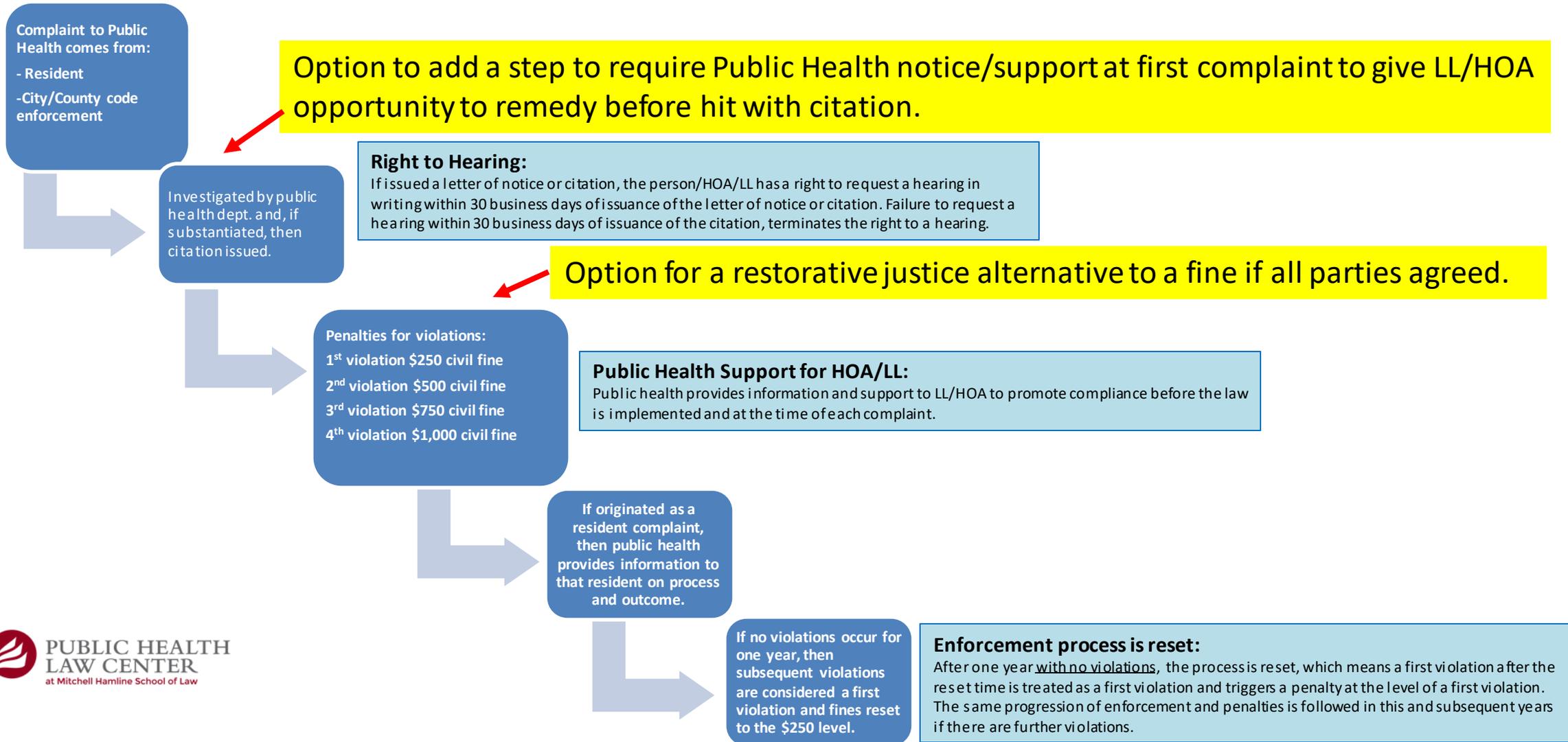
(a) Upon issuance of a civil citation or letter of notice of an alleged violation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 30 business days of the issuance of the civil citation or letter of notice of an alleged 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.

(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.

IMPLEMENTATION PROCESS

HOA/LL VIOLATIONS



ENFORCEMENT PROCESS FOR HOA/LL INFRACTIONS

- Complaint to Public Health
- Investigated by Public Health
 - Substantiated complaint then citation issued
 - Could add a warning letter and opportunity for LL/HOA to remedy
- Right to hearing—due process protections
- Support for HOA/LL throughout process
 - Public health provides support to LL/HOA to promote compliance before the law is implemented and at the time of each complaint



SMOKE-FREE MULTIUNIT HOUSING CONSEQUENCES FOR HOA/LL INFRACTIONS

(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 would be considered a first violation.

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

CONSEQUENCES FOR HOA/LL VIOLATIONS

- Penalties for violations:
 - 1st violation \$250 civil fine
 - 2nd violation \$500 civil fine
 - 3rd violation \$750 civil fine
 - 4th violation \$1,000 civil fine
- Option for a restorative justice alternative to a fine if all parties agreed.
- If originated as a resident complaint, then public health provides information to that resident on process and outcome.



LL/HOA VIOLATIONS RESET PROVISION

If no violations occur for one year, then subsequent violations are considered a first violation and fines reset to the \$250 level.



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