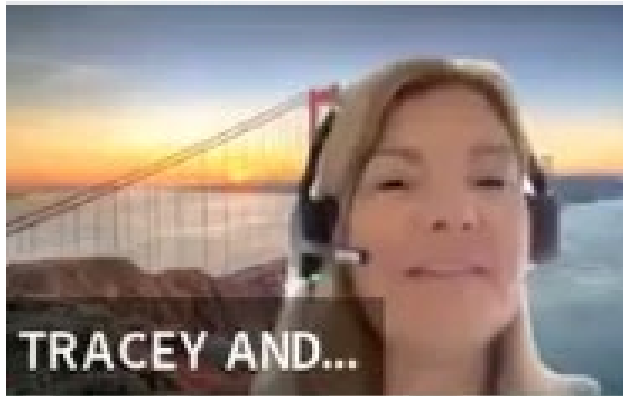




SMOKE-FREE MULTI-UNIT HOUSING ORDINANCES IN NEW YORK STATE: LESSONS LEARNED FROM CALIFORNIA

PRESENTERS



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THE PUBLIC HEALTH LAW CENTER



LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
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Equality



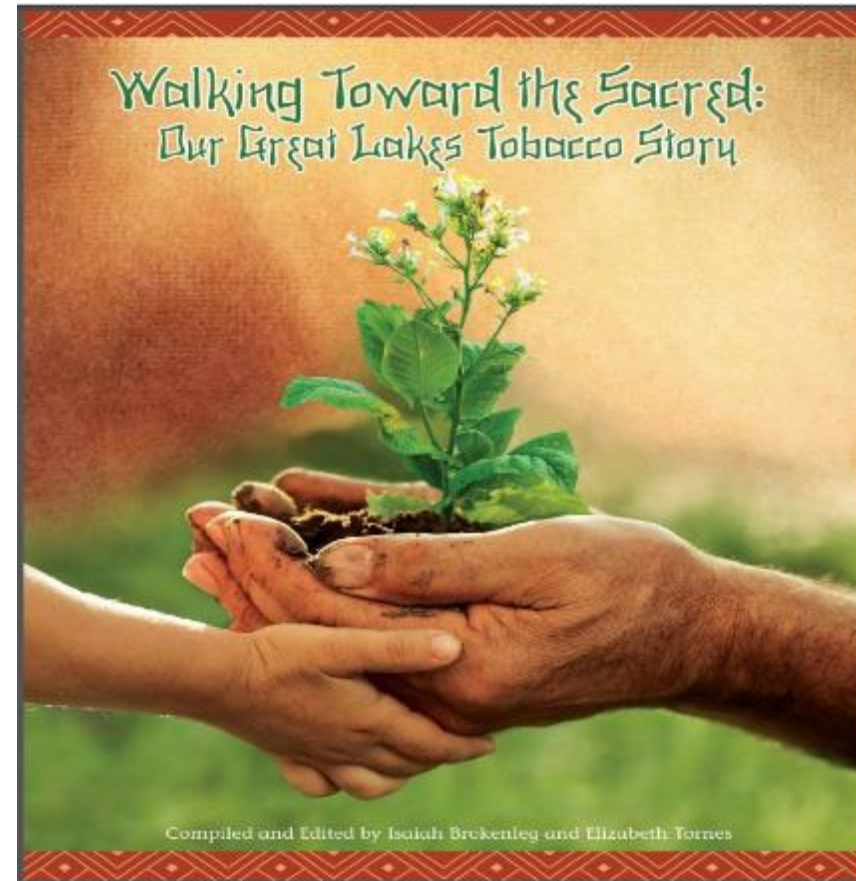
Equity



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COMMERCIAL VS. SACRED TOBACCO

- Words matter:
 - Respecting traditional tobacco
 - “Tobacco is harmful,” “...free of tobacco”



DEFINITION OF COMMERCIAL TOBACCO



“Traditional tobacco is tobacco and/or other plant mixtures grown or harvested and used by American Indians and Alaska Natives for ceremonial or medicinal purposes. Traditional tobacco has been used by American Indian nations for centuries as a medicine with cultural and spiritual importance.”



WHAT ARE WE TALKING ABOUT?

HEALTH EQUITY, DISPARITIES

Figure 1
Social Determinants of Health

Economic Stability	Neighborhood and Physical Environment	Education	Food	Community and Social Context	Health Care System
Employment	Housing	Literacy	Hunger	Social integration	Health coverage
Income	Transportation	Language	Access to healthy options	Support systems	Provider availability
Expenses	Safety	Early childhood education		Community engagement	Provider linguistic and cultural competency
Debt	Parks	Vocational training		Discrimination	Quality of care
Medical bills	Playgrounds	Higher education		Stress	
Support	Walkability				
	Zip code / geography				

Health Outcomes
Mortality, Morbidity, Life Expectancy, Health Care Expenditures, Health Status, Functional Limitations

SMOKING RESTRICTIONS IN NEW YORK STATE

[§ 1399-o](#). Smoking and vaping restrictions. 1. Smoking and vaping shall not be permitted and no person shall smoke or vape in the following indoor areas: a. places of employment...

[§ 1399-n](#). Definitions. For purposes of this article:

5. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, and shall include, but not be limited to, offices, school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment or other office equipment used in common, and company vehicles.



SMOKING RESTRICTIONS IN NEW YORK STATE

[§ 1399-n](#). Definitions. For purposes of this article:

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or cannabis as defined in section 222.00 of the penal law, or cannabinoid hemp as defined in section three of the cannabis law.

9. "Vaping" means the use of an electronic cigarette.



SMOKING RESTRICTIONS IN NEW YORK CITY

§ 17-503 Prohibition of smoking and use of electronic cigarettes.

a. Smoking, and using electronic cigarettes, are prohibited in all enclosed areas within public places except as otherwise restricted in accordance with the provisions below.

§ 17-502 **Definitions.** "Public place" means any area to which individuals other than employees are invited or permitted ... A private residence is not a "public place" within the meaning of this subdivision, except that areas in a private residence where a child day care center or health care facility is operated during the times of operation and areas in a private residence which constitute common areas of a multiple dwelling are "public places" within the meaning of this subdivision.

§ 17-506.1 **Obligation of owners of class A multiple dwellings to adopt and disclose a smoking policy.**



SMOKING CANNABIS IN NEW YORK STATE

“A landlord cannot refuse to rent to a tenant who consumes cannabis, but landlords, property owners, and rental companies can still ban the smoking or vaporizing of cannabis on their premises.”

[NYS Office of Cannabis Management FAQ](#)

No landlord’s smoke-free policy “may be construed to limit the certified medical use of cannabis.”

[New York State Cannabis Law § 127\(2\)\(b\)](#)



LOCAL LAWS



U.S. Laws for 100% Smokefree Multi-Unit Housing

July 1, 2023

This list represents communities with laws that regulate smoking in **private units** of multi-unit housing.

As of July 1, **79 municipalities** have enacted a law at the city or county level that prohibits smoking in **100% of private units** of rental multi-unit housing properties. Of these municipalities, **72** have laws that prohibits smoking in **100% of private units** of both rental **and** owner-occupied multi-unit housing properties. The vast majority of the laws—68 municipalities—apply to properties with 2 or more units.

For public housing policies, see [U.S. Public Housing Authority Policies Restricting or Prohibiting Smoking](#).

See Definitions and Explanatory Notes starting on page 4.

Visit our smokefree multi-unit housing page at no-smoke.org/at-risk-places/homes/ for more information.

Source: <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>

Municipalities with Laws for 100% Smokefree Multi-Unit Housing:

This table represents communities that have **municipal laws** at the city or county level that prohibit smoking in **100% of private units** of all specified types of multi-unit housing. These laws apply to both privately-owned and publicly-owned multi-unit residences, as well as all existing and future buildings, and do not permit current residents to continue smoking in the building (i.e. no “grandfather” clause). Most, but not all, municipal laws include condominiums and other owner-occupied properties.

Municipalities marked with # require multi-unit buildings to be 100% smokefree when the law is in full effect as of the listed Final Effective Date. Municipalities marked **Some** under “% of Units Currently Smokefree” will be 100% when the law is in full effect.

Municipality	State	% of Units Currently Smokefree	Final Effective Date	Minimum Number of Units	Includes Patio/Balcony	Includes Condos
1. Alameda	CA	100%	1/1/2013	2	Yes	Yes
2. Alameda County	CA	100%	7/1/2022	2	Yes	Yes
3. Albany	CA	100%	3/24/2018	2	Yes	Yes
4. Bell Gardens	CA	100%	6/1/2021	3	Yes	Yes
5. Belmont	CA	100%	1/8/2009	2	Yes	Yes
6. Belvedere	CA	100%	11/9/2017	2	Yes	Yes

RE-EVALUATING A SMOKE-FREE POLICY: CONSIDERATIONS

- **What products?**
 - “Prohibited tobacco products”
 - New products?
 - Exempt traditional tobacco practices?
- **Where?**
 - All indoor areas
 - All outdoor areas within 25 feet
 - Entire grounds?
 - Certain outdoor areas?
- **When?**
 - Provide notice to residents
 - Involve residents with process – create buy-in
- **Enforcement?**
 - Existing lease violation procedures
 - Graduated enforcement?
 - Evidence of violations?
 - Resources to help with cessation

MODEL SMOKE-FREE ORDINANCE



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SMOKE-FREE
HOUSING

November 2023



SMOKE- & VAPE-FREE MULTIUNIT HOUSING MODEL ORDINANCE

for New York State



This model ordinance was prepared for municipalities and counties in New York State interested in creating smoke-free and vape-free areas in multiunit housing.

The ordinance is comprehensive, covering all portions of multiunit housing, all types of products, and providing no exceptions. This model ordinance includes all the minimum clean indoor air restrictions required by New York State law and federal law in public housing. It also includes several additional provisions a community may choose to adopt to further protect public health.

Source: <https://www.publichealthlawcenter.org/sites/default/files/resources/NYS-SF-MUH-model-ordinance.pdf>



PUBLIC HEALTH
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at Mitchell Hamline School of Law

REFLECTIONS ON PASSING & IMPLEMENTING A SMOKE-FREE MULTI-UNIT HOUSING ORDINANCE

Unincorporated Alameda County
January 9, 2024







Alameda County Tobacco Control Program

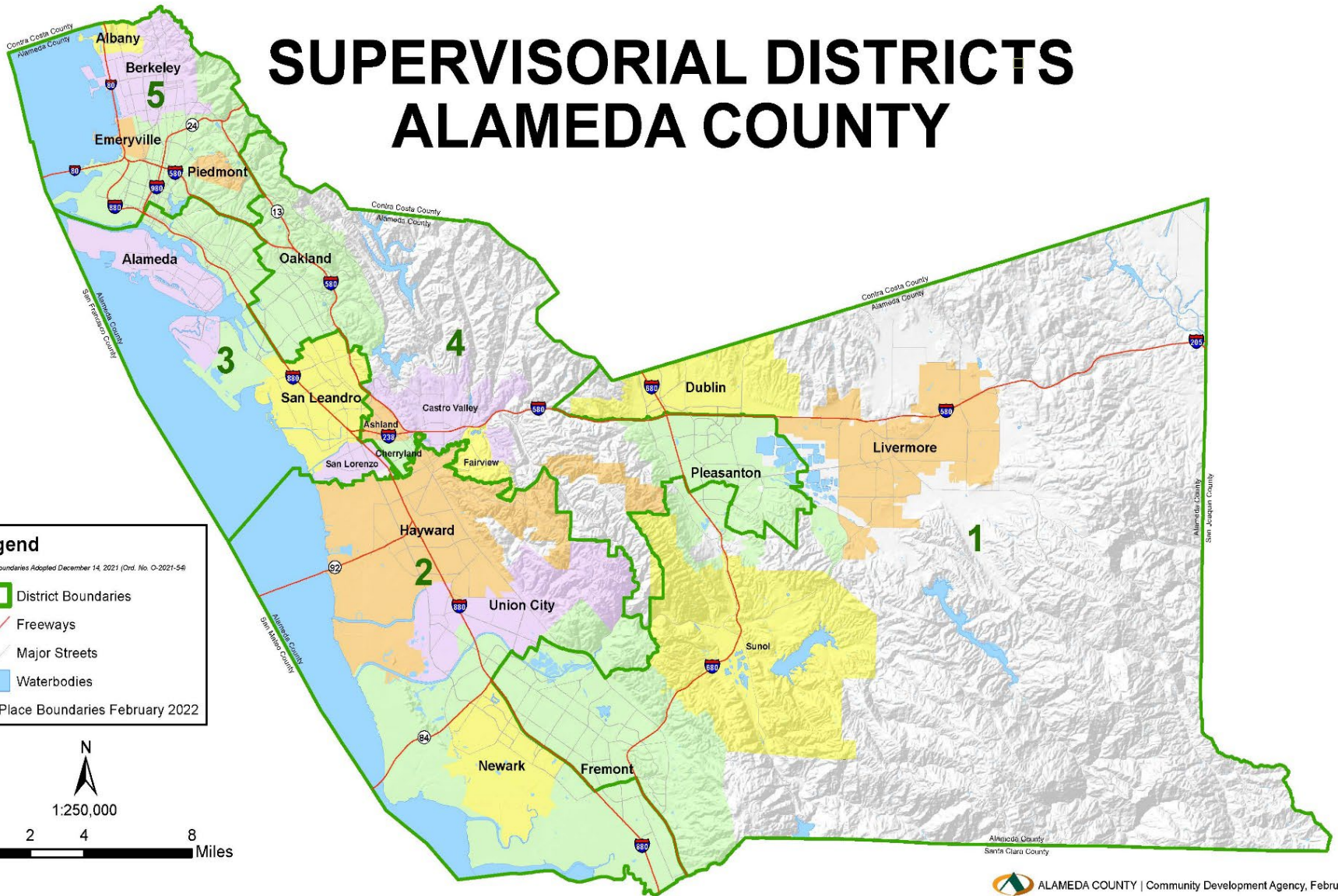
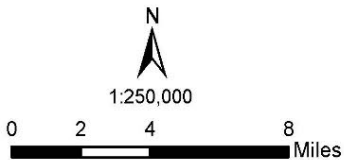
SUPERVISORIAL DISTRICTS ALAMEDA COUNTY

Legend

District Boundaries Adopted December 14, 2021 (Ord. No. O-2021-54)

-  District Boundaries
-  Freeways
-  Major Streets
-  Waterbodies

City/Place Boundaries February 2022



Policy Objectives for our Workgroup

- Protect all persons in multi-unit housing in unincorporated areas from secondhand smoke.
- Not contribute to evictions or housing insecurity of vulnerable families.
- Penalties must not lead to violators interacting with criminal justice system.

Background



- Residents brought concerns of SHS in MUH to Supervisors attention 3 years before the proposed ordinance passed
- Our Program collected input from 6 community meetings August and September 2021
- Supervisors heard residents and supported bringing policy to BOS Meeting for first reading December 2021
- Passed January 11, 2022
- Effective date July 1, 2022

Ordinance Provisions

Requires smoke-free multi-unit residences of 2 or more units:

- Inside units including balconies, patios
- Indoor and outdoor common areas
- 25-foot smoke-free buffer zone around doors and windows **and neighboring multi-unit properties**



Multi-Unit Residence Definition

**Two or more units,
including:**

- Apartments
- Townhomes
- Condominium complexes
- Senior and assisted living facilities
- Long-term health care facilities



Smoking Definition

- Cigarettes, cigars, cigarillos, hookah, and pipes
- Electronic smoking devices
- Cannabis/marijuana



Implementation Language in Ordinance

No-smoking signs provided by PHD

Ordinance would take effect July 1, 2022

6+ months of outreach & education by Public Health Dept (PHD)

- Mail
- Virtual forums

Landlords must notify tenants



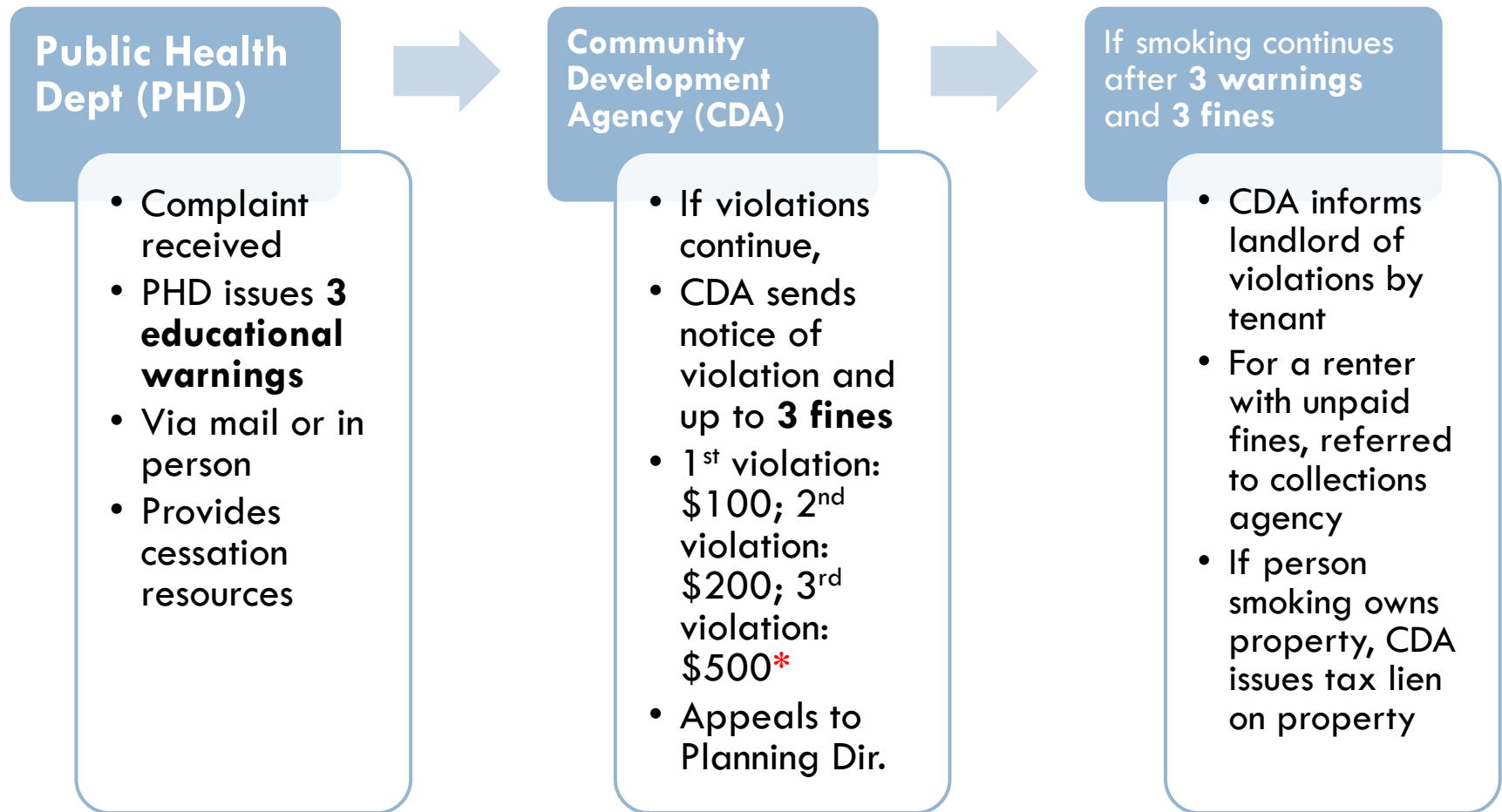
PROHIBIDO FUMAR
PROHIBIDO VAPORIZAR
NO SMOKING
NO VAPING

En el caso de observar una infracción, puede informarlo al 510-208-5920
Report violations to 510-208-5920

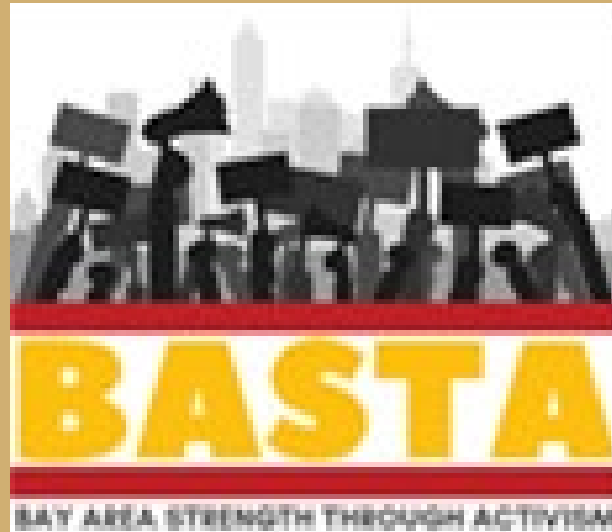


 Código de Ordenanzas del Condado de Alameda, Capítulo 6.74,
Residencias de unidades múltiples libres de humo
Alameda County Ordinance Code Chapter 6.74
Smoke-Free Multi-Unit Residences

Enforcement Language in Ordinance



*\$500 for 3rd and subsequent violations within a three-year period.



COMMUNITY ENGAGEMENT IMPACT ON ADOPTION OF POLICY

Timeframe 6 months (building on last 2.5 years)

Community Engagement Heavy Lifting

Pre-Policy Adoption:

- Provided SFMUH Education in community to organizations and community members
- Collected Surveys from the community on impact of SHS in MUH
- Met with Housing assistance and protections agencies, gained support
- Messaged about policy in multiple languages
- Door knocking to collect statement of concern, surveys
- Came to all council meetings
 - ▣ organized community members to provide public comment,
 - ▣ advocated for Spanish interpretation to be available at council meetings

Post Policy Adoption:

- Informed large MUH property managers of the ordinance and resources available to help them transition properties
- Important thought partner for Implementation solutions
- Continued educating community members about the passing of the ordinance and how to make a complaint

Community Feedback: Support

- 41 supportive comments** from residents affected by drifting secondhand smoke
- 15 Supportive letters**
- Two or more units included in ordinance, e.g., duplexes
- “No smoking” clause in lease
- Removal of eviction protection:**
 - Affected tenants and housing providers want some recourse after 6 violations
 - Other lease violations can lead to eviction
- Protecting residents from secondhand smoke is an important priority
- Remove eviction prohibition and require smoke-free terms in lease
- Ordinance should go further and apply to single-family homes

Community Feedback: Concerns

- Rental Housing Association: prefers education and allowing housing providers to choose smoke-free policy (vs. ordinance)

Required a Follow up meeting with PHD:

- Clarified that no fines or taxes are imposed on housing providers
- Offered to provide education to RHA members
- Local Realtors Association against ordinance fines

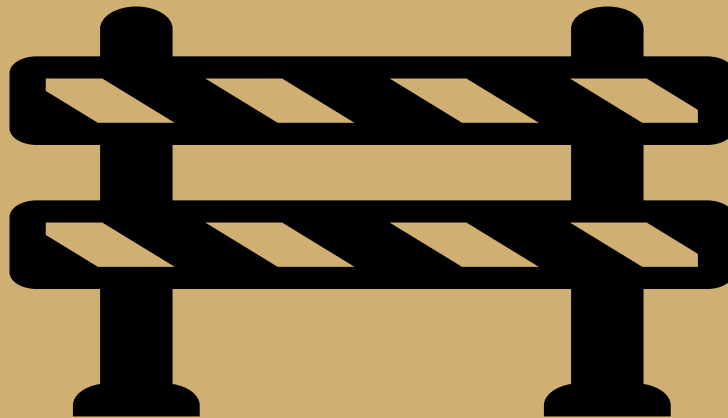
- Government overreach – leave decisions to property owner
- Cost of enforcement and capacity of Code Enforcement
- Issue is not relevant to our community

Results:

Ordinance **only effective within urban growth boundary**
smoke-free clause **not required to be in lease**; and **retain**
eviction protection through end of enforcement process.

Direct PHD to:

- a. Create protocols for 3 educational warnings and 3 fines
- b. Provide education to housing providers on the ordinance
- c. Return to Unincorporated Services Committee in 12 months with analysis of compliance and enforcement, including any evictions



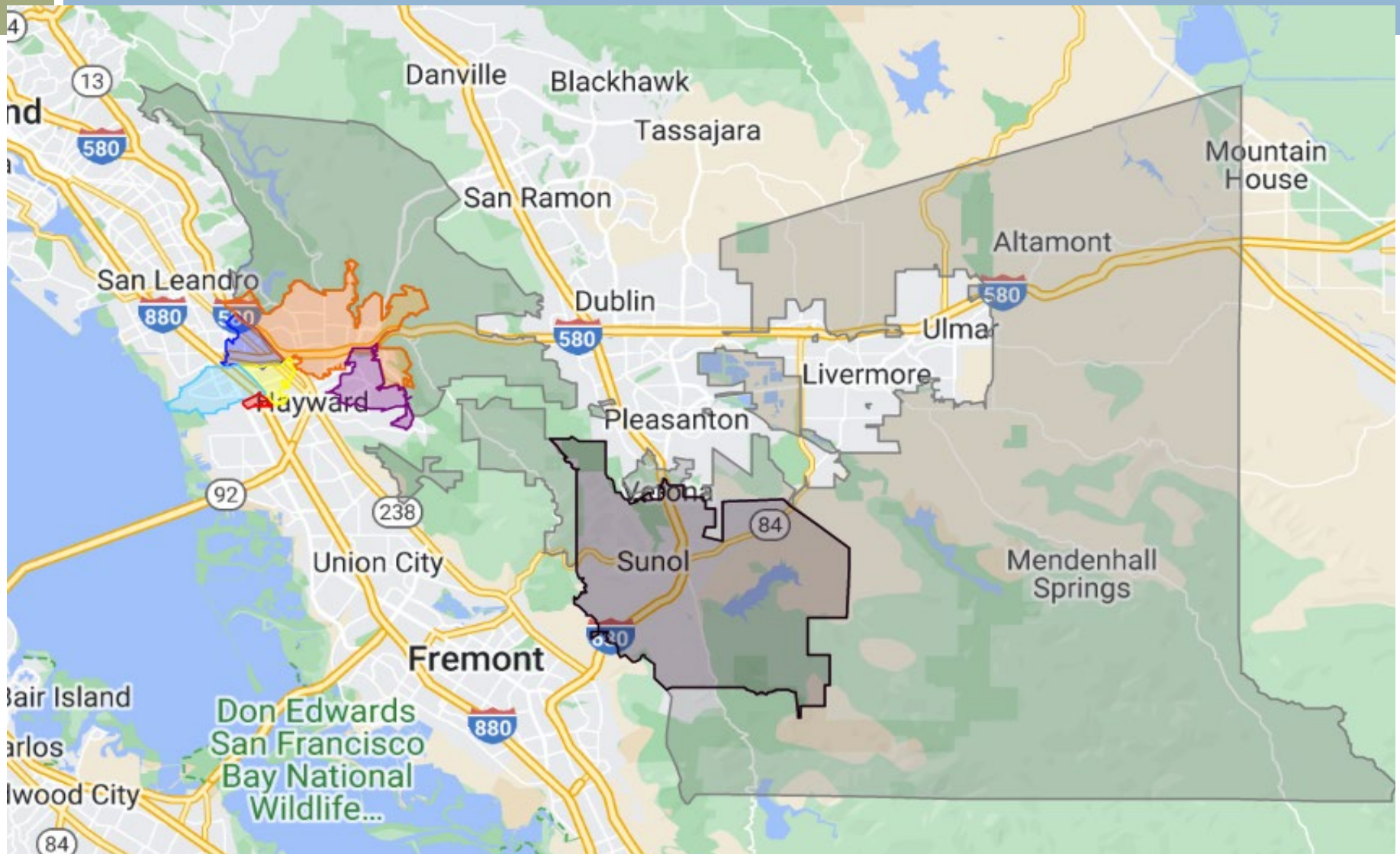
BARRIERS TO IMPLEMENTATION

Lessons learned last 18 months

Barrier Where Does Law Apply?

- Not all unincorporated area was covered and confusing to residents in cities that are very close to the unincorporated boundaries.
- Urban Growth Boundary (UGB) confusing to residents and County staff

Map of Unincorporated Area



How Many MUH Properties?

Identified MUH in area

- a. Used tax assessor list to identify MUH properties by codes
- b. Community Development Agency Staff reduced list to only addresses within Urban Growth Boundary

Problem

- a. Didn't know how many units in a building with assessor code 5 or more.
- b. Housing Community Development had a list that gave more information on the number of units in larger complexes over 5 units.
 - i. Able to better estimate the number of MUH residents we needed to reach.

Notified Public of Ordinance

Hired a Vendor to Print and Mail 55,224 Postcard notifications about the ordinance for residents in MUH

- a. Developed **postcard** to send to Unincorporated Area announcing ordinance
- b. Interviewed with a reporter who ran article about the ordinance and the mailing before the postcards were sent out
- c. Sent letters about the ordinance to hotels and motels, long term care facilities, medical, dental and veterinarian offices
 - Mobile home sites are exempt.
 - Did not include other businesses
- a. Presentations were given to community groups, rental housing association and MUH complexes



To protect residents from secondhand smoke, smoking is prohibited in multi-unit residences in the Unincorporated Areas of Alameda County starting on **July 1, 2022**.

Con el fin de cuidar la salud de los fumadores pasivos, fumar en las residencias de unidades múltiples de las áreas no incorporadas del condado de Alameda estará prohibido a partir del **1 de julio de 2022**.

- The law applies to multi-unit residences in Unincorporated Areas of the County, including Ashland, Cherryland, Fairview, Castro Valley, and San Lorenzo. (Ordinance No. O-2022-5.)
- A multi-unit residence is housing with two or more units, including apartments, townhomes, condominium complexes, senior and assisted living facilities, long-term health care facilities, and hotels and motels.
- A multi-unit residence does not include single-family homes with an accessory dwelling unit or junior accessory dwelling unit and mobile homes in a mobile home park.

This means no one is allowed to smoke:
Esto significa que a nadie se le permite fumar:



- La ley se implementará en residencias de unidades múltiples en áreas no incorporadas del condado. Las áreas donde se implementará la ley son: Ashland, Cherryland, Fairview, Castro Valley y San Lorenzo. (Ordenanza N° O-2022-5.)
- Una residencia de unidades múltiples es una vivienda que posee dos o más unidades, es decir, apartamentos, casas adosadas, complejos de condominios, instalaciones para la asistencia de personas mayores, instalaciones de asistencia médica a largo plazo, hoteles y moteles.
- No se considerarán residencias de unidades múltiples a las viviendas unifamiliares con una unidad de alojamiento auxiliar o con una unidad de alojamiento auxiliar pequeña, ni tampoco las casas rodantes que permanecen en un estacionamiento de casas móviles.

*For more information on what part of the property is included in indoor and outdoor common areas, see: <https://acphd.org/tobacco-control/smoke-free-multi-unit-housing/>

*Para obtener más información sobre qué parte de la propiedad está incluida en las áreas comunes interiores y al aire libre: <https://acphd.org/tobacco-control/smoke-free-multi-unit-housing/>



For more information or to make a complaint:

Si desea recibir más información o realizar una queja, consulte en:

了解更多信息或提出投诉:

Để biết thêm thông tin hoặc để khiếu nại:

Visit: <https://tinyurl.com/smokinglaw>
 Email: TCP@acgov.org
 Phone: 510-208-5920

For resources on how to quit smoking, see:

Para recibir información sobre dejar el hábito de fumar, consulte en:

有关如何戒烟的信息, 请参阅:

<https://tinyurl.com/quit-tobacco>



Biggest Barrier Was With Mailing to Multi-unit Homes

Didn't know how units were addressed lettered, numbered etc.

Vendor suggested **using Every Door Direct Mail (EDDM)** USPS service

Staff calculated EDDM routes that had the MUH properties addresses on the assessor list within Urban Growth Boundary.

Used Postcard mailing as an educational announcement to all residents in community as single-family homes would receive through EDDM

Rental property owners were difficult to reach if they didn't live in the MUH property

Website: <https://tinyurl.com/smokinglaw>

Educational Resources



□ Free no-smoking signs in multiple languages

□ Make a smoking complaint-online form

▣ Tenant FAQ in English, Spanish, Chinese, Vietnamese, cessation resources, copy of ordinance

▣ Landlord FAQ, sample tenant notification letters, presentations available for HOAs and Property Managers



Lessons Learned: Early Engagement

- Engage Rental Housing Associations and property managers after you have some policy momentum and community support
- Favor **Jurisdiction Enforcement** Vs Landlord/HOA Enforcement
- Work with agency responsible for enforcement to develop the enforcement process before Policy recommendations are submitted to Council Members

Lessons Learned: Listen to Community



- Create FAQ materials in multiple languages:
 - Sample tenant notifications translated into Spanish & Chinese
 - Created a way people with another language could report their complaint by call or through website
- Make links to website easy to access
example: use tinyurl.com
- Have Spanish interpretation available for presentations to the community

Lessons Learned: Implementation Process First Year of Ordinance

- Keep Workgroup apprised and meet only if needed to discuss issues that surface with implementation
- PHD communicate closely with complainant, let the agency responsible for enforcement communicate with the alleged violator
- Evaluate and make changes as necessary as each step of enforcement is tested
- Prepare staff for conflict resolution when handling complaints

Lessons Learned: Allocated Resources

□ Administrative:

- Program Set up
- Develop education materials, website, systematize responses to complaints, notice templates, admin process and fee structure
- Check ins and program/protocol review
- Collect data for reporting

□ Enforcement:

- Review referred cases - staff report evidence etc.
- Send notices
- Case related correspondences
- Assess fines and fees
- Process appeals
- Language interpretation resource

Type of Smoking Complaints Received over last 18 months

- 20 complaints of SHS from Cigarettes, cigars, cigarillos, hookah, and pipes
- 17 complaints of SHS smoke from Cannabis/marijuana
- 18 complaints about SHS from both Tobacco and Cannabis
- 8 complaints didn't know

Program Impact

- ❑ Compare # complaints to # MUH units; low rate of calls/per MUH units in Urban Growth Boundary of unincorporated Alameda County.
- ❑ Successful partnership created between Public Health Department and Enforcement Agency.
- ❑ Education and outreach efforts to inform community of the intent of the ordinance; low rate of complaints overall.
- ❑ Compliance from Property Managers and HOAs; Self-policing and utilizing resource support.
- ❑ Only 7 complaints went to level of fines.
- ❑ No evictions in 18 months.

Questions ?

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- For more information visit <https://tinyurl.com/smokinglaw>

Thank You

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