

SMOKE-FREE MULTI-UNIT HOUSING ENFORCEMENT GUIDE

Overview

This guide is designed to help decisionmakers and stakeholders enacting or modifying smoke-free multi-unit housing policies in determining the best options for equitable enforcement. It is meant to be used as a companion to the Partnership's model ordinance, which contains more detailed language and explanation of various enforcement choices. For further information on topics relevant to multi-unit housing ordinances, such as content on cannabis regulation or tenant resources, see our California resource page.

Not all jurisdictions have the same resources or community preferences, so we have included a range of enforcement options and provided context for the benefits and cautions of each from an equity perspective. We have provided recommendations as to which enforcement options are considered best practices and more equitable (**coded green** ✓), which options might require some more caution or consideration (**coded yellow** ⚠), and the options that the Partnership recommends against (**coded red** ✘). Some of these options



have been used across many jurisdictions, while others are emerging strategies.

Having access to safe, affordable, stable housing is a key to both physical and mental health outcomes. But allowing smoking in shared housing makes safe and stable housing difficult to achieve health for all residents. Exposure to secondhand smoke in multi-unit housing can lead to poor health, including asthma and other lung problems, particularly among pregnant women, children, and the elderly. The health impacts of secondhand



smoke are also felt most by communities of color, and other vulnerable groups. For instance, Hispanic/Latinx residents and African American children have some of the highest secondhand smoke exposure levels. Thirdhand smoke — residual nicotine and other chemicals left on furniture, walls, and other surfaces by commercial tobacco¹ smoke — is also toxic, particularly to children.

Enforcement is important to ensure effective compliance and implementation of smoke-free multi-unit housing policies. Enforcement can and should achieve the dual goals of protecting residents from secondhand smoke exposure and ensuring housing stability for all residents whenever possible. Several factors should be considered in pursuing these goals, 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 such as racial profiling posed by different enforcement mechanisms); and the process of enforcement. Part of the consideration for equitable enforcement should involve determining which entity (e.g., code enforcement, landlord, city or county attorneys, the public, police) is best positioned to effectively enforce and will result in the fewest potential negative collateral consequences.

In addition to the enforcement options discussed below, engaging in an education campaign such as providing educational materials or presentations for residents, staff training, and signage or notices to residents could reduce the number of tenants in violation of any policy. Further, including cessation information in an education campaign can promote behavior change and support people in quitting. See our model ordinance for more information.

We acknowledge that in the context of the current housing crisis, particularly concerns around COVID-19 and expiring eviction moratoriums, there is an understandably heightened concern around the best options for enforcement in this area. The Partnership stands ready to provide legal technical assistance on questions related to a particular jurisdiction or enforcement strategy.

✓ Most preferred/most equitable

⚠ Proceed with caution

✗ Not recommended by the Partnership

Enforcement Options

✓ Graduated enforcement by landlord

Benefits

- Taking tiered steps to violations such as providing cessation materials, verbal or written warnings to tenants, informal conferences, or requiring written acknowledgment of the policy can improve compliance (see NYC Housing Authority [example](#), MN model lease addendum, or [other examples](#))
- Providing cessation materials can help support smokers affected by smoke-free policies to quit
- Using steps like “resetting the clock” if there has been no violation for a certain period, or if a tenant has completed cessation support counseling, can give residents second chances and incentivizes compliance
- Can prohibit eviction as a penalty

Cautions

- These tiered steps may not be sufficient to obtain compliance, so there may need to be a stronger penalty as a last resort

✓ Civil fines against landlords/HOAs

Benefits

- Civil fines for landlords for violations of smoke-free ordinances can be effective at incentivizing enforcement by landlords, and can also be graduated
- Can be an effective incentive for HOAs, as they have fiduciary responsibility for their owners’ money
- Can limit the potential negative consequences of direct enforcement against tenants, such as civil fines

- Can allow tenants to initiate enforcement by registering a complaint with a designated local government employee

Cautions

- Landlords or HOAs may be motivated to take stronger steps against tenants than they otherwise would, potentially including actions like eviction

Community service

Benefits

- As an alternative to civil fines, community service can limit the financial hardship on residents
- Can be tailored to assist tobacco cessation or tobacco waste cleanup efforts

Cautions

- Community service may still pose a financial hardship to some individuals, such as if they are required to miss work or arrange for childcare
- If enforced by police, may open the door to other collateral consequences
- May require community to invest in new resources or programs

Restorative justice²

Benefits

- Restorative justice, if all impacted parties agree to participate as an alternative to other enforcement, can be a very effective way to repair harm and potentially transform behavior

Cautions

- Requires involvement of individuals trained in restorative justice practices, so may have some budget impacts
- Since it requires willing participation from all parties, it may not always be possible to use this approach

Nuisance³

Benefits

- Permits a range of nuisance abatement tools commonly used by city or county attorneys, such as restraining orders, or preliminary or permanent injunctions

Cautions

- May require too many local government resources to be widely used
- May expose marginalized communities to unnecessary involvement with law enforcement
- May result in escalated consequences or misdemeanor charges in some jurisdictions

✓ Enforcement through lease

Benefits

- Including smoke-free requirements in lease terms (with appropriate language translations) creates clear expectations for new and existing tenants

Cautions

- Depending on how drafted, could allow for evictions, which can impact health outcomes and worsen existing economic disparities (see full discussion below)

⚠ Civil fines against tenants

Benefits

- Enforcement by housing inspectors, health departments, or other civil employees removes the potential collateral consequences from police/criminal enforcement
- Could act as a deterrent in some circumstances

Cautions

- May be a budget impact on a jurisdiction to add new duties to city or county workers
- Administrative fines may cause financial hardship depending on a resident's financial circumstances
- Risk of discriminatory/unequal enforcement

⚠ Private civil right of action

Benefits

- Allowing private civil actions can help ensure there is adequate enforcement of smoke-free policies
- Gives some agency to tenants to act on their own behalf

Cautions

- When directed against other tenants, there is a risk of discriminatory/unequal enforcement
- Can foster distrust and hostility between tenants
- May burden the judicial system
- Litigants may struggle to prove smoking occurred

⚠ Eviction in limited circumstances⁴

Benefits

- Could be used as a last resort for repeat violations of no-smoking policy to protect the health of other tenants
- Could specify a certain number of warnings/violations before an eviction could proceed to allow for multiple chances to comply (see [example](#), page 30)
- Could allow for no lease renewal instead of immediate eviction as alternative

Cautions

- Can impact health outcomes and worsen existing economic disparities, particularly for Black, Indigenous, or other people of color who are disproportionately renters (63% in CA, compared to 50% if homeowners)
- Can make it more difficult for individuals to obtain other housing
- Could be used as pretext to remove tenant when a landlord or another resident wants to evict for a reason unrelated to smoking
- If can be applied to smoking by guests, can penalize tenants for others' actions
- Knowing that eviction could be an outcome for a neighbor might discourage residents from reporting smoking policy violations
- Elderly residents could lose housing as a result of another family member's smoking

✘ Eviction as a first response

Cautions

- In addition to the cautions listed above, using a "one strike" approach to eviction risks housing instability for tenants without giving them an opportunity to correct or, even better, the opportunity to pursue cessation with the CA Smokers' Helpline or through local treatment programs

Criminal enforcement

Cautions

- Criminal sanctions have been shown to have negative public health consequences and engender inequities.
- Often disproportionately targets individuals of color and can lead to collateral consequences including impact on immigration status, triggering a probation or parole violation, a summons leading to a criminal record or a warrant, or increased distrust of law enforcement.
- If an enforcement action triggers more severe criminal sanctions, could potentially jeopardize housing, benefits, education, and employment.

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Restorative justice focuses on repairing harm caused by crime and reducing future harm through crime prevention. It often involves a cooperative process where willing stakeholders meet to discuss the harm and how to bring about a resolution. See www.restorativejustice.org.
- 3 A public nuisance is a legal doctrine that applies when a person unreasonably interferes with a right that the general public shares in common. Local ordinances can declare violations of the smoke-free ordinance to be a public nuisance, opening up this enforcement option.
- 4 NOTE: Even in jurisdictions that have included eviction as an enforcement option, the majority have not evicted residents for violating smoke-free policies. Given the understandable and growing concern around eviction and housing stability, though, increasingly jurisdictions are pursuing smoke-free multi-unit housing policies that prohibit eviction as an enforcement option. The Partnership is available to provide legal technical assistance tailored to the preferences of local jurisdictions.