

# Becoming a Policy Wonk on Nonsmoking Housing Units Ordinances: Answers to Tough Questions from Opponents and Elected Officials

November 2011

In California, many cities and counties have passed local ordinances to protect residents from secondhand smoke exposure in multi-unit housing in a number of different ways. The type of smokefree housing ordinance that best protects the health of tenants is an ordinance that requires landlords to set aside a certain percentage of nonsmoking units. This type of ordinance is also the most controversial and generates the most interest and opposition.

In the cities and counties that have adopted ordinances to require landlords to designate nonsmoking units in multi-unit housing, advocates have faced opposition but have been able to demonstrate the need for this type of policy. Below are the major arguments and questions raised by elected officials and opponents about smokefree housing in general, as well as specific to policies that create nonsmoking units, and detailed responses to each concern. Additional smokefree housing resources are available at [www.Center4TobaccoPolicy.org/localpolicies-smokefreehousing](http://www.Center4TobaccoPolicy.org/localpolicies-smokefreehousing).

## Are cities and counties allowed to regulate smoking in people's homes?

Yes, there is no constitutional right to smoke and there are no provisions in either state or federal law that prevent a city, county or landlord from restricting tenants from smoking in their apartment. In fact, legislation signed into law in 2011 now spells out in state law the ability for landlords to prohibit smoking in the units they manage and specifically does not preempt cities and counties from adopting local smokefree housing ordinances.<sup>1</sup> Local governments already regulate other kinds of activities people can do in their homes and restricting smoking in apartments would be no different. As further evidence, the ordinances that prohibit smoking in units passed in 23 cities and counties in California have not been challenged in court.

## Doesn't the public support letting tenants decide for themselves whether to smoke or not in their own apartment?

No, on the contrary, statewide scientific surveys commissioned by the Center for Tobacco Policy & Organizing and conducted over several years show people strongly support a law requiring nonsmoking sections in apartments. These surveys reveal that 78% of California voters, 75% of California rural voters and 69% of California renters (even 46% of renters who smoke) support a law requiring apartment buildings to offer nonsmoking sections.<sup>2,3,4</sup> Even among apartment owners and managers in California, 66% support a law requiring the creation of nonsmoking units.<sup>5</sup> The polls also show that 82% of California renters would prefer to live in an apartment complex where smoking is not allowed anywhere or where there are separate smoking and nonsmoking sections.<sup>4</sup>

## How will smokefree housing policies affect people who smoke who are low income or have limited housing options, if they cannot smoke in the only place they can afford to live?

Smokefree housing policies do not prohibit people who smoke from living in a nonsmoking unit. The policies simply require that there be no smoking in that unit. Some housing advocates believe such policies discriminate against low income tenants who smoke, but the real discrimination is against low income families who cannot escape exposure to deadly secondhand smoke and cannot find another place to live because of income, health, or other reasons. Low income individuals have less access to health care and are more likely to suffer from conditions, such as asthma, that are worsened by secondhand smoke exposure. In fact,

housing authorities throughout California are beginning to recognize this reality and have begun prohibiting smoking in low income and senior housing. As of November 2011, 16 cities/counties have adopted a policy to require nonsmoking units in housing authority properties or affordable housing.<sup>6</sup>

## Is secondhand smoke exposure really harmful in multi-unit housing settings?

Yes, there is no doubt that secondhand smoke is harmful to people's health with the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke.<sup>7</sup> Many other studies also show the harmful health effects of secondhand smoke. In a multi-unit housing setting, secondhand smoke does drift from neighboring units, neighboring patios and balconies and from outdoor common areas into nonsmokers' apartment units through open windows, open doors and shared ventilation systems. Studies have shown that secondhand smoke can also enter neighboring apartments under doorways and through wall cracks and openings for electrical wiring, light fixtures, plumbing, baseboards and ductwork.<sup>8,9</sup> A study conducted in a four-story Santa Monica apartment building using an industry-standard device to measure small airborne particles that can penetrate deep into the lung showed that persons living in apartments near smokers can be exposed to potentially hazardous levels of secondhand smoke for 8-24 hours per day.<sup>10</sup>

## Shouldn't landlords just restrict smoking on their own with a voluntary policy instead of city and county governments getting involved in this issue?

It is legal, and now spelled out in state law, for landlords to prohibit smoking in the apartments they manage and many landlords throughout the state have done so. However, these voluntary policies can only accomplish so much. These policies only impact a limited number of tenants and can be changed at any time, especially if ownership or management changes. City and county ordinances are effective for the entire multi-unit housing population and provide a more permanent protection. Moreover, these ordinances can offer new enforcement options to make the nonsmoking provisions easier to enforce than a voluntary policy. Finally, there are many tenants who are exposed to secondhand smoke and have talked to their landlords about creating nonsmoking units with no success. The next place for these people to turn to in order to find a way to protect their health is the local government. Cities and counties have a responsibility to protect the health of their residents and a smokefree housing ordinance falls under that responsibility.

## Why should condominiums be included in the ordinance? Shouldn't places that people actually own be exempted from the smoking restrictions?

The fact that you own your condominium does not protect you from drifting secondhand smoke. Many condominium owners have the same problems with drifting secondhand smoke that apartment tenants do. Cities and counties legally can prohibit smoking in condominiums in the same way that they can in apartments. Yet even though it is legal, some people believe that owning a condominium bestows more rights on the owner than merely renting, and that owners should not be subject to smoking restrictions in their own home. However, condo owners who are exposed to secondhand smoke and are unable to live in their home without harming their health have a right to the enjoyment of their home. Condo owners can't move as easily as someone who rents, so the problem of escaping the continuing exposure to secondhand smoke can actually be more severe for a person who lives in a condo. If a city or county recognizes the importance of protecting people from drifting secondhand smoke in multi-unit housing, it is important that the protections apply to both people who rent and people who own. And many cities and counties have done this; 16 of the 23 local ordinances in California that require nonsmoking units apply these provisions to condominiums.<sup>11</sup>

## What about the landlord, isn't a smokefree housing law going to be a burden?

Actually, a smokefree housing law will probably make their job easier. By requiring landlords to create nonsmoking units, it takes the burden off them of having to decide if they want to enact a voluntary nonsmoking policy. A smokefree housing ordinance would also give landlords tools to better resolve complaints about drifting secondhand smoke by providing new enforcement options. A survey of landlords revealed that complaints about drifting secondhand smoke are the second most common complaint they receive from tenants.<sup>12</sup>

Requiring nonsmoking units will also save apartment owners money. When a unit with a smoking tenant becomes vacant, it costs more and takes more time to clean and refurbish than it does a nonsmoking unit. When people smoke in apartment units, there is more damage to walls, carpets and draperies. A recent study showed that the average smoking related costs for apartment owners was \$4,935 annually and \$282 per unit.<sup>13</sup> In addition, creating nonsmoking units will reduce the fire risk for landlords because cigarettes are the number one cause of residential fire deaths.<sup>14</sup> Some insurance companies have even started offering discounts on fire insurance to owners of smokefree apartment buildings.<sup>15</sup>

## How would this law be enforced?

There are many different ways for a smokefree housing law to be enforced and each city or county will likely have its own unique combination of enforcement options. Any smokefree housing law should include enforcement options for both the landlord and for tenants. Landlords have responsibility for handling violations of the lease and disputes between tenants. Tenants need to have the ability to enforce the nonsmoking provisions if the landlord refuses to do so. The new state smokefree housing law requires landlords to include language in leases specifying where smoking is prohibited. Other enforcement options include setting up a process whereby landlords may, but are not required to, evict a tenant who smokes in a nonsmoking unit, declaring secondhand smoke a nuisance and allowing for private enforcement of the law by other tenants and members of the public. In addition, the police or other appropriate city staff can play a secondary, backup role in enforcement, although they are not intended to be the primary enforcers.

## If smoking is already prohibited in many public places and would now be prohibited in multi-unit housing, where are people who live in smokefree housing going to go to smoke?

There is no question that the locations to smoke available in California are shrinking. This is a good thing from a public health perspective, but there are still plenty of places to smoke. Most local smokefree housing ordinances do not ban smoking in 100% of apartment units and most of these ordinances also allow for the creation of a designated smoking area on the grounds of the housing complex. Creating a designated smoking area provides a place for people who live there and smoke to do so where the secondhand smoke does not drift into apartment units and encourages them to follow the law. In some cities with dense high rise housing there are no suitable outdoor areas for a designated smoking area. It is important for people in these cities to work together to determine a safe location where smokers would be able to smoke without that secondhand smoke harming others.

## Shouldn't local communities wait for the California Legislature to take action on this issue?

No, local communities should not wait for the state to act in order to enact policies that will protect people from exposure to deadly secondhand smoke. The California Legislature did take action on this issue in 2011 and passed a law stating that it is legal for landlords to prohibit smoking in the units they manage and that the law does not preempt local ordinances. It was already legal for landlords to prohibit smoking prior to this law and many local ordinances already go much further than that this state law by requiring nonsmoking units. There is no guarantee that the legislature will take further action on this issue and, if they do, how strong such a law would be. The history of tobacco control policies in California shows that many new strong policies started at the local level and were only adopted by the state after a number of cities and counties had enacted them. If more cities and counties have strong smokefree housing laws, this can influence the legislature to write a stronger smokefree housing bill when the time comes for the legislature to act.

1 Senate Bill 332. California Legislature, signed into law September 6, 2011.

2 The Center for Tobacco Policy & Organizing, American Lung Association in California. Survey of California Voters about Secondhand Smoke Policies, November 2008, conducted by Goodwin Simon Victoria Research.

3 The Center for Tobacco Policy & Organizing, American Lung Association in California. Survey of California Rural and Small Town Voters, March 2008, conducted by Goodwin Simon Victoria Research.

4 The Center for Tobacco Policy & Organizing, American Lung Association in California. Survey of California Renters, August 2004, conducted by Goodwin Simon Victoria Research.

5 The Center for Tobacco Policy & Organizing, American Lung Association in California. Survey of California Apartment Owners and Managers, June 2005, conducted by Goodwin Simon Victoria Research.

6 The Center for Tobacco Policy & Organizing, American Lung Association in California. Matrix of Local Smokefree Housing Policies, November 2011.

7 The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General. – [Atlanta, GA]: U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Coordination Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, [2006].

8 Wagner J, Sullivan DP, Faulkner D, et al. "Environmental Tobacco Smoke Leakage from Smoking Rooms." *Journal of Occupational and Environmental Hygiene*, 1: 110-118, 2004.

9 "Air Monitoring: Confirming the Risk" David Bohac, Center for Energy and Environment, presented at Smoke-Free California Conference, May 2006.

10 N. Klepeis (personal communication, September 29, 2008).

11 The Center for Tobacco Policy & Organizing, American Lung Association in California. Comparison of Nonsmoking Housing Units Ordinances, November 2011.

12 Center for Energy and Environment and Association for Nonsmokers – Minnesota. Survey of Multifamily Building Owners and Managers in Minnesota Regarding Movement of Secondhand Smoke in Buildings and Designation of Smoke-Free Buildings.

13 Ong, M, et al. Estimates of Smoking-Related Property Costs in California Multiunit Housing. *Am J Public Health*. 2011.

14 U.S. Fire Administration, Behavioral Mitigation of Smoking Fires, February 2006.

15 Cushing G. "Apartment Owners Realize Benefits from Smoke-Free Multi-Unit Housing Trend." *Apartment Management*, April/May 2011, p. 13-14.