

## Smokefree Housing Policy Table

### Policy and Enforcement Options for Multi-Unit Housing

*June 2007*

**The following Table outlines five different policy options and three enforcement options that communities may adopt to help residents of multi-unit housing reduce or eliminate their exposure to secondhand smoke.** A sample ordinance that includes specific legal language for these policy options has been produced by the Technical Assistance Legal Center (TALC) and is available at <http://talc.phil.org>.

Cities and communities may choose some or all of the policy provisions outlined in this Table. Although none of the options independently will solve all of the problems associated with drifting smoke in multi-unit housing, most communities are likely to begin by passing only a few of these policy options and then proceed to pass the other, more extensive, policies over time.

This Table is designed to help coalitions and communities working to create smokefree housing determine which policy option, or set of policy options, is appropriate for them. **This is a strategic campaign question, and not a legal one.** It requires coalitions to evaluate their decision makers, understand their political environment, assess their allies, consider their resources, and understand their community.

As you begin this discussion with your coalition members this Table is intended to be a tool to help you evaluate what combination of policies is reasonable and achievable in your community. The discussion below of the advantages and disadvantages considers the potential level of support for these different policy/enforcement options and a community's ability to organize around them.

For quick reference, listed below are the policy and enforcement options included in this Table:

#### **Policy Options**

1. No Smoking Common Areas (page 1)
2. Non-Smoking Units (page 3)
  - Senior Housing (page 5)
  - Affordable Housing (page 5)
  - Market Rate Housing (page 6)
  - Existing Housing (page 6)
  - New Housing (page 6)
3. Smokefree Buffer Zones (page 7)
4. Disclosure Requirement (page 8)
5. Nuisance Ordinance (page 9)

#### **Enforcement Options**

6. Local Government Enforcement (page 11)
7. Required Lease Terms (page 12)
8. Private Enforcement (page 13)

Policy Description	Policy Discussion
<b>1. No Smoking Common Areas</b>	
Would prohibit smoking in all indoor and outdoor common areas.  Also, allows a	<b><u>Advantages</u></b> This is a popular policy option (See Poll Results on page 2). This may be a good first step on the road to passing other smokefree housing policies.  Current state law already bans smoking in indoor common areas if they are workplaces. This policy option would extend this prohibition to all indoor common areas - whether they are workplaces or not - and would also prohibit smoking in

<p>landlord to designate an outdoor smoking area.</p>	<p>outdoor common areas (such as courtyards, entryways, pool areas, and parking lots).</p> <p>There are many communities that have already passed these types of policies. This makes it easier to pass this policy in your community because it provides an example to show decision makers the policy works. (See Real Life Examples.)</p> <p>This common-sense approach may be comfortable for policy makers, because it does not involve regulating activity inside anyone's home.</p> <p><b><u>Disadvantages</u></b></p> <p>This policy option does not address the root of the problem, which is secondhand smoke drifting into an apartment from neighboring apartments or balconies and patios.</p> <p>If smoking is banned in outdoor areas, smokers may be driven back into their apartments where they may expose their families and neighbors to secondhand smoke.</p> <p>In general, this would be a hard policy to enforce because it is not easy to pinpoint violators. The smoker would need to be caught in the act of smoking in order for an enforcer to know who was responsible for the drifting smoke. On the other hand, you may be able to spot regular violators relatively easily.</p> <p>Prohibiting smoking in indoor common areas would provide few public health benefits because most indoor common areas are already smokefree through the state law prohibiting smoking in enclosed workplaces.</p> <p><b><u>Poll Results</u></b></p> <p>The Center polled 600 apartment tenants in 2004. They were asked about smoking in indoor and outdoor common areas:</p> <ul style="list-style-type: none"> <li>▪ Only 39% of those polled were aware that indoor common areas were already non-smoking.</li> <li>▪ 67% support making outdoor common areas (entryways, swimming pools, courtyards) non-smoking.</li> </ul> <p>In addition, the Center conducted a poll of 300 apartment owners &amp; managers in 2005. When they were asked about smoking in indoor and outdoor common areas:</p> <ul style="list-style-type: none"> <li>• 74% of owners/managers polled were aware that indoor common areas were currently non-smoking.</li> <li>• 67% support making outdoor common areas (entryways, swimming pools, courtyards) non-smoking.</li> </ul> <p>The Center also polled 400 Hispanic/Latino apartment renters in August 2006. Their response to smoking in common areas was:</p> <ul style="list-style-type: none"> <li>• 85% of those polled favor making outdoor common areas (entryways, swimming pools, courtyards) non-smoking.</li> </ul> <p><i>(For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p> <p><b><u>Real Life Examples</u></b></p> <p>Over 70 communities in California already prohibit smoking in all indoor common areas of multi-unit housing buildings (beyond those that are already workplaces).</p> <p>In addition, five communities in California prohibit smoking in all indoor and outdoor</p>
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	<p>common areas of multi-unit buildings. These communities are: Calabasas, Contra Costa County, Emeryville, San Mateo County and Temecula.</p> <p>Several communities prohibit smoking in all indoor common areas, but only some outdoor common areas of multi-unit buildings. These communities are: Arcata, Davis, Healdsburg, Laguna Woods and Marin County.</p> <p><b><u>Enforcement</u></b></p> <p>This policy can be passed with just the basic “Enforcement” provision (see page 11), which means only the local government can enforce this ordinance.</p> <p>Another enforcement option is the “Lease Terms” provision (see page 12), which would require that the smoking restriction be included in the lease agreement. This would allow the landlord, as well as other tenants, to enforce the no smoking lease terms against violators.</p> <p>A “Private Enforcement” option (see page 13) can also be passed allowing any private citizen (even one who does not live in the building or who was not exposed to secondhand smoke) to enforce the ordinance through a lawsuit.</p>
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**2. Non-Smoking Units**

<p>Would require new and existing multi-unit rental housing containing a specified number of units to designate a percentage of units as non-smoking. (The TALC sample ordinance suggests that existing buildings with 10 or more units make 50% of the units non-smoking; in new buildings, 75% of the units non-smoking.)</p> <p><i>You must decide whether to use this ordinance for market rate housing or a specified kind of housing (government subsidized, senior, etc.) and whether to include existing</i></p>	<p><b><u>Advantages</u></b></p> <p>This option is the one likely to protect the most Californians from secondhand smoke exposure.</p> <p>There are numerous voluntary examples that can be used to demonstrate to policy makers and the community at large that requiring non-smoking units and non-smoking sections can be a very successful policy. This will strengthen your argument that this policy will work community wide.</p> <p>Public support is highest for creating non-smoking units than for any other policy option. (See Poll Results.)</p> <p>For the most part, this policy is likely to be self-enforcing because renters can choose to move into units that are either smoking or non-smoking, depending on their preference.</p> <p>There is strong support among tenants for evicting tenants who violate the non-smoking policy if they are given multiple warnings.</p> <p>In order to overcome opposition it is important to clarify that smokers may rent a non-smoking unit, so long as they do not smoke in the unit.</p> <p>The enforcement of this option can be constructed so that the first violation is just a warning. This ameliorates the problem of guests accidentally smoking in the unit.</p> <p><b><u>Disadvantages</u></b></p> <p>This policy proposal will stimulate significant opposition. Landlords will be concerned about whether they will be able to rent all their units, about whether they will be responsible for enforcing the non-smoking provision, and whether they will be held liable by non-smoking tenants if someone violates the smoking restriction.</p> <p>The issue of what to do about existing tenants who smoke may create political problems or weaken the ordinance.</p> <ul style="list-style-type: none"> <li>• The ordinance has a “grandfather” clause that allows current smoking tenants to continue smoking in their unit for as long they live in the unit, even if it is designated as non-smoking. Although this clause may be necessary, this would weaken any</li> </ul>
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or just new housing. The pros and cons of this choice are discussed below.

The percentage of units to be designated non-smoking and the minimum size of the buildings to be regulated are policy choices.

Thinking strategically about your community, you must decide how to handle smokers whose units are in areas of a building that is to become non-smoking.

- policy by failing to protect many non-smokers from secondhand smoke exposure.
- Alternatively, rather than being for an indefinite period of time, the “grandfather” clause can be set for a specific time period, such as six months or a year.
  - Another option would be to offer smoking tenants an incentive to move to a designated smoking unit. However, incentives could make the ordinance more costly and increase opposition.

### **Poll Results**

- 69% of tenants polled favor a law that would require all apartment buildings to offer non-smoking sections (where all units, patios, and balconies in the section were non-smoking).

*(Results from the Center poll of 600 apartment tenants in 2004. For more information visit [www.californialung.org/thecenter](http://www.californialung.org/thecenter))*

- 57% of owners/managers polled would favor a law that would require all apartment buildings to offer non-smoking sections (where all units, patios, and balconies in the section were non-smoking).

*(Results from the Center poll of 300 apartment owners & managers conducted in 2005. For more information visit [www.californialung.org/thecenter](http://www.californialung.org/thecenter))*

- 82% of Latino renters polled favor a law that would require all apartment buildings to offer non-smoking sections (where all units, patios, and balconies in the section were non-smoking).

*(Results from the Center poll of 400 Hispanic/Latino renters conducted in 2006. For more information visit [www.californialung.org/thecenter](http://www.californialung.org/thecenter))*

### **Real Life Examples**

The City of Temecula passed a policy in May 2007 that requires 25 percent of all new and existing multi-unit housing to be designated as non-smoking units.

The County of Sacramento passed a resolution in April 2007 that encourages apartment owners to make 50 percent of their units non-smoking or entire apartment buildings non-smoking.

The City of Thousand Oaks adopted a policy in September 2004 requiring that one-third of units in new affordable housing be non-smoking. The city updated this policy in March 2007 to require two-thirds of newly constructed publicly assisted rental housing and one-half of new supportive housing be smokefree.

The Housing Authority of the City of Rancho Mirage made one existing senior housing building and all future senior housing buildings non-smoking.

The City of Sacramento adopted a policy in December 2006 that encourages apartment owners to make 25 percent of their units non-smoking or entire apartment buildings non-smoking.

The Housing Authority of the City of Madera designated two out of three senior buildings as non-smoking.

The Santa Barbara Housing Authority adopted a smokefree policy for a senior housing apartment complex.

### **Enforcement**

This policy can be passed with just the basic “Enforcement” provision (see page 11), which means only the local government can enforce this ordinance.

- The local government could enforce the non-smoking requirement against a tenant who violates the law by smoking in a non-smoking unit.
- The local government could enforce the law against a landlord for failing to set aside the required percentage of non-smoking units.

Another enforcement option is the “Lease Terms” provision (see page 12), which would require that the smoking restriction be included in the lease agreement. This would allow the landlord, as well as other tenants, to enforce the no smoking lease terms against violators.

A “Private Enforcement” option (see page 13) can also be passed allowing any private citizen (even one who does not live in the building or who was not exposed to secondhand smoke) to enforce the ordinance through a lawsuit.

**Non-Smoking Units**  
Senior Housing

**Advantages**

By focusing away from broader market rate housing, not as many people would be affected, and therefore the ordinance may not encounter as much public opposition.

Seniors often have serious health conditions that could be made worse by secondhand smoke. This could make the argument for this policy stronger.

**Disadvantages**

Because this type of policy would only encompass a small percentage of rental housing it would not cover all of the people who need protection from drifting secondhand smoke, such as families.

In addition, it may be extremely difficult to relocate seniors who currently smoke in a unit that is to be designated non-smoking.

**Non-Smoking Units**  
Affordable Housing

**Advantages**

By focusing away from market rate housing, not as many people are affected, and therefore the ordinance may not encounter as much public opposition.

Because government money is used to pay for the building or for subsidizing the rent, some people may see this as a stronger reason for why government should be involved in its regulation. This view could make this ordinance a good first step in this policy area.

Low-income residents of multi-unit housing are particularly vulnerable to drifting secondhand smoke. Low-income residents have few alternative housing options, have a harder time moving, and are more fearful of complaining to a landlord. In addition, there are often higher rates of smoking in this population, which creates more opportunities for exposure to drifting smoke.

**Disadvantages**

Because this type of policy would only encompass a small percentage of the market it would not be covering all of the people who need protection from secondhand smoke.

		<p>Tenants' rights groups may be uncomfortable because such a policy might result in evicting those who have very limited housing options.</p> <p>It may be harder to find individual tenants in these populations willing to speak out.</p> <p>People may be concerned that this policy will make it harder for low-income tenants to find the type of housing they need, because their pool of potential housing will be narrowed even more by the designation of non-smoking vs. smoking units.</p>
	<p><b>Non-Smoking Units</b> Market Rate Housing</p>	<p><b><u>Advantages</u></b> More people will likely be covered by this option than under a subset of the housing market such as senior or affordable housing.</p> <p><b><u>Disadvantages</u></b> Because this option covers more people it is likely to face more opposition.</p> <p>Opponents may be able to make a stronger case that this is an improper restriction on what people can do in their own home.</p>
	<p><b>Non-Smoking Units</b> Existing Housing</p>	<p><b><u>Advantages</u></b> By covering existing housing this policy option deals directly with problems that people are currently facing in their homes.</p> <p>This would provide a large pool of non-smoking options for people looking for rental housing.</p> <p><b><u>Disadvantages</u></b> With existing housing there are likely to be many smokers who are fearful that their current unit may become non-smoking. This is likely to create significant opposition to your policy.</p> <p>Your campaign team will need to think strategically to decide what to do with those smokers in an apartment unit that is newly designated as non-smoking. Those who currently smoke in their units can be grandfathered in or provided incentives as discussed above.</p>
	<p><b>Non-Smoking Units</b> New Housing</p>	<p><b><u>Advantages</u></b> This policy option eliminates the political problems posed by current tenants who smoke (see above).</p> <p>By only covering new housing it is easier to make entire buildings (rather than just sections of a building) non-smoking because there are no current smokers to deal with. This would provide non-smokers with stronger protection.</p> <p>Decision makers might like this as a first step because it covers fewer people and will likely have fewer opponents.</p> <p>This policy begins to provide a pool of smokefree housing for those seeking it.</p>

		<p><b><u>Disadvantages</u></b>  All of the tenants who are being affected now by drifting secondhand smoke will have no relief in their current situation.</p> <p>In some established communities there may be no new multi-unit housing being built.</p>
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**3. Smokefree Buffer Zones**

<p>Would create a smokefree buffer around the windows and doors of non-smoking units and indoor common areas where smoking is prohibited.</p> <p>Would result in prohibiting smoking on balconies or patios near non-smoking units.</p> <p><i>This policy option does not make very much sense as a stand-alone policy. While it can be passed by itself, ideally, it would be passed with or after non-smoking units or smokefree common areas have been established.</i></p> <p><i>The distance established as a buffer zone is a strategic policy choice.</i></p> <p><i>An alternate choice is to pass the buffer around the entire apartment building (rather than just the non-smoking units).</i></p>	<p><b><u>Advantages</u></b>  This option addresses the large number of current complaints about people smoking on balconies and patios and exposing people in neighboring apartments to secondhand smoke. It should be easy to find people willing to testify in favor of such an ordinance.</p> <p>This policy is a good companion piece to the designation of units as non-smoking (see above). This may serve to encourage the landlord to separate any non-smoking units even further than required from smoking units, in order to avoid overlapping balconies.</p> <p>This may be one of the easiest policies to enforce because violators (especially those who violate regularly) will likely be easy to spot by managers or tenants.</p> <p><b><u>Disadvantages</u></b>  As a stand-alone policy, this does not address the fundamental problem of smoke drifting from neighboring apartments. In fact, because this policy would prohibit people from smoking outside on balconies or patios, this policy may drive smokers indoors where they may expose their families and neighbors to secondhand smoke.</p> <p>Because of this potential for increased smoking indoors, this policy may be more difficult to pass politically.</p> <p>Depending on the layout of the building, this policy may make it difficult to find a legal place to smoke on the grounds of the multi-unit housing complex.</p> <p>For enforcement purposes, it may also be difficult to know whether a smoker is within the boundary established as a buffer.</p> <p><b><u>Poll Results</u></b>  When polled, both tenants and owners/managers understood that secondhand smoke drifted inside from outdoors:</p> <ul style="list-style-type: none"> <li>• 72% of apartment tenants thought that secondhand smoke could drift inside an apartment unit from outside</li> </ul> <p><i>(Results from the Center poll of 600 apartment tenants in 2004. For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p> <ul style="list-style-type: none"> <li>• 80% of owner/managers thought that secondhand smoke could drift from outside an apartment building into an apartment</li> </ul> <p><i>(Results from the Center poll of 300 apartment tenants in 2005. For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p> <ul style="list-style-type: none"> <li>• 82% of Latino renters thought that secondhand smoke could drift from outside an apartment building into an apartment</li> </ul> <p><i>(Results from the Center poll of 400 Hispanic/Latino renters conducted in 2006. For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p>
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	<p><b><u>Real Life Examples</u></b>  There are no examples of this type of policy in the multi-unit housing context.</p> <p>However, the State of California has recognized the fact that secondhand smoke drifts indoors from around entrances and exits of buildings, and as a result has banned smoking within 20 feet of a main exit, entrance, or operable window of a government building (Government Code section 7596). In addition, there are some local ordinances that also restrict smoking around windows and doorways.</p> <p><b><u>Enforcement</u></b>  This policy can be passed with just the basic “Enforcement” provision (see page 11), which means only the local government can enforce this ordinance.</p> <p>Another enforcement option is the “Lease Terms” provision (see page 12), which would require that the smoking restriction be included in the lease agreement. This would allow the landlord, as well as other tenants, to enforce the no smoking lease terms against violators.</p> <p>A “Private Enforcement” option (see page 13) can also be passed allowing any private citizen (even one who does not live in the building or who was not exposed to secondhand smoke) to enforce the ordinance through a lawsuit.</p>
<p><b>4. Disclosure Requirement</b></p>	
<p>Would require landlords to disclose to potential tenants the location of designated smoking and non-smoking units and designated smoking areas.</p> <p><i>To clarify, this option does not require landlords to find out whether tenants are smokers. Instead, this would merely require landlords to disclose the status of a rental unit – whether the unit is designated as smoking or non-smoking.</i></p>	<p><b><u>Advantages</u></b>  This policy allows non-smokers to make informed decisions about whether or not to rent a unit based on where the smoking and non-smoking units are located.</p> <p>By disclosing that there are non-smoking and smoking units, this approach could increase awareness of the issue and of people’s right to live in a non-smoking environment.</p> <p>Landlords may be more favorable to this approach, because this option allows each owner to decide what percentage of the building’s units, if any, to designate as non-smoking.</p> <p>This policy option would be strongest in conjunction with an ordinance requiring a certain percentage of non-smoking units (see above).</p> <p>However, this policy option could be passed separately (before the non-smoking units policy). This would require a landlord to point out which units are smoking and which units he/she has voluntarily designated as non-smoking. This could increase awareness of drifting secondhand smoke and perhaps lead to the establishment of more voluntary policies.</p> <p><b><u>Disadvantages</u></b>  Because there is no requirement that landlords designate any portion of units as non-smoking, this policy does not do anything to stop drifting smoke.</p> <p>The ordinance puts a burden on the landlord to keep track of which apartment units are smoking and non-smoking. Landlords are unlikely to welcome additional legal requirements that they must meet.</p> <p>The landlord may be concerned that he may be held liable if he points out a harm (e.g., where the smoking units are) and does nothing to remedy the situation. This may be true with other policy options, but it is most true with this one.</p>

	<p><b><u>Poll Results</u></b>  The Center asked tenants if they supported disclosure of whether tenants smoked in units adjoining the unit they were considering leasing. <i>Note:</i> This is different than the policy option in the TALC sample ordinance, which, less controversially, only requires the disclosure of whether the unit is a designated non-smoking unit or not. Although the option that was polled raises many more privacy concerns, it was still supported by tenants.</p> <ul style="list-style-type: none"> <li>• 61% of those polled supported this policy</li> <li>• 36% opposed</li> </ul> <p><i>(Results from the Center poll of 600 apartment tenants in 2004. For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p> <p><b><u>Real Life Examples</u></b>  Disclosure requirements are common in housing lease agreements, although none currently exist for exposure to secondhand smoke. For example disclosures are made for lead paint, shared utility arrangements, the existence of the Megan's Law database, known asbestos hazards, dangerous mold, and notice of periodic pest control.</p> <p><b><u>Enforcement</u></b>  The local government can enforce the ordinance if they find evidence that a landlord has not given potential tenants the floor plan identifying the locations of the smoking and non-smoking units (see page 11).</p> <p>A "Private Enforcement" option (see page 13) can also be passed allowing any private citizen (even one who does not live in the building) to enforce the ordinance against the landlord through a lawsuit.</p>
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**5. Nuisance Ordinance**

<p>Would specifically identify secondhand smoke as a nuisance.</p> <p>Doing so makes it easier to prove a case should someone want to bring a lawsuit for exposure to secondhand smoke.</p> <p><i>It is a strategic decision whether or not to go with the general nuisance option (as the TALC ordinance does) or a housing specific nuisance option (as the</i></p>	<p><b><u>Advantages</u></b>  This provision as written in the TALC sample ordinance provides broad protection from secondhand smoke anywhere in the city or county, not just in multi-unit residences. It allows anyone who is exposed to secondhand smoke without their consent to take the smoker to court seeking money damages or a court order to prevent future smoking.</p> <p>Some policy makers may be more comfortable with this option because it is not "telling people what they can do in their own home." It is addressing the issue in a more general way.</p> <p>Even if the law were not used much, passing a nuisance law would create public awareness of the problem of drifting smoke and its ramifications.</p> <p>The TALC ordinance only requires one non-consensual exposure to be a nuisance.</p> <p>The nuisance policy option would provide protection from drifting secondhand smoke to people living in condominiums, which many of the other policy options do not.</p> <p><b><u>Disadvantages</u></b>  This law requires tenants to take legal action to get help. If it is not used, the law does not protect anyone.</p> <p>Tenants may be reluctant to sue their neighbors for fear of retaliation from the neighbor. Although there is a provision in the ordinance that makes it unlawful to retaliate, it is unlikely that this will make people feel entirely comfortable.</p> <p>Individuals may not have the necessary time, money, or familiarity with the court</p>
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State of Utah did).

system required to act.

The poll results demonstrate that this is not a popular policy option with tenants and owner/managers.

The scope of a nuisance law is broad, and so is the potential opposition. Opposition could come from well beyond the housing industry.

**Poll Results**

For more information on the poll results on nuisance, please contact the Center at thecenter@californialung.org.

**Real Life Examples**

The State of Utah has passed a nuisance law that applies only to housing situations, not to all secondhand smoke exposure. (Unfortunately, this law is very restrictive about what constitutes a nuisance, e.g. the secondhand smoke has to drift in more than once in each of two or more consecutive seven-day periods.)

In September 2006 the City of Dublin passed an ordinance that designates secondhand smoke a nuisance. This law makes it easier for residents to take legal action against another resident who exposes them to secondhand smoke.

In February 2006 the City of Calabasas passed an ordinance that designates secondhand smoke as a public nuisance. This law makes it easier for residents to take legal action against another resident who exposes them to secondhand smoke.

The City of Emeryville declared secondhand smoke a nuisance in December 2006 but the ordinance renders that declaration almost useless by exempting the individuals and situations where a nuisance law would be most useful.

Noise and smell are other common nuisance provisions that tenants can enforce against each other.

**Enforcement**

Anyone who has been exposed to non-consensual secondhand smoke can sue (in either small claims court or regular court). In the housing context, this allows a tenant who has been exposed to secondhand smoke to sue the smoking tenant. In the non-housing context, a citizen could sue anyone who is exposing them to secondhand smoke without their consent.

Local government could enforce the nuisance provision against the person who was generating secondhand smoke and creating the nuisance (see page 11).

A "Private Enforcement" option (see page 13) can also be passed allowing any private citizen (even one who does not live in the building or who was not exposed to secondhand smoke) to enforce the ordinance through a lawsuit.

**ENFORCEMENT OF SMOKEFREE HOUSING POLICIES – A CLOSER LOOK**  
**Supplemental Table of Enforcement Options for Smokefree Housing Ordinances**

The descriptions below are intended to help those seeking further clarification on the enforcement provisions described in the main body of the policy table. None of the enforcement provisions below are stand-alone policies; they should be passed in conjunction with one of the policy options from the table.

This information follows the TALC sample ordinance enforcement sections, including “**Enforcement,**” “**Required Lease Terms,**” and “**Private Enforcement.**”

Every jurisdiction should, and probably will, include the basic “Enforcement” section because this allows the local government to enforce their laws. The other two policies described allow additional people to enforce the law against violators -- “Lease Terms” extends this enforcement ability to the landlord and other tenants in the building, and the “Private Enforcement” provision extends the right of enforcement to the public.

(It is important to remember that, regardless of the enforcement options described below, the landlord can voluntarily write any of the non-smoking requirements into the lease and can then enforce it.)

**Enforcement Description**

**Enforcement Discussion**

**6. Local Government Enforcement**

Allows a local government agency to enforce the law. A tenant who observes a violation of the ordinance would call the specified enforcement agency to report the violation.

The local government could enforce the ordinance in two ways. The first is for an employee of the designated local enforcement agency to come to the housing complex, actually see the violation taking place, and issue a citation to the violator. The second way to enforce the ordinance

**Advantages**

There is precedent to having a local agency enforce smoking-related laws and ordinances. Under the California Smoke-Free Workplace Act, each local jurisdiction has designated an agency (environmental health, sheriff’s office, fire department) to ensure compliance with this law.

This should be easy to pass because the government will want to be able to enforce its own laws.

This helps both tenants and landlords avoid confrontation and enables a tenant to avoid an uncooperative landlord by allowing the government agency to follow up on any reported violations.

The government can hold a landlord responsible for failing to comply with their responsibilities under the ordinance (such as not designating non-smoking units, not providing a floor plan for new residents, or for “knowingly” permitting smoking in common areas).

**Disadvantages**

Requires a city official (police officer or other designated local enforcement agency employee) to actually come to the complex and see the violation for him/herself in order to issue a citation.

<p>is through a civil action in the trial court, where the city attorney or county counsel would file a lawsuit against the person violating the ordinance.</p>	<p>The probability of local government using their limited resources to enforce this ordinance by either method (citation or civil action) is not very high.</p> <p><b><u>Poll Results</u></b> None available at this time.</p> <p><b><u>Real Life Examples</u></b> This enforcement mechanism is the way that most every other law in a community is enforced.</p>
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**7. Required Lease Term**

<p>Requires that every non-smoking unit have a non-smoking provision in the lease. Also requires a clause stating that it is a breach of the lease agreement to violate any law restricting smoking on the premises. This allows a landlord to enforce these lease terms against violating tenants by bringing an eviction action in trial court.</p> <p>In addition, all other tenants in the housing complex would become beneficiaries of the lease, which gives them the right to enforce the non-smoking provision against a violating tenant (even if they themselves are not exposed to the smoke). The tenant could go to trial court to get an injunction or to small claims court to recover monetary damages.</p>	<p><b><u>Advantages</u></b> Putting the non-smoking provision in the lease and allowing landlords and tenants to enforce the lease terms creates more opportunities and avenues for enforcement. Tenants suffering from drifting tobacco smoke no longer must rely solely on the government to step in and enforce the law.</p> <p>Since the landlord is neither solely responsible for enforcing nor required to enforce the non-smoking provision in the lease, owners and managers may not oppose the ordinance as strongly. Without their opposition it will be easier to pass a non-smoking units policy that includes this enforcement provision.</p> <p>Because of the fear of being sued, this provision may serve as a strong deterrent for people thinking about smoking in a non-smoking unit.</p> <p><b><u>Disadvantages</u></b> Poll results demonstrate that allowing tenants to sue other apartment residents is an unpopular approach. (See Poll Results.)</p> <p>This law may be unsuccessful because it may go unused by tenants who are exposed to secondhand smoke because they are reluctant to sue their neighbors.</p> <p>There is a concern that enforcement actions by landlords will be less frequent because they are not ultimately responsible for enforcing the law.</p> <p>Tenants may be reluctant to sue their neighbors for fear of retaliation from the neighbor. Although there is a provision in the ordinance that makes it unlawful to retaliate, it is unlikely that this will make people feel entirely comfortable.</p> <p>Individuals may not have the necessary time, money, or familiarity with the court system required to act.</p> <p><b><u>Poll Results</u></b> There are no poll results specifically on this enforcement option. However, poll results for other policy options, show that both tenants and apartment owners/managers do not support approaches that rely on one tenant suing another.</p> <p>Owners and tenants were surveyed about their support for enforcement and eviction of tenants. They were asked whether a tenant should be evicted from their apartment if there were a law limiting smoking in apartments, and the tenant had signed a lease that specifies that smoking is not permitted, but then repeatedly violated the law.</p> <ul style="list-style-type: none"> <li>• 70% of tenants felt that the tenant should be evicted from their apartment</li> </ul>
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	<ul style="list-style-type: none"> <li>• 80% of owners/managers felt that the tenant should be evicted from their apartment</li> <li>• 60% of Latino renters thought that the tenant should be evicted from their apartment</li> </ul> <p>Then owners and tenants were asked about a three-step process for enforcing these laws. (Step one would be educating all tenants about the apartment building's non-smoking policies. Step two would be three separate warnings if a tenant violates the building's non-smoking policy, along with information about local programs to help people stop smoking. The final step would be eviction if there is a fourth violation.)</p> <ul style="list-style-type: none"> <li>• 71% of tenants thought this was fair for apartment dwellers.</li> <li>• 66% of owners/managers thought this would be workable.</li> </ul> <p><i>(Results from the Center poll of 600 apartment tenants conducted in 2004, poll of 300 apartment owners &amp; managers in 2005, and poll of 400 Hispanic/Latino renters conducted in 2006. For more information visit <a href="http://www.californialung.org/thecenter">www.californialung.org/thecenter</a>)</i></p> <p><b><u>Real Life Examples</u></b> There are no examples of this type of enforcement in smokefree housing.</p> <p>However, there are other examples of similar enforcement options, which allow tenants to sue in small claims court, for example, for excessive noise.</p>
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**8. Private Enforcement**

<p>Allows any private citizen to enforce the ordinance through a lawsuit. This person does not have to live in the building or have been exposed to secondhand smoke.</p> <p>A suit could be brought against either a landlord or a tenant in small claims or trial court.</p>	<p><b><u>Advantages</u></b> This policy option adds additional enforcers, which could increase the chances of the ordinance being enforced.</p> <p>This allows a tenant who feels uncomfortable suing and fears retaliation to get a local organization or some other individual to sue on their behalf.</p> <p>Allows someone to sue without having to prove actual damages. A person would not have to prove harm from exposure to secondhand smoke, just that the exposure occurred and it was against the law.</p> <p><b><u>Disadvantages</u></b> Because this opens tenants and landlords up to so many more potential lawsuits, it seems likely that there will be serious opposition to this policy among the community and policy makers.</p> <p><b><u>Poll Results</u></b> None available at this time.</p> <p><b><u>Real Life Examples</u></b> In February 2006 the City of Calabasas passed an ordinance restricting smoking in indoor and outdoor common areas of apartments. The ordinance includes provision that allows private enforcement.</p> <p>In addition, the tobacco retailer licensing ordinance in El Cajon includes this type of enforcement. An individual may sue a retailer for violating the licensing law.</p>
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